IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

W.P.(C).No.15030 of 2006 (L)

PETITIONER(S):

P.VISWANATHAN, S/O.LATE RAMAN NAIR,
FULL TIME MESSENGER (UNDER DISMISSAL),
SOUTH MALABAR GRAMIN BANK, PULAMANTHOLE BRANCH,
RESIDING AT POOVATHUMTHODY HOUSE, THRITHALA KOPPAM,
PULASSERY.PO, VIA. PATTAMBI.

BY ADVS.SRI.WILSON URMESE
SRI.M.C.ANTONY.

RESPONDENT(S):-
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1. THE CHAIRMAN,
SOUTH MALABAR GRAMIN BANK, HEAD OFFICE, MALAPPURAM.

2. THE GENERAL MANAGER, P.A.WING,
SOUTH MALABAR GRAMIN BANK, HEAD OFFICE, MALAPPURAM.

R1 & R2 BY SENIOR ADVOCATE SRI.DEVAN RAMACHANDRAN &
STANDING COUNSEL SRI.K.M.ANEESH
R1,2 BY ADV. SMT.S.KARTHIKA, SC,SOUTH MALABAR GRAMIN BANK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C) NO.15030 OF 2006-L

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE COPY OF THE CHARGE SHEET DATED 16.03.2005 ISSUED BY THE DISCIPLINARY AUTHORITY.
EXT.P2	TRUE COPY OF THE DEFENCE STATEMENT DT.31.03.2005.
EXT.P2(a)	TRUE COPY OF THE ENQUIRY REPORT DT.22.08.2005 [PRODUCED ALONG WITH I.A.19470/2011, PETITION FOR AMENDMENT]
EXT.P3	TRUE COPY OF THE REPRESENTATION DT.10.09.2005 SUBMITTED BY THE PETITIONER.
EXT.P4	TRUE COPY OF THE REPRESENTATION DT.06.10.2005 SUBMITTED BY THE PETITIONER.
EXT.P5	TRUE COPY OF THE ORDER NO.9/SMGB/E.347/612/2005/IR DATED 20.10.2005 OF THE DISCIPLINARY AUTHORITY.
EXT.P6	TRUE COPY OF THE APPEAL P[REFERRED TO THE 1ST RESPONDENT DT.11.11.05.
EXT.P7	TRUE COPY OF THE ORDER NO.9/SMGB/E.347/32/2006/IR DATED 13.01.2006 OF THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:-

EXT.R1(a)	TRUE COPY OF THE ENQUIRY REPORT.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.15030 of 2006-L

Dated this the 17th day of December, 2015

JUDGMENT

The petitioner is aggrieved with the imposition of punishment of dismissal, on the petitioner, for the alleged charges which are said to have been proved against him in a domestic enquiry. The petitioner was a Full-Time Messenger [for brevity "FTM"] with the respondent-Bank and was issued with a charge-sheet at Exhibit P1. An explanation offered at Exhibit P2; dissatisfied with which, an enquiry was ordered. On the basis of the findings in the enquiry, disciplinary authority passed Exhibit P5 order dismissing the petitioner from the employment of the Bank.

2. The jurisdiction conferred on this Court under Article 226 of the Constitution is trite and would not extend to re-examination of facts, which at the initial stage is looked into by the Enquiry Officer who takes evidence as a delegate of the disciplinary authority. The findings of the Enquiry Officer does not bind the disciplinary authority and he would,either concur or differ,

with the findings of the Enquiry Officer' based on the evidence recorded at the enquiry. This Court, hence, would not look into the evidence as such and interference would be caused only if there is a procedural irregularity amounting to violation of principles of natural justice or an allegation of bias or when this court finds the findings to be based on no evidence at all. The punishment could also be interfered with, if it is found to be grossly disproportionate to the gravity of the offence.

3. The petitioner had not produced the enquiry report, which was produced by the respondent-Bank along with its counter affidavit dated 12.10.2010. In that context, the petitioner had amended the writ petition, again producing the enquiry report, contending that the evidence adduced by the Bank officials are unbelievable and the charges levelled against the petitioner are illegal. It was contended that there was absolutely no material to come to a conclusion of guilt, as is revealed in the enquiry report. The enquiry was alleged to be an empty formality and the same was also alleged to have been conducted in a partisan manner. It is also averred in Ground-F that the petitioner was not given the copy of the enquiry report and no opportunity to substantiate his version.

4. This latter contention has to be looked into, at the outset, since if the petitioner has not been given a copy of the enquiry report and not afforded an oppotunity to object to the findings in the enquiry report, then the same would result in a violation of principles of natural justice, as has been held in **Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727].**

5. The petitioner's explanation at Exhibit P3 assumes significance to answer the above contention.. Exhibit P3 is the explanation given by the petitioner after the enquiry was over. It starts with the following words:

> "I was very much pained to learn from the enclosed report that the Enquiry Officer has come to the opinion that I am guilty of the charges leveled against me vide chargesheet No.9:SMCB:E-347:192:2005:IR dated 16.03.2005".

Hence, it is very evident that the petitioner was supplied with the enquiry report and the petitioner's objections against the findings in the enquiry report, as stated in Exhibit P3, were considered by the disciplinary authority in Exhibit P5. No other contention as to the violation of principles of natural justice has been raised. A reading of the enquiry report indicates that the petitioner was fully participated in the enquiry, documents relied on by the management were allowed to be perused and the witnesses of the management were permitted to be cross-examined. The petitioner was also permitted to adduce evidence in defence, which obviously, he confined to a statement made before the disciplinary authority.

6. The allegation in the charge-sheet was with respect to receiving cash from one customer and not remitting the same to the account of the customer, maintained with the respondent-Bank. The petitioner, who was a FTM, is alleged to have approached the wife of a customer, who was abroad, to inform her that the gold pledged in the name of her husband would be auctioned unless the dues are satisfied on the very same day. The wife of the customer is said to have entrusted an amount of Rs.1,700/- with the petitioner along with three gold bangles, which the petitioner was to pledge in another Bank and then remit the total amount of Rs.9,500/- in the Bank. These were facts disclosed in a complaint filed by the brother of the person from whom, the petitioner received such money on 18.01.2005,when the brother came to the branch to enquire about

the remittance made on 31.12.2004.

7. Admittedly no evidence was led by the management to establish the incident that occurred on 31.12.2004. However, the charges were not with respect to that incident alone and were specifically with respect to the further incident that happened on 18.01.2005. On that day, the complainant is said to have approached the petitioner, at the premises of the Bank to get the counterfoil of the money deposited by his sister. The petitioner is then said to have written up a challan and obtained the seal of the Bank from the Cashier, on the promise that the amounts would be remitted immediately. The Cashier being a fellow staff member, put the seal of the Bank and his initials on the counterfoil; but, however, had not entered the pay-in-slip; which is the portion maintained by the Bank, of the challan and retained as records in the Bank. Nor was the payment entered in the Cash Register, since no remittance was made.

8. The complainant is said to have then gone from the premises of the Bank; but later telephoned to the Branch Manager to confirm whether such remittance was made. At that time, the Branch Manager had seized the pay-in-slip retained with the Cashier without “Cash Received” seal affixed therein. The Cashier

spoke of the incident, in which the FTM, the petitioner herein, had obtained a counterfoil with a "Cash Received" seal with promise to make the payment before the closure of bussiness for the day. The Manager then asked the complainant to come to the Bank and the complainant, within the premises of the Bank, wrote up a complaint and in the presence of other officers, handed it over to the Manager.

9. At the enquiry, the Senior Manager of the Inspection Wing, the Branch Manager and two officers who were in the Branch, were examined as MWs 1, 2, 3 and 4 and the Cashier as MW-5. The ledger relating to the gold loan account was produced at the enquiry and entry of Rs.9,500/- was seen made in the hand-writing of the petitioner. The pay-in-slip, handed over to the Cashier after affixing "Cash Received" seal on the counterfoil, seized from the Cashier, was also produced at the enquiry as M.E.18. The counterfoil which was handed over to the complainant was produced as M.E.17. The petitioner is said to have remitted the cash after the business hours, which challan is also marked as M.E.19. All these documents were identified by various witnesses examined by the Bank before the Enquiry Officer.

10. The complainant was not examined by the management, though he was one of the witnesses cited by the management and also the defence. The mere non-examination of the complainant cannot be said to be fatal, since often the customers who make a complaint resile from the same when the misappropriated amont, which belongs to the customer is refunded to him. Here, it is evident that though Rs.9,500/- was initially alleged to have been deposited to the gold loan account, of the sister of the complainant, the same was not done and hence the complaint was filed. Subsequently, on the very same day, the petitioner himself had made arrangements to make late payment of the cash and that persuaded the complainant from not appearing before the Enquiry Officer. It is also to be noticed that the nature and quality of evidence required in an enquiry proceeding is not as strict as to bring home the guilt in a criminal proceeding or in the nature of being possible of beyond all reasonable doubt as would be required under the Evidence Act.

11. In the enquiry proceeding, the Manager who deposed as M.W.2 spoke of the incident which led to the allegation against the petitioner and also spoke of the pay-in-slip having been seized from the Cashier and the counterfoil having

been surrendered to him by the complainant. The allegation of the petitioner that the complainant was forced to sign a document which was dictated by the Bank officials, was found to be unbelievable, especially since the complainant was stated to be a known businessman of the locality. Further, the officer who was examined as M.W.3, deposed that he had seen the complainant himself writing the complaint, which was given to the Manager. The Cashier spoke about the counterfoil sealed with "Cash Received" having been given to the petitioner, on the promise of the petitioner, to remit the money before the close of business hours. The pay-in-slip with the Cashier was also not entered into the Cash Register; nor was it sealed as "Cash Received".

12. Further, the petitioner himself had remitted Rs.9,500/- as "late cash", which was spoken to by the witnesses and is evidenced by M.E.19. MW4, the officer who initialed the counterfoil, handed over to the complainant, also deposed that the petitioner requested him to initial it and also to correct the date which was initially shown as 30.01.2005 and then corrected to 18.01.2005. It cannot at all be said that the finding of guilt entered into by the Enquiry Officer and the Disciplinary Authority was

without due cause or evidence.

13. The further contention raised by the learned Counsel for the petitioner is that the petitioner was a FTM, who was in the verge of his retirement and there was no other allegation levelled against him during his entire career. It is also submitted that even if the allegations are deemed to have been proved, the quantum of the amount involved in the case would warrant interference with the punishment imposed, finding the same to have no nexus to the gravity of the offence. Here, it is to be noticed that the petitioner was employed in a Bank dealing with public funds and the allegation is that the petitioner had attempted misappropriation of funds of the Bank's customers. The quantum or the fact that it was a solitary incident, would not offer any mitigation.

14. The petitioner, who was an employee in a financing institution, dealing with public funds, held a position of trust, which he misused by taking money from customers and not remitting it into their accounts. On the customer raising a complaint, the petitioner is also found to have manipulated the staff of the Bank as also made wrong entries in the Bank's books, to convince the customer of the remittance having been made.

This Court does not find any reason to interfere with the punishment. Apposite would be reference to **(2005) 7 SCC 435 [*State Bank of India v. Bela Bagchi*]** wherein the Hon'ble Supreme Court held that a higher degree of honesty and integrity has to be maintained by the employees of a bank and the quantum of misappropriation cannot be a ground to examine the proportionality of the punishment imposed.

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]