

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3862 of 1999

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Rabindra Nath Thakur, Son of Prabhu Thakur, resident of village-
Bagoura, P.S.- District-Siwan

.... Petitioner/s

Versus

1. Canara Bank through its Chairman, 112, J.C. Road, Banglore.
2. The Chairman, Canara Bank, 112, JC Road, Banglore,
3. The Managing Director, Canara Bank, Head Office, 112, J.C. Road, Banglore
4. The General Manager, Canara Bank, Head Office, 112, JC Road, Banglore
5. The Deputy General Manager, Canara Bank, Circle Office No.21 Camal Street, Calcutta-16
6. The Manager, Canara Bank, Bill Section, Head Office, Banglore
7. Sri P. Sridhar Manager, Canara Bank, Staff Selection Circle Office, Calcutta (Inquiring Authority)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Upadhyay

For the Respondent/s : Mr. Rajan Ghoshrahe, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 01-05-2015

An order dated 17.1.1989 passed by the Deputy General Manager (Respondent No.5), imposing punishment on the petitioner of reduction to lower stage in time scale by three stages is under challenge in the present writ application.

2. I will be briefly narrating the facts which ultimately resulted into passing of an order dated 07.01.1999 by the appellate authority i.e. Managing Director of the Canara Bank, whereby, he has dismissed the petitioner's appeal, which order is also under challenge in the present writ application. The order passed by the

Disciplinary Authority dated 17.1.1989 is based on a report of the Inquiry Officer communicated to the petitioner through letter dated 17.1.1989. The petitioner has challenged the findings of the Inquiry Officer also.

3. A departmental enquiry was initiated against the petitioner with the issuance of the charge-sheet dated 19.10.1987 containing following charge:-

“You are working as Manager, Scale I at our Bagoura Branch since 3.10.1986.

You were previously working at Our Divisional Office, Patna as an Accountant.

While so working at Division Officers, Patna you were deputed to our Manganpur Branch to officiate as Manager during the period commencing from 16.2.1985 to 10.12.1985. During the period of deputation, you were permitted to stay at an operated from Hajipur to Manganpur.

You have submitted a T.A. Bill dated 2.5.1986 to the Bills Sec. Personnel Wing, Head Office, Bangalore, claiming a total sum of Rs. 39,498.10 (Rupees thirty nine thousand, four hundred ninety eight and paise ten only) towards fare, boarding and lodging expenses and halting allowance. Out of the above amount, you have claimed a sum of Rs. 29,766.70 towards boarding and lodging expenses supported by hotel bills. The details of hotel bills submitted by you are more fully described in the statement of imputations to this articles of charge.

The investigations conducted to verify

the genuineness of the hotel bills have revealed that you did not stay in the hotel at Hajipur, but stayed at an operated from Patna. The hotel bills submitted by you are false, fabricated and obtained through unfair means in active connivance of the hotel authorities. You have by producing the aforesaid hotel bills, made/attempted to make a false claim against the Bank with an ulterior motive of depriving pecuniary benefits for yourself and to cause wrongful loss to the Bank.

By your above action in preferring a false claim, you have failed to perform your duties with honesty and integrity, devotion and diligence and have acted in a manner which is most unbecoming of an Officer of the Bank. You have, thus contravened Regulation 3(1) read with Regulation 24 of Canara Bank Officer Employees (Conduct) Regulations 1976 and thereby committed misconduct punishable under the provisions of Canara Bank Officer Employees' (Discipline & Appeal) Regulations, 1976."

4. I need not narrate the details of the manner in which the enquiry was conducted, the nature of evidence adduced in course of such enquiry, suffice it to say that the Inquiry Officer submitted his report, recording a finding that the charge against the petitioner stood proved, which was communicated to him through letter dated 17.1.1989. On the basis of the said report of the Inquiry Officer, the disciplinary authority imposed upon the petitioner the



punishment as aforesaid by the order dated 17.1.1989. The petitioner, aggrieved by the order of the disciplinary authority had preferred an appeal before the appellate authority. The appellate authority, however, dismissed the petitioner's appeal. The petitioner approached this Court challenging the said order of the disciplinary authority dated 17.1.1989 as well as the appellate authority rejecting the petitioner's appeal, by filing a writ application before this Court being CWJC No. 1493 of 1990. Upon detailed consideration of rival pleadings and submissions made on behalf of the parties, including a plea raised on behalf of the petitioner that it was a case of no evidence and the finding of the enquiry Officer was therefore perverse and subsequent orders passed by the disciplinary authority and the appellate authority illegal, this Court disposed of the writ application by a judgment dated 21.9.1998 passed in CWJC No. 1493 of 1990. This Court held in paragraph 38 of the said judgment as follows:-

“38. Applying those principles it is difficult for this Court to discard the evidence which has been adduced by the management witness on the basis of his conversation with the old man. Therefore, this Court cannot hold that it is a case of no evidence in law said enquiry. Since there is some evidence in the said enquiry and the hearsay evidence is of a rational and probative value, the findings of the enquiry authority are not perverse.”

5. This Court found one infirmity in the report of the Inquiry Officer i.e., he refused to examine two documents which the petitioner had forwarded by way of defence and which documents were part of the written argument. The Inquiry Officer had refused to take into account those documents on the ground that they were not properly introduced in course of the departmental enquiry. This Court observed that if the Enquiry Officer could accept hearsay evidence arising out of the conversation between the management witness and that old man, referred to in the report of the Inquiry Officer, there should have been no reason why the documentary evidence which had been annexed with the petitioner's written argument submitted on behalf of the petitioner before the Inquiry Officer by way of defence should have been rejected. This Court held that the Enquiry Authority was under an obligation, in view of the extant regulation to consider the documentary proof which were adduced by way of defence as part of his written argument. The Court further held that the Inquiry Officer should not have become technical and discarded the explanation put forth in the defence statement on the ground that they had not been properly introduced. Despite noticing the said infirmities in the report of the Inquiry Officer, this Court, in the facts and circumstances of the case, did not interfere with the report of the Inquiry Officer itself or the order of disciplinary authority

imposing punishment on the petitioner, based on such enquiry report but thought it proper to remit the matter back to the appellate authority to consider those two documents which the petitioner had submitted before the Inquiry Officer along with his written argument, when the enquiry before the Inquiry Officer was at the verge of conclusion.

6. In compliance of the direction given in the said judgment of this Court dated 21.9.1998, it appears that the petitioner presented those documents before the appellate authority on 23.10.1998. The appellate authority, in compliance of the judgment and order of this Court dated 21.9.1998 passed an order afresh dated 7.1.1999 on the petitioner's appeal, wherein he considered the documents as referred to by this Court in the judgment dated 21.9. 1998. This is the circumstance in which the order of the appellate authority dated 7.1.1999 is under challenge in the present writ application.

7. In view of the developments as noted above, this Court cannot go behind the stage when this Court delivered the judgment in CWJC No. 1493 of 1990 preferred by the petitioner on 21.9.1998. The scope of judicial review of this Court under Article 226 of the Constitution of India in the present writ application is confined to challenge the order of the appellate authority dated 7.1.1999, whereby, he has rejected the petitioner's appeal after

following the judgment and order of this Court dated 21.9.1998 (supra).

8. Mr. A.K. Upadhayaya, learned counsel appearing on behalf of the petitioner has submitted that in effect, the appellate authority was directed by this Court by an order dated 21.9.1998 to pass an order afresh on the basis of the entire material available on record of the disciplinary proceeding and the competing evidence adduced in course of the departmental enquiry by the management and the petitioner.

9. He has submitted that the appellate authority, appreciating the spirit of the judgment and order of this Court dated 21.09.1998 ought to have made relative assessment of the evidence adduced by the management before the Enquiry Officer and the documents which the petitioner had presented with written notes of defence before the Enquiry Officer. He has submitted that on the one hand, the evidence adduced on behalf of the Bank before the enquiry Officer was based on hearsay, the petitioner had submitted, in course of departmental enquiry, the documentary evidence which were required to be considered by the appellate authority in terms of the judgment and order of this Court. He has submitted that the documents referred to by this Court in the order dated 21.09.1998, though have been considered by the appellate authority, he has not considered them in their true perspective. He has gone to the extent

of submitting that the order of the appellate authority dated 07.01.1999 suffers from perversity and improper application of mind.

10. Learned counsel appearing on behalf of the respondents-Canara Bank, on the other hand, has submitted that the appellate authority, acting in strict compliance of the judgment and order of this Court dated 21.09.1998, considered the documents which the petitioner has referred to in his written notes of defence before the Enquiry Officer after the evidences were adduced by the parties before him. He has submitted that those documents could not convince the appellate authority for taking a decision different that what he had earlier taken. He has submitted that the appellate authority found and observed that the petitioner had failed to adduce evidence before the Enquiry Officer by producing the concerned witness.

11. I have perused the impugned order dated 07.01.1999 passed by the appellate authority, wherein, he has taken note of the two documents which the petitioner had submitted alongwith his written submission before the Enquiry Officer, which are as follows:-

“(a) Letter dt. 22.01.1987 of M/s. Hotel Vaishali, Hajipur addressed to General Manager, Canara Bank, Bills Section, Head Office, Bangalore.

(b) An affidavit dt. 28.01.87 of Sri Anil Chandra, Hotel Vaishali, Hajipur.”



12. From the discussions made in the order passed by the appellate authority, I find that he disbelieved the petitioner's submission in his written brief, on 14.06.1988, wherein, he had contended that the aforesaid two documents were discovered subsequent to the enquiry held on 10.05.1988. The appellate authority in his impugned order held that the production of the documents after closure of the enquiry were indicative of the fact that it were after thought. He considered the aspect that the petitioner could have produced the author of the documents as witness in support of his case. He, therefore, refused to alter the view which he had taken earlier as an appellate authority. From the discussion made in the impugned order of the Appellate Authority, I find that he has assessed and evaluated the competing evidence produced by the petitioner and those adduced by the Bank in course of departmental enquiry and thereafter refused to interfere with the order of the disciplinary authority, imposing punishment upon the petitioner. At the outset, I must express that I do not find any such infirmity in the order of the appellate authority, which would require interference by this Court in a certiorari proceeding under Article 226 of the Constitution of India, as the findings arrived at by the appellate authority cannot be said to be perverse, without material or



contrary to material which were available before him. It cannot be said that there has been non application of mind by the appellate authority. Mr. Upadhyaya has extraneously attempted to convince me that the order is erroneous and needs interference in the present proceeding. However, I am of the view that if it is evident from the order that a quasi judicial authority has applied his mind, evaluated the materials and upon consideration of such materials, has come to a particular conclusion, unless such conclusion or finding is perverse, it is not ordinarily permissible for this High Court in a certiorari proceeding under Article 226 of the Constitution of India to interfere by reevaluation the evidence.

13. Mr. Upadhyay, has also submitted that the entire records of the disciplinary proceeding should be taken into account for the purpose of reaching to a conclusion, whether the petitioner was guilty of misconduct or not. This Court earlier in its judgment dated 21.09.1998, had found the findings of the Enquiry Officer not to be perverse. I cannot take a different view. Certain infirmities were detected by this court in the report of the Enquiry Officer which were pointed out and, accordingly, the appellate authority was asked by this Court to look into such documents and take a final decision. I find that the Appellate Authority has taken into account those documents and reached to a particular finding. The findings arrived at by the Appellate Authority cannot be substituted by a different

finding by this Court, by re-evaluating the materials available on the records of the departmental enquiry. Mr. Upadhyay has drawn my attention to Annexure-17 of the petitioner's reply to the rejoinder filed on behalf of the Canara Bank and has submitted that on 13.10.1998, the Bank had bestowed upon the petitioner "Milestone Award" in recognition of his meritorious and unblemished service rendered by him to the Bank and, therefore, the authorities should reconsider the matter of punishment. I do not find any force in such submission.

14. This application is, accordingly, dismissed.

15. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/Praveen-

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