

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 18044 of 2004 (W)

ID 89/2001 of INDUSTRIAL TRIBUNAL, KOLLAM

PETITIONER(S):

**STATE BANK OF TRAVANCORE
ZONAL OFFICE, PADINJARAKA CHAMBERS, KOTTAYAM-2
REPRESENTED BY THE DEPUTY GENERAL MANAGER.**

BY ADV. SRI.P.RAMAKRISHNAN,SC FOR SBT.

RESPONDENT(S):

- 1. THE INDUSTRIAL TRIBUNAL, KOLLAM.**
- 2. SRI.GEORGE VARGHESE,
PALACKASSERIL HOUSE, KALATHOO KAVADU P.O..
ERATTUPETTA, KOTTAYAM DISTRICT.**

**R2 BY ADVS. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 18044 of 2004 (W)

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER OF THE R1 DATED 27/2/04 IN ID.88/01.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.VINOD CHANDRAN, J

W.P.(C).No. 18044 of 2004

Dated 27th February, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P1 order of the Industrial Tribunal finding that the disciplinary enquiry held against the delinquent employee is vitiated by violation of principles of natural justice.

2. The short question to be considered is as to whether any prejudice was caused to the delinquent employee on the non-furnishing of preliminary investigation report which led to the show cause notice and eventually the charge sheet which culminated in the disciplinary proceedings.

3. The show cause notice was issued against the delinquent employee on 09.01.1998 in which three allegations were raised. The said

allegations were said to be "as a result of the investigations". The delinquent employee filed a reply to the show cause notice primarily contending that, the report of the investigation should be supplied to him. All the same, the allegations were answered. The disciplinary enquiry not being satisfied with the reply of the petitioner, issued a charge sheet dated 12.02.1999 and by the said charge sheet itself, initiated disciplinary proceedings directing the delinquent employee to submit his statement of defence, in writing.

4. An Enquiry Officer was appointed and in the enquiry conducted, two charges were found against the delinquent employee and in one, he was acquitted. The Disciplinary Authority, concurring with the enquiry report, dismissed the employee against which a reference was made by the appropriate Government to the Industrial

Tribunal, Kollam. In the said reference numbered as I.A.88 of 2001, the Tribunal found that the enquiry is vitiated for reason only of the delinquent employee having not been supplied with the preliminary investigation report which led to the allegations in the charge sheet. The Tribunal also relied on the decision of the Honourable Supreme Court in State of U.P. v. Shatrughan Lal & Another (1998 (2) LLJ 799).

5. I have heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent. The learned counsel for the petitioner would in fact contend that, no prejudice was caused to the delinquent employee since the investigation report which led to the issuance of show cause notice and eventually the charge sheet, was produced before the Enquiry Officer and marked in the enquiry proceedings. The witnesses examined in the preliminary

investigation were also examined before the Enquiry Officer.

6. The learned counsel would urge that in finding an enquiry to be vitiated for violation of principles of natural justice, the Court should not take a doctrinaire approach. What is to be looked at is the prejudice caused to the delinquent employee as has been laid down in Alok Kumar v. Union of India and Others (2010 (5) SCC 349) and State Bank of India and Others v. Bidyut Kumar Mitra and Others (2011 (2) SCC 316).

7. The learned counsel for the respondent, however, would contend that the Tribunal, when examining the question of violation of principles of natural justice, is not looking at the enquiry proceedings alone, since that is only a delegation by the disciplinary Authority

effected in administrative convenience. The entire gamut of the proceedings right from the issuance of the show cause notice, would have to be examined to find out if there had been any violation of principles of natural justice. In the present case, though, the preliminary investigation report was marked in the enquiry, none of the statements recorded were supplied to the delinquent employee, which alone could have enabled the delinquent employee to confront the witnesses examined in the enquiry and facilitated reliance on any portion of such depositions which was in favour of the delinquent employee.

8. Ext.P1 does not find any infirmity or irregularity in the proceedings against the delinquent employee except for the non-supply of the preliminary investigation report. This court has examined the files of the enquiry,

handed over by the learned counsel for the respondent, across the bar. The preliminary investigation report which led to the issuance of the show cause notice was marked in the enquiry as Ext.P9. The witnesses examined therein, on going through the report, are seven persons of which, four are Bank employees and the 5th person is the delinquent employee and 6 and 7 are the customers of the Bank; the transactions with whom were the basis of the allegations.

9. The four employees of the Bank participated at the preliminary investigation were examined at the enquiry also, which is evident from the enquiry report. They were permitted to be cross-examined by the delinquent employee. The preliminary investigation report also has not spoken of any statements recorded. The Officer conducting the same merely examined

the records and had discussions with the other officials of the Bank, the delinquent and two customers. In such circumstances, what would be relevant is the question of prejudice caused to the employee.

10. In Shatrughan Lal (supra), a preliminary enquiry was conducted behind the back of the employee. The Honourable Supreme Court found that it could only be so carried out; but however emphasized the need for supply of the report and the statements recorded therein to the employee to afford him a reasonable opportunity of defence. However, a reading of the said judgment does not indicate as to whether at the enquiry proceedings, the same was marked and the delinquent employee permitted to contest the same. A reading of the judgment would indicate that the allegations therein were based on the investigation and the

findings were also on the basis of such preliminary enquiry report. The documents which were to be relied on in the departmental proceedings were not supplied to the delinquent employee and the statements recorded at the preliminary enquiry were also not supplied to him.

11. Herein, the show cause notice was issued on the basis of an investigation report and despite the allegation of the delinquent employee to the contrary, there are clear statement of allegations pointing out the instances which formed the basis of the misconduct alleged against the delinquent employee. The preliminary enquiry report was marked before the Enquiry Officer in the presence of the delinquent employee and the delinquent employee cross examined the person, who conducted the preliminary investigation, as also the employees

of the Bank with whom discussions were carried out in the preliminary investigation. As was noticed earlier, no statements were recorded at the preliminary enquiry, the preliminary enquiry report was marked at the enquiry, with copy supplied to the delinquent employee. The Bank officials with whom discussions were carried on, were also examined thereto.

12. At no point of time, in the enquiry proceedings did the delinquent employee request the Enquiry Officer to direct the Management to supply him with statement of any witnesses which he alleges to have been recorded at the preliminary investigation. The delinquent employee was nevertheless granted sufficient opportunity to cross examine the employees of the Bank who were officers with whom discussions were conducted at the preliminary enquiry. Three out of the five associated with the

preliminary investigation, were respectively the delinquent employee and two customers. The employee did not offer any of the customers as his witnesses. In such circumstances, going by the decisions of the Honourable Supreme Court in Alok Kumar (supra) and Bidyut Kumar Mitra (supra) it has to be found that there is no prejudice caused to the delinquent employee. On the basis of the non-supply of the enquiry report at the preliminary stage, when the show cause notice was issued, on the facts which come to fore in the aforesaid case, this Court is not convinced that, violation of principles of natural justice is discernible; vitiating the enquiry proceedings.

13. In the above circumstances, Ext.P1 would stand set aside. The domestic enquiry is held to be one properly conducted in consonance with the principles of natural justice. The

matter is remanded to the Tribunal for consideration of the findings on merits.

14. It is brought to the notice of this Court that though the Labour Court, Kollam, had passed the preliminary order in the aforesaid case, now the Central Government Industrial Tribunal cum Labour Court, Ernakulam, is notified and the matter would have to be considered by that Tribunal. The Labour Court, Kollam, shall immediately transmit the files to the Central Government Industrial Tribunal-cum-Labour Court at Ernakulam, at any rate, within one month from today. The parties shall appear before the Central Government Industrial Tribunal-cum-Labour Court, on 01.04.2015. If the files have been received, the matter shall be taken up and proceeded with and concluded within a period of six months from the date of appearance.

15. One aspect which has to be noticed; is that the Labour Court, Kollam, before finding the enquiry to be vitiated on principles of natural justice, looked at the merits of the issue and also the findings in the enquiry and found that the allegations stood proved in the enquiry; at the preliminary stage itself. If at all the enquiry was vitiated, then the Management would have had an opportunity to adduce evidence and then the Labour Court would have had to look at the issue on merits afresh *de hors* the findings in the domestic enquiry. If the enquiry was upheld then too the Labour Court would have to examine the sustainability of the charges on the basis of the evidence adduced at the domestic enquiry. In any event, at the preliminary stage, the Labour Court ought not to have entered into such findings and hence, the Central Government Industrial Tribunal-cum-

Labour Court shall *de hors* all the observations made on merits in the preliminary order, consider the issue on merits afresh. It is made clear that the said directions are issued only since the Labour Court could not have, technically, at the preliminary stage examined the merits. This Court has not looked into the sustainability of the charges, which the Central Government Industrial Tribunal, Ernakulam, would have to do; now that the domestic enquiry has been upheld by this Court.

The writ petition is allowed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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