

CASE NO.:
Appeal (civil) 8569 of 1997

PETITIONER:
BANK OF INDIA

Vs.

RESPONDENT:
SECRETARY, BANK OF INDIA STAFF UNION & ANR.

DATE OF JUDGMENT: 09/04/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

RAJENDRA BABU, J. :
L...I...T.....T.....T.....T.....T.....T.....T..J

This appeal is filed against an award made by the Industrial Tribunal, Kanpur on a reference made to it on the following question:

Whether the action of the management of Bank of India in not paying special allowance to the staff posted at clearing house of Lucknow, Agra, Unnao, Varanasi and Kanpur as per list enclosed is justified? If not to what relief were the workmen entitled?

The Tribunal held that the concerned workmen are entitled for special assistant allowance for the number of days they have worked at various collection centres and the same shall be payable for the number of days they have actually worked with effect from the date of reference. The workmen in question worked at various centres including Collection Centre, Kanpur, Lucknow and Varanasi and Main Branches, Agra and Unnao of their Banks as detailed in Annexure thereof. They claimed that they performed the duties as authorised representatives of the Bank of clearing house at the Reserve Bank of India, Kanpur and State Bank in clearing house at the Reserve Bank of India, Kanpur and State Bank of India, Lucknow, Agra, Unnao and Varanasi which fall under the duties of Special Assistant. The workmen claimed that they are checking or scrutinizing all the schedules and/or vouchers received along with the cheques and other instruments as per para XIX(III) of Appendix B of 1st Bi-partite Settlement dated 19.10.1966. The workmen claimed that they are entering each cheque, demand draft, pay slips, etc. with their respective credit voucher i.e., Branch Debit Note drawn on Regional Collection Centres and Main Branch in clearing house register and balancing as per paragraph 45.5 of Manual of Instruction, Volume I, Chapter 127 to the following effect:

Particulars of all cheques drawn on other local clearing banks received by the Branches for collection should thereafter be sorted and listed bankwise. The total

of cheques entered in the clearing cheques register should agree with the total amount of cheques listed on all the clearing schedules and also with the total amount of the relatives paying-in-slips.

The workmen further claimed that the cheques/instruments are sorted bankwise and posted the cheques etc. in totalling and numbering as per paragraph 45.5 of Manual of Instruction; that the workmen are to check crossing and clearing stamp on each cheques and other instruments on front face of these instruments and endorsement stamps of the bank on each instrument; that the checking of total in List of Cheques with the books of the Bank i.e. clearing cheques register, mentioned in each sheet for the different bank; that checking each list of cheques in clearing schedule of the bankwise with cheque numbers in the column Delivered in left hand side drawn on other banks and totalling all the amounts of the cheques mentioned in the different list of cheques mentioned in the different list of cheques register; that the workmen receive various cheques, demand draft, pay slip and other instruments in the clearing house from different banks and also make the entry in the column Received bankwise with cheque numbers in the right side and totalling all the amount and cheques mentioned in their different sheets of the bank; that the checking is for the correctness of endorsement crossing stamp, clearing stamps, date of the returning of the cheques, date of the cheques, comparison of cheques and totalling the amount delivered by the different banks as per para III(I)(xi) and (iii) of Appendix B of Bi-partite Settlement; that the workmen prepare debit and credit vouchers according to cheques and the instruments after checking the clearing schedule on account of cheques received from other banks daily; that the workmen also sign the difference of the entries such as to pay or receive in the independent capacity of authorised representative of clearing house as Clearing in-charge at the Reserve Bank of India and State Bank of India on behalf of the Bank in the clearing house after delivering and receiving the different instruments in sheet for submissions and receiving the different instruments in sheet for submission to the Reserve Bank of India and State Bank of India; that the workmen are holding banks valuable cheques, drafts and other instruments signally and are accountable for them and are responsible for the clearing department of the bank and prepare, sign independently clearing and transfer vouchers such as to pay or receive on account of the cheques delivered or received from different banks through the sheet in the bank account mentioned by the Reserve Bank of India and the State Bank of India which constitute the additional duties and functions requiring the greater skill and responsibility over and above the routine duties of the workmen in terms of Para III(I)(xi)(ii).

The appellant-Bank filed a written statement contending that though the workmen have performed the duties of attending the clearing house on behalf of the Bank, they have not discharged any of the duties so as to attract payment of special allowance by way of Special Assistant as none of the duties are being performed by them to attract such allowance and denied the various claims made by the workmen. They submitted that they are simply delivering cheques of the Bank drawn on other banks and receiving cheques drawn by other banks on their Bank at the clearing house after counting the number of cheques/instruments as

per schedule listing it bankwise in the sheets, arriving at the clearing different and preparation of the different vouchers, segregation of the instruments categorywise and preparation of debit in nature and in no way require any greater skill and responsibility warranting payment of any special allowance. It was also contended that the duties of Special Assistant as laid down in Bi-partite Settlement dated 19.10.1966 have been modified in the subsequent Bi-partite Settlement dated 17.9.1984 and the duties of special assistant as laid down in the said Bi-partite Settlement 1984 are as listed in the Annexure A thereto. It was contended that para 5.267 of the Desai Award has not been modified by any subsequent Bi-partite Settlement and is still in existence and that the clerks deputed to the clearing house are not in charge of the Banks clearing department but are simply clerks posted in that department and the overall incharge of the department is an officer under whom these clerks are functioning. It was specifically claimed by the appellant that the Special Assistant will be accountable and responsible for running of the department/section under them and their duties will involve looking after and checking the work of other clerk or clerks and sub-staff and will include several other duties set out in Annexure A to the Bi-partite Settlement of 1984.

An affidavit was filed by Jai Bahadur Singh on behalf of the appellant and it was stated therein as follows :

That the clerk attached to my department amongst the other clerical duties are on rotation basis sent to the Bankers clearing house for delivering the cheques/drafts etc of our bank drawn on other Bank and receiving cheques/drafts etc drawn by other banks on our bank as per the schedule which he carries with him in duplicate. Specimen of which is marked as Annexure A to the affidavit. Under the column delivered of the said schedule the cheques/drafts etc. drawn on other banks and delivered by him at the clearing house are entered bankwise and total is arrived at this represents the amount of cheques delivered by the Bank is clearing. The cheques delivered by other banks are entered in the column received of the schedule bank wise and the total is arrived at, this represents the amount of cheques received. Thereafter the difference between the amount delivered and received is arrived at which is known as clearing difference. Thereafter a copy of clearing schedule is delivered to the officer in charge of the clearing house. As such the duties being performed by the clerks attending the clearing house is purely clerical in nature.

The Tribunal, after setting out the case of the parties and the evidence put forth before it in the shape of the affidavits, stated that though affidavits have been filed by several persons, only two witnesses, namely, V.K.Srivastava and Baikunth Lal, were produced for cross-examination on behalf of the workmen and Jai Bahadur Singh on behalf of the management and, therefore, their affidavits alone are admissible. However, the Tribunal chose not to examine that evidence on the following basis:

.the concerned workmen have been sent to the Regional Collection Centres of the Reserve Bank of India and State

Bank of India at other places for verification of cheques issued by their Banks. It is also not disputed that when these persons went to these centres none of the officer of the bank had accompanied. I am of the view that when a member of award staff handles and deals with cheques and other instruments within the bank premises and during the office hours there is no element of risk and there cannot be said to be doing any work involving extra responsibility. However, the moment such workman is asked to carry cheques and the instruments outside the bank as is being done by the concerned workmen. I am of the view officer accompanied them at such occasion there would be no responsibility of these workmen. Hence since in the instance case the concerned workmen had been carrying cheques independently, and checking the same at the Regional Collection Centres and without any officer accompanying them, I come to the conclusion that had been performing the job involving greater responsibility as well.

Proceeding thus, the Tribunal made the award without any further examination of the matter.

In this background, it becomes necessary to consider whether the award made by the Tribunal can be sustained or not. It is the contention of the respondents that the decision of this Court in Central Bank of India Ltd. vs. Sisir Kumar Shaw, 1976 (2) SCC 859, fully covers the case of the workmen in question. In that decision, it was stated that it was not necessary to refer to the details of the Sastry Award of 1953 or the Desai Award which ceased to apply in the year 1966, when the Bi-partite Settlement came into force. The preamble to the Bi-partite Settlement dated 19.10.1966 states that the parties have agreed that the provisions of the award known as the Sastry Award as modified by the Desai Award shall govern the service conditions therein covered except to the extent that the same have been modified by the Bi-partite Settlement of 1966. If that is so, it will not be accurate to state that the Sastry Award or the Desai Award has ceased to apply and this position is clarified by this Court in C.A.No.7752 of 1996 Bank of India vs. Presiding Officer and Ors., disposed of on 28.11.2000. However, that aspect will not settle the problem arising in the present case. The question for consideration is whether the principles set out by this Court in Sisir Kumar Shaws case [supra] would be applicable to the facts of the present case. In that case, there was a specific finding by the Labour Court as to the nature of the duties of the clerk working as the clearing house representative on behalf of the bank. While in the present case, the duties discharged by the clearing house representative are in serious dispute. Unless the same are adjudicated by appropriate examination of the facts of the case with reference to the contentions advanced by either party and the evidence adduced, it cannot be concluded in the manner done by the Tribunal. There is no finding that the workmen discharge certain duties and, therefore, are entitled to special allowance in the category of Special Assistant. The Tribunal has proceeded as if it was dealing with a fresh matter before it without reference either to the Bi-partite Settlement or to the Sastry or the Desai Award. Necessarily, the Tribunal had to examine whether the workmen in question fall in any one of the categories to which special allowance is to be given or refused by the two Awards [Sastry/Desai Awards] or in the Bi-partite Settlement that part has been modified or a new clause has been

introduced thereto inconsistent with the Sastry/Desai Award so as to entitle to such allowance. Unless such an exercise is undertaken and the details of the duties assigned to each of the workman are considered it will not be possible for the Tribunal to decide a matter of this nature. Therefore, we are constrained to set aside the award made by the Tribunal and remit the matter to the Tribunal for fresh consideration in the light of the observations made by us above and in accordance with the law.

The appeal shall stand allowed accordingly. No costs.

JUDIS