

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 14.02.2011*

+ **RSA No.129/2004**

B.R. SHARMA Appellant
Through: In person.

Versus

SYNDICATE BANK & ORS. Respondents.
Through: Mr.Jagat Arora, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 29.1.2004 which has affirmed the finding of the trial judge dated 16.11.1999 whereby the suit filed by the plaintiff seeking declaration and mandatory injunction that his penalty order dated 28.12.1992 be declared null and void had been dismissed.

2. Plaintiff B.R. Sharma was posted as an Assistant Manager in the Nirman Vihar Branch of the Syndicate Bank. Allegation against him was that on 12.7.1991 he had committed misconduct in as much as on that day he misbehaved and manhandled an official of the Zonal Office namely Mr.V.S.N.Shobhnan in front of the staff members. Enquiry was initiated against the plaintiff. The plaintiff had participated in the enquiry. On behalf of the department two witnesses namely Mr.V.S.N. Shobhnan , the Deputy D.M. and

Mr. Satynaraina, Chief Manager of the Nirman Vihar Branch of the bank had been examined. The plaintiff who was the delinquent official had examined four witnesses on his behalf. In view of the oral and documentary evidence led before the Enquiry Officer, the Enquiry Officer had held that the charges of misconduct stood proved against the delinquent. The penalty of reduction of three increments was imposed upon him. This order of the Disciplinary Authority was affirmed in appeal. The present suit was accordingly filed.

3. The contention of the appellant/plaintiff is that there has been a violation of the principles of natural justice and inadmissible evidence had been relied upon by Enquiry Officer while ignoring the admissible evidence. His contention is that there was seven documents which have been exhibited by the department of which the first two documents establish the case of the delinquent that on the fateful day i.e. on 12.7.1991 he was in attendance in the Nirman Vihar Branch and he had not moved out of the Branch. He could not have been gone to Zonal Office at Bhagwan Dass Road, to commit the alleged misconduct; this has not been appreciated by the Enquiry Officer in its correct perspective; there has been a violation of principles of natural justice.

4. This contention had been denied by the defendant. The trial judge on these pleadings had framed six issues. Issue no.3,4 and 5 are relevant; they reads as follows:

“.....

3.Whether this court can re-appreciate the evidence already recorded by the departmental authority?OPD

4.Whether the pltff. is entitled to grant relief of declaration as claimed?OPP

5. Whether the pltf. Is entitled to decree of mandatory injunction as prayed?
.....”

5. The Trial Judge was of the view that the Civil Court is not an appellate court and cannot re-appreciate and re-examine the evidence which has been led before the Enquiry Officer. Relying upon various authorities and case laws cited before the trial judge the suit of the plaintiff had been dismissed.

6. This finding of the trial judge was affirmed in appeal.

7. This is a second appeal. On behalf of the appellant (who is appearing in person) reliance has been placed upon 2009 I AD (SC) 239 Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi to support his submission that High Court can entertain a second appeal if a substantial question of law arises for its consideration; a finding may give rise to a substantial question of law if the finding is based on no evidence or its is based on inadmissible evidence or evidence has been taken into account which was never there. There is no dispute to this proposition.

8. Applying the test as aforestated the case of the appellant has to be examined as to whether a substantial question of law had in fact arisen or not.

9. Before the Enquiry Officer, the victim namely Mr.V.S.N.Shobhnan had come into witness box. The second witness; Satynaraina was also an independent witness, he was an eye-witness; both of them have admitted the case of the department that the appellant had committed a misconduct and manhandled V.S.N.Sobhnan. The cross-examination of this witness has also been highlighted in the impugned judgment. It is noted in the impugned judgment that no cross-examination had been

effected of either of these two witnesses on the ground that had deposed falsely and against the interest of the appellant/delinquent because of any bias or prejudice or any other anterior purpose. These eye-witnesses had been rightly relied upon by the Enquiry Officer to return a finding of guilt against the appellant. The attendance register dated 12.7.1991 had established that the appellant was in attendance in the office on the said date. The Movement Register of the said date had been produced by the department; the impugned judgment had noted that according to the normal practice in government offices only outsiders visiting office are monitored and record qua them is kept and not for the insiders.

10. These fact findings call for no interference. This is a second appellate Court; unless or until a perversity has been pointed out, interference on facts is not permitted. The submission of the learned counsel for the appellant that inadmissible evidence has been relied upon has neither been substantiated nor is it borne out from the record. Enquiry officer had relied upon the testimony of eyewitnesses to return a finding of guilt against the appellant. The question of malafides, non-adherence to the principles of natural justice had been dealt with by the two fact finding Courts below; this contention of the appellant had been rejected. No prejudice had been pointed out.

11. The findings of the Enquiry Officer/disciplinary authority had been affirmed by the Appellate Body. It is settled proposition that the trial judge in civil proceedings cannot sit in appeal over the findings of the Enquiry Officer/Disciplinary Authority and assume the role of an Appellate Body. The impugned judgment had rightly

noted that no interference is called for in the finding of the Enquiry Officer which has been affirmed by the Appellate Body.

12. The substantial questions of law have been formulated on page 2 of the appeal.

“i. Whether non-examining of any of the eye-witnesses to the alleged incident would be a ground for quashing the Charge Sheet, enquiry proceeding, disciplinary authority proceeding and Appellate authority proceeding? If the answer is yes, then the entire proceedings of the respondents against the appellant are liable to be quashed.

ii. Whether the Hon’ble appellate court was right in shifting the onus of proving the charge of the respondents bank on the Appellant/employee and not on the respondents?

iii. Whether it is possible that a person can be at two places at one time?

iv. Whether in a departmental enquiry if it is proved and admitted that the evidence of witnesses as provided by the employee/appellant have gone un rebutted, even then employee/appellant could be hold guilty of the charges and the same would not amount to violation of Principle of Natural justice?

v. Whether the charges against the employee stands proved in the departmental enquiry even though all the documents produced in the enquiry by the respondents, do not support the charges as framed by the respondents/management?

vi. Whether there can be two different yard stick for evaluating the management/respondents evidences and the charge-sheeted employee/appellant evidences?

13. Perusal of the same shows that they are all fact based. Finding of the fact as already noted unless perverse cannot be interfered with. No such perversity has been pointed out.

14. No substantial question of law has arisen. Appeal is dismissed in limine.

INDERMEET KAUR, J.

FEBRUARY, 14, 2011
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