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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1819/2004

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22nd April, 2013

SH. CHANDER PRAKASH

.....Petitioner

Through: Mr. B.B. Sawhney, Senior Advocate with
Mr. Sunil Kumar, Advocate.

VERSUS

RESERVE BANK OF INDIA AND ORS.

..... Respondents

Through: Mr. K.N. Bhat, Senior Advocate with Mr.
H.S. Parihar, Advocate and Mr. K.S.
Parihar, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes.**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner Sh. Chander Prakash impugning the orders passed by the Departmental Authorities viz the Disciplinary Authority and the Appellate Authority whereby the petitioner has been imposed the punishment as under:-

“(i) In terms of Regulation 7 of Reserve Bank of India Pension Regulations, 1990, the pension of Shri Chander Prakash, Assistant Treasurer (Retired) be withdrawn by 50% of his basic pension for a period of three (3) years from the date of passing the final order i.e March 11, 2003. The dearness relief will be payable to him on 50% amount of basic pension. After the expiry of the said period of 3 years from the date of

passing of final orders, he will be eligible to draw normal pension with dearness relief admissible under the provisions of Reserve Bank of India Pension Regulations, 1990.

(ii) An amount of Rs.2,00,000/- (Rupees two lakh only) being part of pecuniary loss caused to the Bank, be recovered from the ROCM.”

2. The charge which was held against the petitioner was that the petitioner was found guilty of gross negligence in the discharge of his duties while working in Chest Note Vault No.1 leading to abstractions/pilferage of three bundles of Rs. 500/- denomination notes thereby acted in a manner detrimental to the interest of the Bank and causing pecuniary loss of Rs. 15,00,000/- to the bank.

The aforesaid charge was on the basis of the following facts:-

“i) On 3rd July 1999 a remittance, in 12 boxes, was received in Chest Note Vault No.1 from Oriental bank of Commerce, Adarsh Nagar, Jalandhar. Five boxes from this remittance were opened on 6th July 1999 and after preliminary verification a part of the remittance composing 150 bundles of Rs. 500/- denomination were kept in bin No. 265-R-4.

ii) Shri Chander Prakash was working as Assistant Treasurer for the purpose of guiding the regular Assistant Treasurer Smt. Chitra Rani Gupta, in the Chest Vault No.1 of Issue Department, Reserve Bank of India, New Delhi on 6th July 1999.

iii) During the course of special physical verification of the note balances held in the Chest Note Vault No.1, carried out on 20th December 2001 in the presence of chest representative of Oriental bank of Commerce, Adarsh Nagar, Jalandhar Currency Chest, it was found that the bin No. 265-R-4 contained 147 bundles of Rs. 500/- (value Rs.7.35 crore) instead of 150 bundles of Rs.5000/- denomination (value Rs.7.50 crore) as indicated and initiated by you on the tag attached to the Bin, and also in the balances of Bin Book kept inside the said bin. Therefore, total cash reported missing from the bank's vault is to the tune of Rs.15,00,000/- (Rupees fifteen lakhs only).”

3. The petitioner was served with the chargesheet dated 31.8.2002. Enquiry proceedings were thereafter held and which culminated in the report of the Enquiry Officer dated 27.11.2002. I may note that two charges in the alternative were imputed against the petitioner. The first was of committing grave misconduct by extracting cash of Rs.15,00,000/-from the bin. Second alternative charge was of displaying gross negligence leading to the loss of Rs. 15,00,000/- to the bank. In the enquiry proceedings, the first charge was not pressed on behalf of the respondent-bank i.e there was no charge against the petitioner of his abstracting cash of Rs.15,00,000/- and only the alternative charge was pressed of loss to the bank on account of gross negligence of the petitioner.

4. Before I turn to the report of the Enquiry Officer and the arguments urged on behalf of the learned senior counsel for the petitioner before me, two important aspects, and which will be very relevant to the determination of the present case, need to be noted and which are as under:-

(i) The scope of a Court while hearing a writ petition under Article 226 of the Constitution of India for challenging the orders passed in the departmental proceedings is limited. It is settled law that this Court hearing a writ petition under Article 226 of the Constitution of India does not act as an Appellate Court and re-appraise the evidence before the Enquiry Officer. Courts only interfere in cases of

clear cut perversity or illegality in the enquiry report or violation of principles of natural justice.

(ii) The petitioner, in spite of opportunity, chose to lead no evidence in the departmental proceedings. Petitioner not only did not lead evidence of any witness, but also he himself did not step into the witness box, and it is not the case of the petitioner that he wanted to lead evidence by stepping into the witness box and that he was prevented from doing so.

5. In view of the aforesaid two points and the scope of the hearing before me, let me turn to the main heads of arguments which have been addressed before me on behalf of the petitioner. These arguments are:

- i) The presence of the petitioner on 6.7.1999 was not proved in the departmental proceedings;
- ii) The initials on the bin book and bin tag were not proved to be of the petitioner;
- iii) The bin containing the cash, and which was ostensibly opened for verification on 20.12.2001 when missing cash was reported, is not the only date of operation of the bin as the bin was operated even on 19.12.2001 and thereby possibility of the bin having been opened earlier and mis-appropriation having been taken earlier cannot be ruled out;

- iv) Principles of natural justice have been violated as documents which were asked for from the petitioner being three documents to show that the petitioner was not posted at the Chest Note Vault No. 1 on 6.7.1999 and hence it should be held that the petitioner was not present at the Chest Note Vault No. 1 on 6.7.1999;
 - v) As per the relevant pension rules, pension cannot be withheld unless there is a case of grave mis-conduct or negligence and the facts of the present case do not prove to show that there was any grave mis-conduct or negligence. Reference is drawn to Regulation 7 of the relevant Pension Regulations;
 - vi) Even assuming the order passed by the disciplinary authority is correct, yet, that did not entitle the respondent-bank to withhold pensionary benefits to the petitioner and which pensionary benefits became payable on 1.1.2002 as the petitioner was retired on 31.10.2001 and since pensionary benefits were only paid to petitioner on 31.3.2003 for the period of delay the petitioner must be compensated by interest.
6. On behalf of the respondent-bank all the arguments urged on behalf of the petitioner have been emphatically refuted and the Enquiry Officer's report has been argued to be correct. It is argued that the enquiry report should not be interfered with by this Court in exercise of its powers under Article 226 of the
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Constitution of India in view of the limited jurisdiction that this Court has, and especially because neither there is any perversity, nor any illegality nor any violation of principles of natural justice.

7. On behalf of the petitioner the learned senior counsel took me through various documents as also the cross examination of the witnesses whose evidence was led on behalf of the bank to argue that the respondent-bank has failed to prove in the enquiry proceedings that the petitioner was in fact present in the Chest Note Vault No. 1 on 6.7.1999 i.e it was argued that though the respondent-bank contended that the petitioner was in fact posted for his duties in the Chest Note Vault No.1 on 6.7.1999 this aspect was not established. On this aspect, I must note that the witnesses who have deposed on behalf of the respondent-bank have specifically stated that the petitioner was posted as per the records of the respondent-bank in Chest Note Vault No. 1 on 6.7.1999. Mere cross examination of the witnesses cannot mean that it should be held that the petitioner was not present in the Chest Note Vault No. 1 on 6.7.1999 inasmuch as unless and until there is a clear cut admission in the cross examination of the petitioner not being posted and not being present at Chest Note Vault No. 1 on 6.7.1999, I cannot agree that it should be held that the petitioner's presence in Chest Note Vault No. 1 on 6.7.1999 has not been proved. Departmental proceedings are not proceedings in a criminal court where a case has to be proved beyond all reasonable doubts. It is

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also not as if the proceedings in the departmental enquiry are strictly civil law proceedings and there has to be technically a clear cut discharge of onus of proof. No doubt that on the general principles there must be discharge of onus of proof in the sense that it must be proved that the petitioner was present in Chest Note Vault No. 1 on 6.7.1999, in my opinion however this stands proved from the depositions of the witnesses of the respondent-bank. If the petitioner was so confident of his case, he ought to have had the minimum basic courage to stand up and depose in his own favour and subject himself to the test of cross-examination. Petitioner not having the courage of conviction to stand in the witness box to depose in his own support or stand the test of cross-examination, in my opinion, this aspect totally turns all the issues against the petitioner in the present case. This I am stating so because even with respect to the subsequent arguments which I am dealing with hereinafter with respect to initials of the petitioner not being there on the bin book or bin tag, or the bin having allegedly been operated not on 20.12.2001 but also on 19.12.2001, these arguments are such arguments which will be covered by this conclusion that once in the departmental proceedings evidence is led by the respondent-bank, such evidence ordinarily ought to be believed when a charged official does not even step into the witness box in support of his own case, leave aside leading evidence of witnesses.

8. I, therefore, reject the arguments that there is any perversity in the findings of the Enquiry Officer that petitioner was held to have been found to be present in the Chest Note Vault No.1 on 6.7.1999. To this aspect I must also state that the Enquiry Officer has suggested in his report vide sub-para (iii) in para 7 of the report that the petitioner did not strenuously contend with regard to his non-presence in Chest Note Vault No.1 on 6.7.1999. I have not found any averment in the writ petition that the petitioner has averred that the Enquiry Officer has wrongly noted this particular aspect. Therefore, the argument that there is any perversity in the finding of the Enquiry Officer of the petitioner actually being present in Chest Note Vault No.1 on 6.7.1999 is not correct or it can be interfered under Article 226 of the Constitution of India.

9. The second argument raised is as to whether the Enquiry Officer has correctly arrived at a conclusion that the petitioner's initials did appear on the bin book and the bin tag. It may be noted that when cash is put in a bin, signatures have to be taken of the concerned officer in the bin book as well as the bin tag. These initials which appeared on the bin book and bin tag have been deposed to by the officer of the respondent-bank being the petitioner. As already stated, petitioner has cross-examined and contended that the initials on the bin book and bin tag are not his but the petitioner has not had the courage, or the basic minimum conviction to stand in the witness box and depose in his own favour that the initials are not

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his. As already stated above, mere cross-examination cannot mean that it should have been held by the Enquiry Officer that initials were not of the petitioner. Once onus of proof in the departmental proceedings is discharged by leading evidence on behalf of the bank by witnesses who deposed that the initials appeared to be that of the petitioner, the Enquiry Officer was justified in arriving at a conclusion that the initials in the bin book and the bin tag were of the petitioner. To this aspect, the Enquiry Officer, in my opinion, has correctly observed that in the books which are maintained outside the bin, there were also initials showing that the petitioner was posted at the Chest Note Vault No.1 on 6.7.1999. These initials of the petitioner were on the relevant books namely CD-3, CD-9 and CD-50 and this finding the Enquiry Officer has arrived at on the basis of the stand of the petitioner in the departmental proceedings that these related registers CD-3, CD-9 and CD-50 were authenticated by both the Joint Custodians viz. Smt. Chitra Gupta who was the Assistant Treasurer posted at the Chest Note Vault No.1 and the petitioner, who as an Assistant Treasurer was posted to guide Smt. Chitra Gupta in her duties. In the departmental proceedings, it is perfectly permissible for the Enquiry Officer to draw inferences on the basis of existing record and I do not find any perversity in the report of the Enquiry Officer drawing necessary inferences from initials of the petitioner on CD-3, CD-9 and CD-50. The Enquiry Officer was further justified in ruling out any complicity of Smt. Chitra Gupta because Smt. Chitra Gupta did not

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dispute that her signatures did appear on CD-3, CD-9 and CD-50 and therefore, there was no point for her to dispute her presence on 6.7.1999 and therefore, for her in any manner having to do with the existence of initials of the petitioner on the bin book and the bin tag. In any case, more and more I go into the aspect of appreciation of evidence further and further I will go from the applicable law which states that I am not entitled to re-appraise the evidence unless a clear cut perversity is pointed out to me. A wrong conclusion here and there, assuming there is one, is definitely not a perversity more so in the facts of the present case because the conclusions of the Enquiry Officer are based on the evidence which has been led by the respondent- bank in the enquiry proceedings and the petitioner failing to lead any evidence whatsoever.

10. I may also note that there is no requirement that the initials of a person have only to be proved through a handwriting expert. I also feel that handwriting expert would hardly have a role in a case like this when initials were admittedly in some way similar and some way different from other admitted initials of the petitioner. A handwriting expert has to have such amount of clear cut admitted signatures for being compared with disputed signatures and only thereafter can a handwriting expert prepare his report. A handwriting expert's report on initials cannot and is not final in law. Also, in my opinion, it was permissible for the Enquiry Officer himself to compare disputed initials with the admitted initials of

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the petitioner so as to arrive at finding that the disputed signatures on the bin book and bin tag were of the petitioner. I note that in fact even in civil cases Courts are empowered under Section 73 of the Evidence Act, 1872 in appropriate cases to itself compare disputed signatures with admitted signatures. Therefore, I cannot agree with the contention that initials on the bin book and the bin tag have been held to be of the petitioner without the requisite evidence. The third argument of the petitioner is also rejected for the self-same reasons as regards the first two arguments.

11. The next argument urged on behalf of the petitioner is that the petitioner was not supplied the three documents, and which were asked for with respect to his posting record on 6.7.1999 in the respondent-bank. The petitioner claims that he was not expected to remember his postings in the bank which happened for a period which was much earlier, and therefore, once documents asked for by the petitioner with respect to his posting on 6.7.1999 are not supplied, principles of natural justice have been violated.

12. Firstly, I must note that I do find it quite strange that a person must contend that as an officer of a bank he does not know where he was posted just three years prior to the proceedings before the Enquiry Officer. Proceedings before the Enquiry Officer took place in and around the year 2002 and we are talking of the relevant period of July, 1999. I, therefore, do not feel that the period

is so long from July, 1999 to the proceedings being conducted in the year 2002 for the petitioner to have ignorance and lack of knowledge about his postings with the bank on 6.7.1999 and therefore, the requirement is of the bank to produce the records with respect to the posting of the petitioner on 6.7.1999. As already stated above, for this aspect to have had significance the petitioner should have stood in the witness box and at least deposed with respect to the minimum evidence in his own support, but the petitioner as repeatedly stated above, did not step into the witness box and had no courage to stand the test of the cross-examination.

13. Accordingly, I do not feel that the principles of natural justice have been violated in the facts of the present case. Principles of natural justice are not inflexible principles and they have to be applied with respect to facts of each case to determine whether or not prejudice has been caused. The Supreme Court in the judgment of *State Bank of Patiala & Ors. Vs. S.K.Sharma, 1996 (3) SCC 364* has held that when the issue raised is of violation of principles of natural justice, two aspects have to be examined. One aspect is that natural justice has not at all been followed i.e it is a case of no hearing. The second aspect is violation of a facet of the principles of natural justice such as non supplying of documents etc. So far as the second aspect is concerned, the Supreme Court has observed that mere non supplying of documents cannot amount to violation of principles of natural justice unless and until it is established that the charged official is gravely and greatly

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prejudiced by the non-supplying of the documents. In the facts of the present case, I do not find that the petitioner has at all been prejudiced because as I stated above, not only the petitioner cannot plead selective amnesia with respect to his posting on 6.7.1999, but also that the aspect of posting of the petitioner in Chest Note Vault no.1 is duly deposed to and hence proved by the witnesses of the respondent-bank.

14. That takes me to the issue as to whether the enquiry proceedings are to be faulted because in terms of Rule 7, no case of grave negligence or misconduct is made out. Surely, loss of Rs.15,00,000/- to the bank is something serious. It cannot be contended that once it is proved that an amount of Rs. 15,00,000/- is lost on account of negligence of the petitioner, yet it is not a case of grave negligence or misconduct. In my opinion, loss of Rs.15,00,000/- to the bank from bundles of notes which were put in the bin of the bank, is quite clearly a case of grave negligence and misconduct. This argument of the petitioner is also therefore rejected.

15. That leaves us with the final argument urged on behalf of the petitioner with respect to the claim of interest inasmuch as the petitioner is said to have been paid the pensionary benefits on 31.3.2003/1.4.2003 and the entitlement of the petitioner is w.e.f 1.1.2002, inasmuch as learned senior counsel for the

petitioner states that pension becomes payable two months after the date of retirement being 31.10.2001. Issue thus is the claim of interest from 1.1.2002 till 31.3.2003/1.4.2003. Learned senior counsel for the petitioner has relied upon Regulation 7 of the Regulations which provides that the entitlement of the respondent no.1 to withhold pension is only after an employee is found guilty of grave misconduct in departmental proceedings. It is argued that till there is a final finding of the Departmental Authority of the petitioner being guilty of grave misconduct, pension cannot be withheld. Regulation 7 of the Pension Regulations of the respondent no.1-Bank, reads as under:-

“7. Right of the Bank to withhold or withdraw pension

The competent authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specific period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, provided that the Central Board shall be consulted before any final orders are passed”.

16. In response, learned senior counsel for the respondent no.1 has placed reliance upon Regulation 6(3) of the said Regulations to argue that on the petitioner having been *prima facie* found guilty of grave misconduct, there is entitlement of the respondent no.1 to withhold the pension. The relevant Rule 6 reads as under:-

“6. Pension subject to future good conduct

- (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these Regulations.

(b) The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specific period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than Rs. 375/- per mensem in the case of a full-time employee, and proportionate amount thereof in relation of wages applicable in the case of a part-time employee.
- (2) Whether a pensioner is convicted of a serious crime by a court of law, action under sub-regulation (1) shall be taken in the light of the judgement of the court relating to such conviction.
- (3) In a case not falling under sub-regulation (2), if the authority referred to in sub-regulation (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-regulation (1).

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the competent authority such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).
- (4) Where the authority competent to pass an order under sub-regulation (1) is the Governor, the Central Board shall be consulted before the order is passed.

- (5) An appeal against an order under sub-regulation (1), passed by any authority other than the Governor, shall lie to the Governor and the Governor shall, in consultation with the Central Board, pass such orders on the appeal as he deems fit”.

17. I am unable to agree with the arguments as urged on behalf of respondent no.1, and I agree with the argument as urged on behalf of the petitioner, because, Regulation 7 of the Regulations reproduced above specifically provides that the entitlement to withhold pension is only when the employee is found guilty of grave misconduct in the departmental proceedings. In the present case, departmental proceedings resulted in passing of the impugned order by the Disciplinary Authority on 11.3.2003. Therefore, till 11.3.2003, there was no finding against the petitioner in departmental proceedings of his being guilty of gross misconduct so as to enable the respondent to withhold the pension under Regulation 7 of the Regulations. In my opinion, Regulation 6 relied on behalf of the respondent no.1 cannot apply because this provision entitles withholding of pension for future period and not on the first day on which the same is granted. That this is so becomes clear from the heading itself of the Regulation 6 which is “Pensions subject to future good conduct”. If there is any doubt, the same is removed from Regulation 6(1) (a) and which provides that it is the future good conduct which would be the basis for pension and its continuance under these regulations. Surely, future good conduct would be after the retirement and not

with respect to conduct prior to the retirement of an employee. Therefore, in the facts of the present case since the misconduct which is alleged of the petitioner/employee is prior to the period of retirement, it is Regulation 7 which will come into application and not Regulation 6 of the Regulations. Therefore, the petitioner will be entitled to interest for the amount of pensionary benefits not paid from 1.1.2002 till 11.3.2003.

18. In view of the above, the writ petition is dismissed so far as the same challenges orders of the Disciplinary Authority and the Appellate Authority imposing punishment on the petitioner, however, petitioner will be entitled to interest at the rate of 12% per annum simple from 1.1.2002 till 11.3.2003 with respect to the amount of pensionary benefits which became due to the petitioner, but were not paid from 1.1.2002 till 11.3.2003. Parties are left to bear their own costs.

APRIL 22, 2013

VALMIKI J. MEHTA, J.

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