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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 4979/2013

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6th August, 2013

NEERAJ KAUSHIK

.....Petitioner

Through: Mr. Manoj Sharma and Mr. Kapil
Kaushik, Advocates.

VERSUS

THE REGISTRAR, CO-OPERATIVE SOCIETY & ANR. Respondents

Through: Mr. L.K.Garg, Adv. for R-1.

Mr. Anil Kumar, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, petitioner impugns the orders dated 29.12.2010 and 9.3.2012 whereby the petitioner-probationer was removed from the services of the bank during the probationary period after conducting an enquiry as there was a complaint against him that he willfully blocked the narrow passage in front of a woman employee when she was coming back from the washroom. Counsel for the petitioner has argued before me three aspects:-

(i) First is that the termination order is stigmatic though this aspect is not pleaded in the writ petition and since this argument arises out of an admitted fact this issue be considered by the Court.

(ii) Second aspect which is argued is that enquiry which was conducted against the petitioner was in violation of principles of natural justice.

(iii) The third aspect which is argued is that petitioner did not continue as a probationary employee and was a confirmed employee in view of the service rules of the respondent.

2. So far as the first aspect of the order being a stigmatic order is concerned, though the petitioner has not so pleaded before this Court, however, the impugned order dated 29.12.2010, communicated to the petitioner shows that he has been removed in view of the report of the Enquiry Officer. This would in my opinion amount to a stigmatic order. Since however petitioner has not pleaded this issue and I have permitted him to do so, I therefore now allow the respondent to pass a non-stigmatic order of termination against the petitioner and which would operate from 29.12.2010. Also, I may state that it is not the case of the petitioner that the impugned order dated 29.12.2010 has been found stigmatic by any subsequent employer with whom petitioner has sought employment.

Therefore, allowing the respondent to pass a non-stigmatic order of termination will serve the interest of justice in the present case.

3. So far as the issue of enquiry proceedings being violative of principles of natural justice is concerned, it is settled law that the enquiry proceedings have not to be like the proceedings in the civil court, also it is not necessary that evidence must be led in the enquiry proceedings in accordance with the Evidence Act. The Supreme Court in its judgments reported as *State Bank of India and Others Vs. Narendra Kumar Pandey (2013) 2 SCC 740* and *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S.Gandhi and Ors. (1991) 2 SCC 716* has held that provisions of Evidence Act do not act to departmental enquiries and strict rules of proving facts as applicable to a civil court do not apply to departmental proceedings. Supreme Court has further observed in the judgments that compliance of principles of natural justice depends on facts of each case in the departmental proceedings. The relevant para of the judgment in the case of *State Bank of India (supra)* is para 23 which reads as under:

“23. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the

charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court reported in *Union of India v. Sardar Bahadur* (1972) 4 SCC 618 and *R.S. Saini v. State of Punjab and Ors.* (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.”

4. Paras 17,22,32 and 37 of the judgment in the case of *Maharashtra State Board of Secondary and Higher Secondary Education(supra)* are relevant and which read as under :-

17. The students involved at the examination of secondary education are by and large minors but that by itself would not be a factor to hold that the students were unfairly treated at an inquiry conducted during the domestic inquiry. Assistance of an Advocate to the delinquent at a domestic enquiry is not a part of the principles of natural justice. It depends on the nature of the inquiry and the peculiar circumstances and facts of a particular case. The regulations and the rules of enquiry specifically excluded the assistance of an Advocate at the inquiry. Therefore, the omission to provide the assistance of a counsel at the inquiry is not violative of the principles of natural justice. The show cause notice furnished wealth of material particulars on which the tampering was alleged to be founded and given the opportunity to each student to submit the explanation and also to adduce evidence, oral or documentary at the inquiry. Each student submitted the explanation denying the allegation. At the inquiry the questionnaire in the pro-forma was given to each student. It is undoubted that the allegation of fabrication was stated to have been done at the behest of either the student/parents or guardians and the parents or guardians were not permitted to participate in the inquiry. Inspection of documents was given. Their answer-sheets and marks secured were perused by the students and were asked to testify whether the answer-books belongs to him or her and to identify the marks awarded by the examiner to each answer to the question and the total marks awarded. It was also asked to verify and state whether the moderator's marks-sheets were tampered in the concerned subject or subjects as the case may be. The student could

easily identify and in fact identified his or her answer books and verified the marks awarded and answered positively that the marks were fabricated in the moderators' mark-sheets. The questionnaire was also given to indicate their educational background in the previous school years and also the marks they expected at the final examinations. The need of the assistance of the parents/guardians was thus absolutely nil. Further question in the proforma was to ascertain from the students, due to tampering, whether or not the marks were increased to his or her advantage. It could be answered by a mere look at the marks. No outside assistance is needed. All the students have admitted that the answer books belong to them. They also admitted the marks initially awarded by the examiner or added or subtracted, if any, by the moderators. They also admitted that the fabrication in the moderators' marks-sheets in the subject or subjects and the marks were increased to their advantage. They also denied the complicity of him or her or of parents or guardians. It is not the case of the respondents that they were coerced to answer the questions in a particular manner. It is obvious from the record that they had prior consultations with the counsel. Thus it could be seen that the procedure adopted at the inquiry is fair and just and it is not vitiated by any procedural irregularity nor is violative of the principles of natural justice. The absence of opportunity to the parents or guardians, in this background does not vitiate the legality or validity of the inquiry conducted or decision of the Committee.

22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted, the talcum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Inquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Inquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need to their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record

reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration.

32. It was held that in evaluating the evidence of circumstantial nature it is the duty of the prosecution that all the circumstances must be fully established circumstances should be consistent only with the hypothesis of the guilt of the accused. This standards of proof also is not relevant not to be extended to consider the evidence in an inquiry by the domestic tribunal. The ratio in Bank of India v. J.A.H. Chinoy AIR 1950 PC 90 that the appellate court would be reluctant to differ from conclusion of the trial Judge if his conclusion is based on the impression made by a person in the witness box is also not germane for the purpose of this case. It was laid therein that inferences and assumptions founded on a variety of facts and circumstances which, in themselves, offer no direct or positive support for the conclusion reached, the right of the appellate court to review this inferential process cannot be denied. While dealing with proof of fraud it was held that speculation is not enough to bring home a charge of fraudulent conspiracy.

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred with as much practical as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof

that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight Jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.” (underlining added)

5. The respondent has filed before this Court a copy of the enquiry report dated 14.8.2010. The enquiry report states that petitioner participated in the enquiry, he was heard, he noted the statements of the witnesses of the department, he gave his own statement also. Thereafter, the Enquiry Officer drew out the report finding the petitioner guilty. The enquiry report reads as under:-

“ENQUIRY REPORT

Dt. 14.08.2010

By the CEO, Delhi Nagrik Sehkari Bank Ltd, the undersigned has been directed to conduct a preliminary enquiry into the complaint dated 28.07.2010 of Ms. Prerna Rajora, Clerk cum Cashier (Code No. 522) made against Sh. Neeraj Kaushik, Clerk cum Cashier (Code No. 517)

List of Allegations:

According to Ms. Prerna Rajora, Sh. Neeraj Kaushik had been showing bad behavior towards her ever since she joined office at Head office. On 27.7.2010 (Tuesday) according to her, he again misbehaved with her by blocking her way outside the wash room, when she was going there. She requested him to leave her way. When he did not listen her request, she called Sh. Rajeev Gupta accountant who was nearby the spot at that time to help her, as Sh. Neeraj Kaushik was blocking her way and not letting

her to pass through. Finally after the intervention of Sh. Rajeev Gupta he let the passing of her.

Proceeding of Enquiry

I started the enquiry by conducting extensive questioning from Sh. Neeraj Kaushik, Sh. Rajeev Gupta and Miss Prerna who have mainly figured into this untoward incident. I had also tried to enquire from other staff members but no one come forward to narrate the account of this incident on account of having no substantiated knowledge about it. With regard to the charges raised in the said complaint, I also obtained the statement of Sh. Neeraj Kaushik and Sh. Rajeev Gupta however the complainant Miss Prerna could not submit her statement on the issue.

1. Sh. Neeraj Kaushik, Clerk cum Cashier (Code No. 517)

Sh. Neeraj Kaushik through his written statement stated that on that fateful i.e. day 27.07.2010, when he was taking tea before the canteen his mobile phone, which was placed on his table, had been taken away by some one. On not finding his mobile, he doubted on Miss Prerna as she had been near his table, and then simply asked her to return his mobile phone. He further clarified that this instance happened in gallery and there was no instance of any misbehavior from his side.

During the questioning, he however could not provide any satisfactory explanation as to why he followed a female employee upto the washroom and why he kept on blocking the narrow passage leading to the washroom and not allowed her to pass through safely from that passage. He also had no answer to the question and why he did not wait for her coming back from the washroom for enquiry about his mobile phone. Further as no other employee had been contacted by him for enquiring into his missing mobile phone, which shows that the story of missing mobile is concocted by him.

2. Sh. Rajeev Gupta, Accountant , Code No. 422

Sh. Rajeev Gupta through his written statement stated that on 27.07.2010 he went to the clearing department of enquire about some query related to RBI. After completion of his work, when he was returning back

he saw that Miss Prerna was calling him by waving her hands. Sh. Neeraj Kaushik was also standing there at that time. When he reached there Miss Prerna told him that Sh. Neeraj Kaushik had blocked her way and not letting her to pass through. At that he told Sh. Neeraj Kaushik to behave properly. After that Sh. Neeraj Kaushik gave the way to Miss Prerna.

The statement of Sh. Rajeev Gupta, Accountant appears to be containing the true picture of the incident. He has seen Sh. Neeraj Kaushik standing in middle of the narrow passage just in front of the complainant, and on his admonishing Sh. Neeraj Kaushik came out of the way letting Miss Prerna to go back to her seat. Sh. Neeraj Kaushik also could not provide any answer about his such an offensive posture to Sh. Rajeev Gupta and silently went away from the scene.

3. Miss Prerna Rajora, Clerk cum Cashier, Code No. 522.

Miss Prerna Rajora explained that on that day (27.07.2010) when she was going to washroom Sh. Neeraj Kaushik tried to block her way as he was already standing there. Thereafter, when she was coming back from the wash room he again blocked the narrow passage in front of her offensively and deliberately. She requested him to give way but refused to do so. Therefore no option was left with her except to call someone for help. At that very moment she saw Sh. Rajeev Gupta, Accountant coming from the Clearing Department. She immediately asked him to help by waving her hands. Sh. Rajeev Gupta immediately came to the spot and after hearing her plight, told Sh. Neeraj Kaushik to behave properly and let her go as that was not the proper way to deal with any female staff in the office. Thereafter Sh. Neeraj Kaushik left the way unceremoniously.

Though Miss Prerna did not prefer to give anything further in writing, she narrated the entire incident to the undersigned, fully supporting her accusations made in the complaints against Sh. Neeraj Kaushik, who was harassing her for a long time, but she kept on tolerating his unruly behavior silently to save her image and reputation. She appears to have briefly described the true account of misconduct and misdeed of Sh. Neeraj Kaushik in her complaint. The matter being of serious and sensitive nature, the undersigned did not press her to give her statement in writing to save her from further embarrassment and ignominy as the piece

of complaint dated 28.7.2010 was already containing the charges explicitly.

Conclusion:

The close examination of the complaint dated 28.07.2010 and the detailed inquiries made into the matter revealed that it was the offensive and unruly behavior of Sh. Neeraj Kaushik, which forced the complainant to file this complaint against him. He has been established that Sh. Neeraj Kaushik willfully blocked the narrow passage in front of her when she was coming back from the washroom. The passage at that particular spot is so narrow that no other person could have passed without touching him. Further, even on the request of giving way, he did not move and kept standing there in a very offensive and bullying posture. That kind of behavior cannot be accepted/tolerated in any civilized society much less in an institution. The story of missing his mobile phone appears to be fabricated one, with an objective of covering up his misdeeds as he asked no one else about it at that time. The version of Sh. Rajeev Gupta who had seen him standing in the middle of that narrow passage in front of the complainant further confirmed the incident. When Sh. Rajeev Gupta admonished and asked Sh. Neeraj Kaushik to leave the way apprehending the situation going serious and coming out in open, he went away from the scene, even without explaining his case to him.”

6. As already stated above, since principles of natural justice are not hide bound rules and they have to be applied considering the facts of each case, and considering that petitioner was a probationer, he participated in the enquiry proceedings and also gave a statement, and thereafter, the Enquiry Officer after considering the depositions of the witnesses, found the petitioner guilty, I do not think that present is a case where I must hold that enquiry report is bound to be set aside because principles of natural justice

have been violated. This argument is therefore rejected.

7. The last aspect which is urged on behalf of the petitioner that since petitioner had completed his first year of probation, therefore he is to be taken as confirmed as per the service rules, is also an argument without merit because petitioner has nowhere filed service rules which provides for deemed confirmation after a period of one year. In fact the appointment letter of the petitioner as per para-1 specifically states that the period of probation of the petitioner can be extended. In fact, pursuant to this clause petitioner's period of probation was extended up to 31.12.2010 by the letter dated 24.12.2008 and copy of which is also placed on record. Petitioner therefore has been terminated in the probation period.

8. I do not find any merit in the petition which is therefore dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of.

9. As already stated above, a fresh non-stigmatic order against the petitioner be issued by the respondent no.2 within a period of four weeks from today.

AUGUST 06, 2013
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VALMIKI J. MEHTA, J.