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Editorial

THE STRUGGLE AHEAD - 2022

The waves of struggle that AIBOC had triggered off in 2021 had compelled the government to make a strategic retreat by deferring the introduction of the Bill amending Banking Companies (Acquisition & Transfer of Undertaking) Act 1970, paving the way for privatization of public sector banks as promised in the budget speech of the Union Finance Minister on 1st February, 2021. The struggle needs to be reviewed, considering the programmes adopted at both the UFBU level collectively and the AIBOC level severally. The programme of Bharat Yatra was conceptualised beforehand and commenced after the listing of the Bill intending to privatise the public sector bank in the business agenda of the winter session of Parliament came to light. The disdain with which the bankers looked at the news of the introduction of the privatization bill in the Parliament had found its expression in the instant response of the Confederation, which had taken the struggle onto the streets of India in letter and spirit. In other words, the movement freed itself from the confines of the traditional organisational actions hitherto prevalent and attempted to reach the citizenry with the participation of all sections of stakeholders. A move by the bankers for protecting the ownership character of their workplace has converted itself into a mass movement with a wider appeal of upholding the basic characteristic of the republic in the 75th year since the country's independence. This unique programme has thus laid the foundation of a wider struggle

in the days to come. The lesson that the Bharat Yatra gives is that we need to build an organic relationship with the entire citizenry if we really want to thwart the offensive of privatization launched by the government.

The initial success of our movement against privatization has to be viewed from a wider perspective in the smooth implementation of the wage agreement settled in November, 2020. As we had mentioned in previous issues, the wage settlement was clinched in a situation when there was a widespread layoff, salary cut, march of the migrant labour after being thrown out of the job due to a sudden and unplanned lockdown. The wage settlement also has to be viewed that it had not only taken care of the interest of the existing employees but ensured the implementation of family pension at a huge cost to the banks. The cost that the banks had to absorb for implementing the family pension agreement could be arrived at due to the proactive role played by the Confederation. The Confederation was also successful in placing the demand of 5 days a week at the centre stage of negotiation apart from making the demand for updating of pension, a crucial component of residual issues while ensuring a decent increase in the contribution to NPS by the management till such time the demand for re-implementation of contributory pension is implemented for the new generation. We are spending nearly a paragraph on wage revision as the successful negotiation had instilled a rare dose of confidence in the minds of the

A JUG FILLS DROP BY DROP

membership, giving them confidence that the collective movement can win over the challenges that the community is confronted with.

Common Bond extends its fraternal support to the two days strike call given by Central Trade Unions and independent federations on 23rd and 24th February, 2022 against the retrograde economic policies pursued by the Central Government of which privatization of the public sector undertakings, including banks, are the major building blocks. But Common Bond expects that apart from issuing messages of support, the Central Trade Union should take a few lines out of the leaf of our Bharat Yatra, which taught that it is not the message but active shop floor participation by the fraternity of working class, peasantry, student and youth, women and in fine the entire spectrum of the toiling masses can only ensure the real bonding between the broad section of the democratic movement with the bank employees movement in particular. It would also ensure enthusiastic reciprocation from the bank employees to the greater issues confronting the democratic fabric of an inclusive secular India.

This being moral, we need to internalize while

drawing the strategy for our future day struggle. We have no complacency about the virulent nature of the aggression that would be unleashed on the working people both during the budget declaration and after the completion of the state elections. The budget session has been compartmentalized keeping the weaponry of attack in a safe place to be deployed viewing the election result. We cannot afford to waste a single day. Our preparedness should be at the highest level so that we can hit the street on the hints of the slightest provocation as we did on 24th November, 2021. The gains that we have made need to be consolidated, and the fierce battle has to be waged not only for protecting the achievements of the Confederation in the year 2021 but for occupying more space, be it in the realm of service condition or expanding our struggle against privatization and other anti-working class move of the government. 2022 should belong to us. We must win against the twin pandemic of Covid-19 and the threat of privatization.

March on comrades,
#NationAgainstPrivatisation
#StrikeHard
#PowerofUnity
#BankBachaoDeshBachao

OBITUARY

Editorial Board of Common Bond pays its deep respect to the memory of Comrade K K Nair, former Chairman UFBU and former General Secretary INBOC. Common Bond remembers his role in organising the officers' community during the stormy days of the '70s both in Bank of Baroda and under the banner of AICOBBO. His contribution to the movement for officers' cause will remain etched in the memory of the generation of bank employees and officers—our deepest condolence to the bereaved family members. We are reproducing the full text of the UFBU circular on the demise of Comrade Nair.

COM K.K. NAIR IS NO MORE

We deeply regret to inform our unions and members that Com K.K. Nair, former General Secretary of Indian National Bank Officers Congress and Chairman of All India BOB Officers Association and who was the Chairman of United

Forum of Bank Unions from July 2013 until 2019 when he stepped down due to his failing health, passed away this evening at Mumbai. He was suffering from old-age ailments for the last two years.

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

Com Nair was one of the leaders who had been associated with UFBU right from its inception in 1997. He used to attend all the meetings and contributed a lot in arriving at united understandings in the meetings. He used to emphasise in our meetings that because UFBU consists of different Unions, we should always discuss and deliberate different view points but at the same time, strive to take collective decisions to move forward.

Both during discussions and negotiations with the IBA as well as during UFBU meetings, Com. Nair used to make practical suggestions to find

amicable solutions to various issues. He endeared himself to all our colleagues in UFBU due to his amiable and affable nature.

He was Treasurer of INTUC for many years and thus was part of the Central Trade Union organisation.

His death is a loss to INBOC and UFBU and to the trade union movement. We convey our deep condolences to the bereaved family and pay our homage to the memory of our beloved leader Com K K Nair.

Article

THE LATENT THREAT OF PRIVATISATION

Bankers are on the street spearheading the struggle against the privatisation of national assets, which includes the threat of privatisation of public sector banks. The government has deferred the introduction of the Bill, but they have not abandoned it. The privatisation efforts are hydra-headed, and financial engineering tools are being employed to ensure the safe landing of the process of privatisation. There is a widespread belief, even within the movement, that the process of privatisation will kick-start with some so-called small players in the public sector bank space leaving aside the more prominent players. We will examine in this article that the design of the government is more nefarious than it looks, and the net of privatisation is rather widely laid with the hope of catching all the fish in the pond irrespective of its size.

The gradual weakening of the feudal mode of production had ensured the penetration of the money-lending class in Indian agriculture. The moneylender did obtain finance from the banking system still in its nascent stage for on-lending to the farmers. The money lenders charged exorbitant interest from their borrowers, and the difference between the cost of fund procuring and lending was their profit. The banking system has one advantage: they are not bothered to recover from a large number of the buckets but only from the

moneylender. The tactic employed by the money lender to recover from the ultimate beneficiaries is beyond the scope of this article, but the stories are well known. The so-called privatisation move will re-establish this traditional credit delivery system through a nexus of bankers – money lenders to farmers. However, modern times require that such predatory action by the current money lenders arrive wrapped in a veil of sophistry.

The new age emergence of private money lending has taken a concrete shape with a new arrangement being implemented. The deal between Adani Capital and the State Bank of India is an example. There will be co-lending, with the bank paying 80 percent and a 'non-bank financial company' (NBFC) like Adani Capital paying 20 percent of the loan. The NBFC will obviously decide whom to lend and on what conditions, subject, one presumes, to certain restrictions imposed by the Reserve Bank of India's guidelines; on the other hand, in case the ultimate borrower fails to pay back the loan, the loss will be borne by both the bank and the NBFC. The bank, in short, will be bearing the risk of lending without having any say on who the ultimate borrower is (for if the bank had a say on who the ultimate borrower is, then it would have been a straightforward bilateral relationship between the bank and that borrower without the need for any co-lending).

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

The NBFCs, in short, are in a far better position than the moneylender of colonial times: they decide whom to lend and on what terms but hardly run any risk of the sort that the colonial moneylender had to run. At the same time, the bank is in a far worse position than the bank in colonial times: it has no say on who the ultimate borrower is but bears most of the risk of lending. The Modi government has at one stroke extended favour to its capitalist patrons (the owners of the NBFCs) whose business can now expand rapidly and whose profits can now soar without their having to run any significant risks. And it has extended this favour at the expense of the nationalised banks that are being run to the ground, a fact over which it will shed no tears at all. Already plans are afoot to make the depositors bear the nationalised banks' risks, in which case the government will not have to pay from the budget to cover the losses of such banks. If losses mount, then it can always privatise these banks "for a song" which it has been keen to do anyway and for which it will then get a very valid excuse.

While all this is being done, one obvious question remains unanswered: why is this being done? Is there an iota of benefit that this arrangement will bring to the peasants or the MSME sector, the nationalised banks, or anyone other than the capitalist owners of the NBFCs? The answer is a resounding "no". And one would like to come across a single government spokesperson to contradict this "no" with a valid argument.

The State Bank of India's official claim in defence of its co-lending agreement with Adani Capital is that it would help to "expand customer base and connect with the underserved farming segment of the country and further contribute towards the growth of India's farm economy". But this argument is just laughable. The SBI is a massive bank, the largest in the country, which has 22,000 branches all over India compared to about 60 branches of Adani Capital; it has 1.4 crore credit accounts with farmers and Rs 2 lakh crore outstanding credit to farmers, compared to 28,000 and ₹ 1,300 crores respectively for Adani Capital. To say that Adani Capital will "help expand the

customer base of the SBI" which the latter could not otherwise have done (for else there was no need for the co-lending deal) is like saying that ISRO must have a deal with a Sivakasi, firecracker manufacturing unit to improve its rocket-launching ability!

Credit, in short, is a powerful means of changing land use, and the SBI-Adani deal is a way of achieving such a change in the pattern of land use. In other words, through such "nationalised banks-NBFC" deals, the government is trying to achieve what the three farm laws could not achieve. Such deals must be opposed with the same intensity and single-mindedness with which the farm laws were opposed, for it is part of the same fight.

The three farm laws were a brazen attempt on the part of the Modi government to change the current system, which also ensures food security for the country. In the face of implacable and admirable resistance from the farmers, the repeal of those laws has left the government red-faced vis-à-vis international agribusiness and its domestic corporate backers. It desires to change the pattern of crop production, and hence land use, by other means. And channeling government institutional credit through the domestic corporate-financial oligarchy, through NBFCs owned by this oligarchy, is one such means.

Here again, we are confronting the rejuvenation of a colonial-style regime. Under colonialism, since land revenue had to be paid by specific dates and times, the peasants had to borrow to meet the revenue demand. And the traders, often the East India Company's agents, gave them advances for this purpose on the condition that they grow specific crops and sell them to the agents at pre-contracted prices; this is how the cultivation of crops like opium and indigo was encouraged in India.

The conclusion of the SBI-Adani deal is nothing but the killing of two sparrows by flinging a single stone. It would effectively ensure the re-enactment of repealed farm laws through the backdoor while ensuring effective privatisation of the agricultural finance portfolio of the country's largest lender, the

OVERCOME ANGER BY LOVE, EVIL BY GOOD

State Bank of India. We have to appreciate that the government is ensuring a knife-edged equilibrium to have its objective of control over the economy by the crony corporate and finance capital oligarchy be completed either by front door enactment of legislation or through backdoor maneuvering financial engineering. The challenges are formidable, and we should not have any complacency in assuming that they have abandoned the path of privatisation. It is only by the intensification of the resistance along with ruthless unmasking of the design that the

challenges thrown can be effectively negotiated. SBI-Adani deal following closely the SBI-Reliance deal confirms that the net of privatisation is relatively broad and encompasses the entire sector, big and small alike. By widening the scope of resistance, the government's evil design can only be effectively put to rest forever.

The editorial team acknowledges that it has borrowed excerpts substantially from a brilliant article of Prof. Prabhat Patnaik published elsewhere.

CIRCULARS

85 dated 31st December, 2021: Circular on commencement of booking of AIBOC Guest House: New Delhi from 01.01.2022

01 dated 01st January, 2022: Circular on resolution for a sustained movement against privatisation : NEW YEAR 2022

02 dated 07th January, 2022: Text of Letter No. AIBOC/2022/01 dated 07.01.2022 to Hon'ble Finance Minister regarding safety measures to be initiated on COVID 19 Pandemic : Omicron variant

03 dated 17th January, 2022: Text of UFBU circular dated 17.01.2022 on the demise of Com K. K. Nair, former Chairman UFBU and former General Secretary INBOC

Judicial Verdict

**2021 LLR 1153
SUPREME COURT OF INDIA
Hon'ble Mr. Ajay Rastogi, J.
Hon'ble Mr. Abhay S. Oka, J.
CAJCA No. 6092/2021 arising out of
SLP(C) No. 5931/2015, Dt/- 29.09.2021
Standard Chartered Bank
Vs.
R.C. Srivastava**

A. DISMISSAL – Justification of – Employee was dismissed from service after holding enquiry for grave and serious misconduct of drunkenness within the premises of the Bank and assaulting senior officer – Employee raised an industrial dispute – Industrial Tribunal held the enquiry fair and proper – While considering case on merits Tribunal held that Bank has miserably failed to establish the charges levelled against the workman, directing management to reinstate the workman with full back wages and all

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

consequential benefits – Management challenged the award in writ petition which was dismissed – Management filed SLP – Held, after holding the enquiry fair and proper, Tribunal has a very limited scope to interfere in the enquiry by invoking its power under Section 11A of the Act 1947 – Drunkenness or riotous or disorderly or indecent behavior on the premises of the bank are grave and serious misconducts when proved justifies punishment of dismissal – Tribunal has exceeded its jurisdiction while appreciating the finding recorded in enquiry converting itself in to an Appellate Court – High Court has also committed a manifest error while passing the judgment impugned – Hence, impugned award and judgement are set aside – Appeal is allowed – Punishment of dismissal is justified in view of gravity of misconducts.

B. JURISDICTION OF INDUSTRIAL ADJUDICATOR – Section 11A of Industrial Disputes Act, 1947 – Tribunal, after holding the enquiry fair and proper, has limited power under Section 11A of the Act to interfere with the quantum of punishment if the same is grossly disproportionate touching to the conscience of the court – Tribunal is not empowered to act as an appellate court - Its power is only to interfere with the punishment imposed by disciplinary authority if there is any apparent perversity in the finding of facts or there is violation of any procedure of holding enquiry or punishment is grossly disproportionate – Its jurisdiction under Section 11A of the Act 1947 although is a wide one but it must be judiciously exercised – it cannot be exercised either whimsically or capriciously – Labour Court cannot overturn decision of management on “ipse dixit” and its decision should not be passed on mere hypothesis.

C. RECOVERY OF AMOUNT PAID TO WORKMAN – During pendency of litigation in higher court – Scope of – Workman has received ₹ 46,89,421.16 plus amount towards Section 17B of the Industrial Disputes Act 1947, i.e. ₹ 10,27,096.56, in total ₹ 57,16,517.72 in the interregnum period – Workman has attained age of superannuation - Workman has suffered long

litigation – it is appropriate that no recovery shall be made from the workman from the amount already paid to him.

D. STANDARD OF PROOF – Held, domestic enquiry is not to be tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system but domestic enquiry is to be tested on the principle of preponderance of probabilities.

E. CONSTITUTION OF INDIA – Article 226 – Judicial review – Scope of – Held, judicial review in matter of enquiry is limited to examine whether the procedure in holding domestic enquiry has been violated or the principles of natural justice has been complied with or any perversity in the finding of guilt recorded during the course of domestic enquiry has been committed.

IMPORTANT POINTS

- ✳ After holding the enquiry fair and proper, Tribunal has a very limited scope to interfere in the enquiry by invoking its power under Section 11A of the Industrial Disputes Act 1947.
- ✳ Drunkenness or riotous or disorderly or indecent behavior on the premises of the bank are grave and serious misconducts when proved justify punishment of dismissal.
- ✳ Punishment of dismissal is justified in view of gravity of misconducts of drunkenness or riotous or disorderly or indecent behavior on the premises of the bank.
- ✳ Industrial Adjudicator may interfere with the quantum of punishment if the same is grossly disproportionate touching to the conscience of the court, if there is any apparent perversity in the finding of facts or there is violation of any procedure of holding enquiry but it is not empowered to act as an appellate court.
- ✳ Jurisdiction under Section 11A of Industrial Disputes Act, 1947, although is a wide one but it

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

must be judiciously exercised and cannot be exercised either whimsically or capriciously.

* Labour Court cannot overturn decision of management on "ipse dixit" and its decision should not be passed on mere hypothesis.

* It is appropriate that no recovery shall be made from the workman towards amount already paid to him including amount under section 17B of the Industrial Disputes Act, 1947, in the interregnum period since the workman has attained age of superannuation.

* Domestic enquiry is to be tested on the principles of preponderance of probabilities and not to be tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system.

* Judicial review under Articles 226 of the Constitution of India in matter of enquiry is limited to examine whether the procedure in holding domestic enquiry has been violated or the principles of natural justice has been complied with or any perversity in the finding of guilt recorded during the course of domestic enquiry has been committed.

JUDGEMENT

Ajay Rastogi, J.

1. Leave granted.

2. The instant appeal is directed against the judgment and order dated 21st November, 2014 passed by the High Court of Judicature at Allahabad upholding the reinstatement with full back wages awarded by the Tribunal dated 14th September, 2006. Signature Not Verified Digitally signed by

3. The facts in brief which are relevant for the purpose are that the respondent-workman was an employee of the appellant-Bank and for the alleged delinquency which he had committed on

12th January, 1988 in discharge of his duties, a chargesheet dated 27th January, 1988 was served upon the respondent-workman with the allegation of drunkenness within the premises of the appellant-Bank and for manhandling and assaulting the senior officers and also hurling abuses at the management. The relevant portion of the chargesheet dated 27th January, 1988 reads as under:

"You are aware that the hearing in the court case No.5887/83 was fixed for 13.1.88 in which you are also a party. On 12.1.88 during office hours Mr. Bachchoo Lal Mishra and Mr. P.K. Seth, officer of the bank tomorrow there is a court case so do not mark me late as I will go the court direct from my house.

Mr. Seth told you and Mr. Mishra that you should first come to the Bank, sign the attendance register and only thereafter you should go to court. In the evening again at about 5.30 PM you alongwith Mr. B.L. Mishra approached Mr. Seth and told him not to mark Mr. B.L. Mishra late on 13.1.88 and that he would go to the court straight from his house without first reporting to the bank.

Mr. Seth asked you and Mr. Mishra to first come to the bank, sign the attendance register and then go to the court. You and Mr. Mishra then asked Mr. Seth to talk to Mr. Sikka, Assistant Manager (Operation) who in turn advised Mr. Seth to write court case in the attendance register which fact was advised to you as also to Mr. Mishra.

On the same day i.e. 12.1.88, Mr. Seth alongwith Mr. Arun Sharma were in the office at about 9.00 PM and were going to close the branch when you alongwith Mr. B.L. Mishra, Mr. Than Singh and an outsider entered the bank hall in a drunken state and started discussing the issue regarding marking late in the attendance register.

Mr. A. Sharma tried to pacify you and the others by pointing out that such requirements are normal norms of the office and that the officers were carrying out the instructions on the senior officers and that such requirements are only as per office

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

rules. It is reported that both Mr. Mishra and Mr. Than Singh abused the Management/Officers.

In the meantime Mr. Sharma went to the residence of Mr. Sikka in the bank compound to deposit the bank's keys. The moment Mr. Sharma went out you alongwith the outsider pulled Mr. Seth's tie from his neck and manhandled and slapped him resulting in his spectacles being broken and he also got a bruise on his left eye. The above said acts on your part if proved will constitute the following gross misconduct under paragraph 19.5 of the Bipartite Settlement dated 19.10.66, which reads as under:

19.5 (c): Drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank and

(d) Doing any act prejudicial to the interest of the bank, and you are hereby charged with the above gross acts of misconduct."

4. For the alleged gross misconduct which he had committed in discharge of his duties, a departmental enquiry was held and in the course of enquiry, the evidence of three witnesses namely, Mr. P.K. Seth (MW1), Mr. B.M. Sikka (MW2) and Mr. Arun Sharma (MW3), who are the officers and with whom the alleged incident had occurred were produced by the management and in defence, the respondentworkman had not appeared in the witness box but two employees namely, Mr. Shyam Bahadur (DW1) Watchman and Mr. Panna Lal (DW2) an exemployee of the Bank, were produced.

5. The enquiry officer after holding enquiry in terms of the Bipartite Settlement and after due compliance of the principles of natural justice held the charges proved against the delinquent respondent and the disciplinary authority after due compliance, confirmed the finding recorded by the enquiry officer and punished him with the penalty of dismissal from service by an order dated 22nd August, 1991.

6. The reference made by the appropriate

Government by its notification dated 30th June, 1992 for adjudication to the Tribunal reads as under: "Whether the action of the management of ANZ Grindlays Bank Plc, Kanpur in dismissing Sri R.C. Srivastava from service with effect from 22 August, 1991 is justified? If not, to what relief the workman is entitled to?"

7. The Tribunal in the first instance after examining the record of enquiry held the domestic enquiry to be fair and proper and thereafter, revisited the record of enquiry and apprised the statement of the management witnesses namely, Mr. P.K. Seth (MW1), Mr. B.M. Sikka (MW2) and Mr. Arun Sharma (MW3) and defence witnesses namely, the Watchman (DW1) and the ex employee of the Bank (DW2) and recorded a finding that the management of the appellant-Bank has miserably failed to establish the charges levelled against the respondent-workman and held the charges not being proved and in consequence, set aside the order of dismissal from service and directed the appellant to reinstate the respondent-workman in service with full back wages, seniority and all the consequential benefits attached to the post by its Award dated 14th September, 2006.

8. The award dated 14th September, 2006 came to be challenged by the appellant in a writ petition under Articles 226 and 227 of the Constitution and the High Court by its impugned judgment and order dated 21st November, 2014 dismissed the writ petition.

9. The learned counsel for the appellant submits that after the domestic enquiry was held to be fair and proper, the Tribunal has a limited scope to interfere with the findings recorded in the domestic enquiry and unless the finding is perverse and not supported by a piece of evidence, it was not open for the tribunal to interfere within the scope of Section 11A of the Industrial Disputes Act, 1947(hereinafter being referred to as the "Act 1947").

10. However, in the instant case, the Tribunal converted itself into a Court of Appeal and has not only revisited the evidence in toto but has

THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE

proceeded on the assumption that the management has to prove the charges beyond reasonable doubt and despite the material evidence of three officers, who were abused by respondent-workman in drunkenness condition, have been completely disowned on the premise that one Watchman (DW1) and an ex-employee of the Bank(DW2) have stated in their deposition that such incident has not occurred and to justify it, a document was placed on record i.e. the attendance register of the time in question and to confront it further with the fact that the delinquent had not appeared in the domestic enquiry and still a finding has been recorded by the Tribunal that such incidence has not occurred is something which has appeared from blue and without there being any iota of the factual foundation, the interference made by the tribunal in the finding of guilt recorded in the course of enquiry is not only perverse but is unsustainable in law.

11. The scope of judicial review in the matter of domestic enquiry is to examine whether the procedure in holding domestic enquiry has been violated or the principles of natural justice has been complied with, or any perversity in the finding of guilt recorded during the course of domestic enquiry has been committed.

The basic error which was committed by the Tribunal in its impugned Award has not been appreciated even by the High Court and dismissed the writ petition without appreciating the finding recorded in the domestic enquiry keeping into consideration the principles laid down by this Court of preponderance of probabilities while holding guilt in the domestic enquiry and exceeded in its jurisdiction defined under Section 11A of the Act 1947.

To the contrary, the officers with whom the alleged occurrence of gross misconduct has been committed have been put to notice that their allegation on the face of it is unfounded, baseless and has not at all occurred which is something beyond imagination. More so, when it was established during the course of enquiry after affording an opportunity of hearing to the

delinquent respondent, enquiry officer held the charges proved and confirmed by the disciplinary authority followed with the penalty of dismissal upon the respondent.

12. It is informed to this Court that the respondent-workman had attained the age of superannuation on 31st January, 2012 and during the period of litigation, he has throughout been paid his last wages drawn in terms of Section 17B of the Act 1947.

13. Per contra, the learned counsel for the respondent while supporting the findings recorded by the Tribunal and confirmed by the High Court in the impugned judgment submits that there was no evidence on record as appreciated by the Tribunal in the first place, in arriving to the conclusion that such alleged incident in reference to which domestic enquiry was held had never occurred and the action was taken against him because he was an active member of a union and this was the circuitous route adopted by the appellant to eliminate the respondent to curb his trade union activities in the bank and the only recourse available was to make such uncalled for baseless allegations which certainly on being tested on the floor of judicial review by the Tribunal do not hold good and rightly interfered by the Tribunal and has been confirmed by the High Court.

14. We have considered the submissions of the parties and with their assistance examined the material available on record.

15. This Court while issuing notice on 27th February, 2015 stayed the payment of back wages obviously for the reason by that time the respondent-workman had attained the age of superannuation on 31st January, 2012.

16. It is not the case of the respondent that the domestic enquiry has not been conducted as per the Bipartite Settlement dated 19th October, 1966, which was applicable for holding domestic enquiry in reference to misconduct committed by a workman and the alleged misconduct for which the respondent workman was charge-sheeted has

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

been defined as one of the misconduct under Clause 19.5 (c) and (d) of the Bipartite Settlement. The acts which constitute the gross misconduct under paragraph 19.5 of the Bipartite Settlement dated 19th October, 1966 reads as under:

“19.5 (c): Drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank and

(d) Doing any act prejudicial to the interest of the bank, and you are hereby charged with the above gross acts of misconduct.”

17. After the charge sheet dated 27th January, 1988 was served, of which a detail reference has been made in the course of enquiry, the officers of the Bank namely, Mr. P.K. Seth (MW1), Mr. B.M. Sikka (MW2) and Mr. Arun Sharma (MW3) with whom the alleged misconduct was committed by the respondent workman had appeared as a witness on behalf of the management in support of allegation levelled against the respondent-workman in the charge sheet and for the reason best known, the respondent had not recorded his own statement in defence in the course of enquiry but produced (DW1) Watchman and (DW2) – an ex-employee of the Bank who confronted the statement of the witnesses of the management with whom the alleged incident occurred, based on the ocular evidence and obviously, there cannot be any documentary evidence to support with the kind of allegation of misconduct levelled against the respondent-workman, the enquiry officer after affording opportunity of hearing and due compliance of principles of natural justice recorded the finding of charge being proved and confirmed by the disciplinary authority and in consequence thereof, he was punished with the penalty of dismissal from service with effect from 22nd August, 1991.

The Tribunal after re appraisal of the record of domestic enquiry held it to be fair and proper, has a very limited scope to interfere in the domestic enquiry to the extent as to whether there is any apparent perversity in the finding of fact which has been recorded by the enquiry officer in his report

of enquiry obviously, based on the evidence recorded during the course of enquiry and as to whether the compliance of the Bipartite Settlement which provides the procedure of holding enquiry is violated or the punishment levelled against the workman commensurate with the nature of allegation proved against him and if it is grossly disproportionate, the tribunal will always be justified to interfere by invoking its statutory power under Section 11A of the Act 1947.

18. In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a Court of Appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while interfering with the finding recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned.

19. The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on ipse dixit. Its jurisdiction under Section 11A of the Act 1947 although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize or analyse the evidence but what is important is how it does so.

20. We are of the considered view that the Award passed by the Tribunal and confirmed by the High

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

Court under impugned judgment is not sustainable in law.

21. On the last date of hearing before this Court, we have called upon the appellant to place for our perusal the payment which has been made to the respondent-workman.

22. In compliance thereof, the statement has been placed before us for perusal, indicates that a sum of ₹ 46,89,421.16 plus amount towards Section 17B of the Act 1947, i.e. ₹ 10,27,096.56, in total ₹ 57,16,517.72 has been paid to the respondent-workman in the interregnum period.

23. Learned counsel for the respondent in his submission has tried to persuade this Court that a poor workman has been targeted by the appellant and throughout his life, he had been in the litigation and what has been paid to him is his legitimate dues and interference, if made, may cause prejudice to him.

24. In the given facts and circumstances, looking to the peculiar facts of this case where the

respondentworkman had been paid ₹ 57,16,517.72 and had attained the age of superannuation on 31st January, 2012, stay was granted by this Court in reference to back wages by order 27th February, 2015, while upholding the order of penalty of dismissal from service dated 22nd August, 1991 passed by the authority in the domestic enquiry, we consider it appropriate to observe that no recovery shall be made in reference to the payment which has been made over to the workman in the interregnum period, of which a reference has been made by us afore stated.

25. The appeal succeeds and is accordingly allowed and the judgment of the High Court dated 21st November, 2014 affirming the Award dated 14th September, 2006 passed by the Tribunal is set aside with the clarification that there shall be no recovery in reference to the payment which has been made over to the respondent-workman in the interregnum period.

26. Pending application(s), if any, shall also stand disposed of.■

GUEST HOUSE

Circular No. 2021/85

Date: 31.12.2021

Dear Comrade,

AIBOC GUEST HOUSE: NEW DELHI COMMENCEMENT OF BOOKING FROM 01.01.2022

We are pleased to inform that booking of Confederation's Guest House in New Delhi will resume from 1st January 2022. The apartment, consisting of three bedrooms and a drawing-cum-dining room located at Rajendra Nagar, has been now renovated and refurbished (details appended). In this context, we place on record our deepest appreciation to Com. Pankaj Kapoor, Joint General Secretary of the Confederation for his effort in making the guest house operational again.

02. The tariff of the rooms for the members of all the Affiliates of the Confederation is fixed at a reasonable rate of ₹ 800/- per day. All our Affiliates / State Units and members are requested to bring this communiqué to the notice of the members so that they can avail of this facility. Please note that the request for booking should be only through the respective affiliate/ State Unit.

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Landline No. : 011-25720817

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E-mail ID : aiboc.guesthouse@gmail.com,
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Contact Person: Shri Surender Sharma

Mobile No. : 09818008855

The confirmation of booking would be sent to the members through letter after receiving transaction ID of deposit of booking amount with date to AIBOC Guest House, A/c No. 601610110005803, Bank of India, Parliament Street Branch, New Delhi, IFSC Code: BKID0006016.

Wish you a happy and prosperous new year 2022.

Stay safe, Stay healthy

With best regards,

Yours sincerely,

Sd/-

(Soumya Datta)
General Secretary

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