

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 18187 of 2012 (W)

AGAINST THE ORDER/JUDGMENT IN APPEAL 41/2011 of KERALA CO-
OP.TRIBUNAL, THIRUVANANTHAPURAM. DATED 15-06-2012

PETITIONER:

P.J. JOSE,
MANAGER (TERMINATED)
MEENACHIL EAST URBAN CO-OP BANK LTD. NO:4266
POONJAR, POONJAR THEKKEKARA P.O.
PIN: 686 582 RESIDING AT PURAYIDATHIL HOUSE
PANACHIPARA, POONJAR P.O., KOTTAYAM DISTRICT.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SMT.APARNA RAJAN
SRI. SREEDHAR RAVINDRAN

RESPONDENT(S) :

1. MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO.4266
POONJAR, POONJAR THEKKEKARA P.O., KOTTAYAM DISTRICT
REP. BY ITS GENERAL MANAGER-686 582.

2. KERALA CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM-695 001.

3. KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM-695001.

R1 BY ADV. SRI.SHAJI THOMAS PORKKATTIL
R1 BY ADV. SRI.N.NAGARESH
R1 BY ADV. SRI.BINU PAUL
R1 BY ADV. SRI.T.V.VINU
R BY GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 18187 of 2012 (W)

A P P E N D I X

PETITIONER'S EXHIBITS

EXT-P1: TRUE COPY OF THE MEMO OF CHARGES DT.19.05.2008.

EXT.P2: TRUE COPY OF EXPLANATION DT.25.07.2008.

EXT.P3: TRUE COPY OF THE SHOW CAUSE NOTICE DT.2.3.09.

EXT.P4: TRUE COPY OF THE REPLY DT.9.3.09.

EXT.P5: TRUE COPY OF THE ORDER DATED 18.03.2009.

EXT.P6: TRUE COPY OF ORDER DISMISSING THE APPEAL DATED 24.06.2009.

EXT.P7: TRUE COPY OF THE APPEAL FILED BY ARBITRATION COURT
THIRUVANANTHAPURAM DATED 10.07.2009.

EXT.P8: TRUE COPY OF THE ORDER OF THE ARBITRATION COURT IN ARC
NO.99/2009 DT.3.3.2011.

EXT.P9: TRUE COPY OF THE ORDER OF APPELLATE TRIBUNAL IN APPEAL
NO.41/2011 DT.15.06.2012.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.18187 of 2012-W

Dated this the 5th day of August, 2015

JUDGMENT

The petitioner, who was working as a Manager in Meenachil Urban Co-operative Bank Ltd., has filed this Writ Petition challenging the order passed in A.R.C No.99 of 2009 by the Co-operative Arbitration Court and Ext.P9 judgment in Appeal No.41 of 2011 of the Kerala Co-operative Tribunal by which the award passed in ARC was upheld.

2. The petitioner, while working as Manager, was placed under suspension on the basis of an inspection conducted in the bank on 22.02.2008. Based on the inspection report, Ext.P2 memo of charge was issued to the petitioner on 19.05.2008, on the following allegations:

(i) petitioner rendered necessary support and assistance to the cashier Sri S.Dileep Kumar to misappropriate a sum of Rs.19,43,584.55 from the Erattupetta Branch of the 1st respondent bank;

(ii) for the purpose of enabling the said Dileep Kumar to

commit the misappropriation, the petitioner permitted him to leave the branch before completing the cash book, without preparing cash denomination register and without maintaining cash entrustment register from 19.3.2008 on 22.03.2008, 19.03.2008 and 22.02.2008 respectively and thereby aided the said Dileep Kumar in the misappropriation;

(iii) the act of misappropriation and defalcation caused illreputaion to the bank in the society; committed wilful negligence in properly endorsing the movement of keys in the register for the same and to maintain it properly;

(iv) retained cash balance in excess of the permissible limit of Rs.15 lakhs in the bank, contrary to the decision No.2692 of the committee taken on 11.05.2007 etc. and

(v) thereby committed wilful lapses in keeping the records up-to-date his supervisory duties attached to the post.

The petitioner was asked to submit explanation if any on the memo of charges, before the enquiry officer. A list of documents was also annexed to the memo of charges. The petitioner submitted Ext.P2 explanation denying the charges levelled against him. After conducting an enquiry, the disciplinary committee issued a show cause notice to the petitioner informing

him that the disciplinary sub committee agreed with the finding of the enquiry officer who has found the petitioner guilty of the charges and therefore as the misconduct committed are very serious it was provisionally decided to dismiss the petitioner from service as the bank has lost confidence in him. The petitioner was asked to show cause against the provisional decision, within a period of 7 days. A copy of the enquiry report was forwarded along with the show cause notice Ext.P3. The petitioner thereupon submitted Ext.P4 pointing out that there was no evidence to connect the petitioner with any of the charges and none of the charges have been proved in the enquiry. He has not committed any misconduct. He has not abetted Sri Dileep Kumr deliberately etc. and he pointed out that the proposed punishment was severe and he requested to drop the proceedings against him, condoning the lapses if any on his part. By Ext.P5 order, the disciplinary sub committee dismissed the petitioner from service w.e.f 16.3.2009. The petitioner thereupon submitted an appeal before the Director Board of the bank and by Ext.P6 order, the appeal was dismissed. Aggrieved by Exts.P5 and P6 orders, the petitioner approached the Co-operative Arbitration Court in A.R.C No.99/2009. In the ARC, he

pointed out that the enquiry was conducted without complying with the principles of Natural Justice without allowing him the assistance of a lawyer; and contrary to law. The enquiry officer submitted the report in a highly impartial manner, without verifying the evidence on record. It was also pointed out that the enquiry officer even suggested and directed the petitioner to consult his junior for legal advice and since the petitioner did not accede to the same, he became inimical towards him and got biased and the enquiry was conducted only with the intention to victimise the petitioner. It was also stated that the proceedings were initiated against him in order to wreak personal vengeance and to see that he is not promoted as General Manager at a time when he is due for promotion. After taking evidence and hearing, the Arbitration Court considered whether the domestic enquiry conducted was vitiated, whether the contention of the enquiry officer was perverse and whether the charges levelled against the petitioner are sustainable.

3. Petitioner adduced oral evidence by examining himself as PW1 and documentary evidence marking Exts.A1 to A12 . On the side of the respondent bank, the enquiry officer was examined as DW1 and the domestic enquiry file was marked

as Ext.B1. After evaluation of the evidence with reference to the contentions, the Arbitration Court found no infirmity either in the domestic enquiry or in its findings. The first charge levelled against the petitioner was found not fully sustainable, as it was found that the respondent had not adduced any evidence to prove that the petitioner and the cashier jointly made any preparation for the misappropriation and thereby the petitioner gained any unlawful profit. Regarding charge No.2, the Arbitration Court found that the petitioner committed dereliction of duty in verifying the cash, in preparing the cash book, cash entrustment register as well as cash denomination register and found that the said charges were proved. Charge No.3 was not found proved. Charge Nos.5 and 6 were also found not proved. In effect no charges except charge no 2 and 4 were found not proved and unsustainable. In conclusion it was found that the amount of Rs.19,43,584.55 was misappropriated by the cashier Sri Dileep Kumar himself. It was found that there was no charge against the petitioner for misappropriation of money. However, as both the cashier and the petitioner, were dismissed from service, the Arbitration Court found the punishment awarded to the petitioner was not proportionate. Hence the order of

dismissal was set aside and the case was remanded to the Board of Directors of the respondent/bank, to take a decision within a period of two months.

4. The petitioner filed Ext.P9 appeal before the Co-operative Tribunal. One of the contentions raised therein was that the copy of the enquiry report was not furnished to the petitioner before taking a decision about the punishment and hence the proceedings have become vitiated. The Tribunal found that no prejudice was caused to the petitioner because of the omission to furnish a copy of the enquiry report, before taking provisional decision for imposing the punishment of dismissal from service, as far as the decision dated 27.02.2009 of the disciplinary sub committee of the bank and hence that was not a ground sufficient to interfere with the award passed by the Arbitration Court whereby charge no. 2 and 4 are concerned. Hence the appeal was dismissed accordingly. The orders of punishment as well as order passed by the Arbitration Court and the Judgment of the Co-operative Tribunal are under challenge before this Court.

5. One of the main contentions raised by the petitioner is that the copy of the enquiry report was not furnished to him

before the disciplinary sub committee entered into a finding regarding the punishment to be awarded. Going by the judgment of the Apex Court in **Managing Director, ECIL v. B.Karunakar** [AIR (1993) 4 SCC 727] and that of this Court in **Chacko v. Thiruvalla East Cooperative Bank Ltd.** [2001(2) KLT SN 17], rendered while interpreting Rule 198 of the Co-operative Societies Rules, it is argued that non furnishing of copy of the enquiry report, before the disciplinary authority entered into a finding regarding punishment, vitiates the proceedings and hence the punishment awarded to the petitioner is liable to be set aside and accordingly the impugned award and the judgment are liable to be set aside.

6. The learned Senior Counsel Sri P.Ravindran appearing for the petitioner pointed out that the very fact that the Arbitration Court found that there was no evidence to prove any of the charges, except one and the findings of the inquiry officer on all but one charges were held erroneous, that itself was sufficient to indicate that serious prejudice was caused to the petitioner by not furnishing a copy of the enquiry report. In the above circumstances, it was contended that the impugned award and the judgment suffer from serious infirmity apart from

being perverse, and are liable to be set aside by this Court.

7. The respondent/bank in their written statement in the ARC refuted the claims of the petitioner and stated that there was every reason for proceeding against the petitioner. He was given an opportunity to submit his reply to the memo of charges and thereafter a full fledged enquiry was conducted in which he was given sufficient opportunity to substantiate his defence. Thereafter the show cause notice was issued along with a copy of the enquiry report calling for his reply against the proposal for dismissal, and punishment of dismissal was awarded since he was found guilty of the charges including that of abetting misappropriation. The respondent bank has filed a counter affidavit before this Court also explaining that the non furnishing of copy of the enquiry report did not in any way prejudice the petitioner. It was stated that the disciplinary committee had only taken a tentative decision to impose the penalty of dismissal when the show cause notice was issued. Before taking a final decision, the disciplinary committee had sent a copy of the enquiry report to the petitioner calling for his explanation as to why the committee should not agree with the findings of the enquiry officer in his report. In answer to the same, the

petitioner had filed an elaborate reply to all the points in the enquiry report. In that reply, the petitioner had not raised any contention that he suffered any kind of prejudice by the tentative decision of the disciplinary committee. Thereafter the petitioner was given a personal hearing on 16.03.2009. In that personal hearing also, he did not raise any such contention. Further in the appeal submitted before the Board of Directors of the bank also, the petitioner had not raised any such contention. The Arbitration Court had further found that the punishment of dismissal from service was disproportionate to the gravity of charges found against the petitioner and interfered with the punishment of dismissal. However, it was found that there was serious dereliction of duty on the part of the petitioner in verifying cash, maintaining cash entrustment register, cash denomination register and key movement register. At any rate, there is no complaint against the enquiry conducted, it is contended.

8. It was further stated that pursuant to the award of the Arbitration Court in ARC, which had remitted the matter to the bank for deciding on the punishment, the bank, though was aggrieved by the interference by the Arbitration Court, did not

prefer an appeal, only because of the fact that the petitioner was due to retire on 31.05.2011 and after retirement it may not be possible for the bank to continue the proceedings against him. Therefore the matter was placed before the disciplinary committee and the disciplinary committee issued notice to the petitioner for personal hearing, which was fixed on 11.05.2011. Since the petitioner did not respond to this notice, the disciplinary committee again sent notice to him by registered post fixing the date of personal hearing on 25.5.2011. Even though this matter was informed to the petitioner by the General Manager in-charge of the bank along with 2 other Chief Accountants of the bank by personally meeting the petitioner at his home, the petitioner did not attend the personal hearing and thereafter the disciplinary committee had to pass orders in the absence of the petitioner and punishment of compulsory retirement from service was awarded as per order dated 26.05.2011. As against this, the petitioner filed an appeal before the managing committee under Rule 198(4) of the Co-operative Societies Rules. After hearing the petitioner, the appellate authority confirmed the order of the disciplinary authority and dismissed the appeal on 28.01.2012. Challenging the order of

the disciplinary authority dated 26.5.2011 and the decision taken by the appellate authority on 28.01.2012, the petitioner preferred ARC No.14 of 2012 before the Co-operative Arbitration Court, which is pending. Thus according to the respondent bank, since the petitioner has preferred an appeal against the order passed, consequent to the remand of the matter to the disciplinary committee, he is estopped from challenging the proceedings, as he himself has approached the appellate authorities.

9. I heard the learned Senior Counsel Sri P.Ravindran appearing for the petitioner and Sri Shaji Thomas, the learned Counsel appearing for the respondent/bank. The learned Senior Counsel relied on the judgments **Managing Director, ECIL v. B.Karunakar** (supra) and **Chacko v. Thiruvalla East Cooperative Bank Ltd.** [2001(2) KLT SN 17] and asserted that serious prejudice was caused to the petitioner by not furnishing him a copy of the inquiry report and contended that in case it was furnished to him, he could have pointed out the unsustainable and erroneous findings unsupported by evidence, arrived at by the enquiry officer on each of the charges and in that event, the disciplinary committee would not have taken such

a decision. He also pointed out that the fact that the Arbitration Court itself found that almost all the charges levelled against the petitioner were not found proved and remanded the matter for awarding punishment proportionate to the charges found proved. That itself is sufficient for arriving at a conclusion that very serious prejudice was caused to the petitioner on account of non furnishing of the enquiry report. He reiterated that the entire object of the supply of a copy of the enquiry report is to enable the delinquent officer to satisfy the disciplinary authority about the innocence of the delinquent. In the above circumstances, the disciplinary committee ought to have called for and considered the explanation of the employee against the evidence and the findings in the enquiry report, before it arrived at a conclusion with regard to the guilt or innocence of the charges. But in this case, the inquiry report was furnished only after the disciplinary authority agreed to the findings of the enquiry officer and took a decision on the question of punishment. The learned Senior Counsel relying on **para.31 of the judgment in Managing Director, ECIL v. B.Karunakar** (supra), contended that the law laid down therein should apply to employees from all establishments whether Government or non

Government, public or private, whether there are rules governing the disciplinary proceedings or not and whether they furnish copy of the report or are silent on the subject. It was thereafter that this Court reviewed the judgment in **Chacko v. Thiruvalla East Cooperative Bank Ltd.** (supra) in respect of punishment awarded to an employee in a Co-operative Society.

10. On the other hand, the learned counsel appearing for the bank Sri Shaji Thomas maintained that there was no contention as to non furnishing of enquiry report or that it caused him any prejudice, upto the stage of filing appeal before the Tribunal. In support of his contentions, he relied on the very same judgment, apart from the judgments in **Commandant, Central Industrial Security Force v. Bhopal Singh** [(1993)4 SCC 785], wherein the Apex Court held that the ratio of Mohammad Ramzan Khan decision was inapplicable, while considering the question regarding a delinquent's right to get a copy of the enquiry report submitted by the enquiry officer and the said decision was inapplicable in the case. He further relied on various judgments regarding the subject including **Sarva U.P. Gramin Bank v. Manoj Kumar Sinha** [(2010) 3 SCC 556], **Union of India v. P.Gunasekaran** [(2015) 2 SCC 610],

David v. Kuruppumpady Service Co-operative Bank [2015 (2) KHC 301(DB)], **Rajagopal B. v. Jomy Xavier and Anr.** [2010(2) KHC 196] and **Pushkaran v. State of Kerala & Ors.** [2005 KHC 932]. In **Pushkaran v. State of Kerala & Ors.** (supra), the Apex Court held that non furnishing of enquiry report to the delinquent does not vitiate the proceedings and unless the punishment is shockingly disproportionate to the charges proved the court will not interfere with the punishment. He further argued that the area of interference of this Court under Article 226 is limited as held by this Court in a series of judgments like **Rajagopal B. v. Jomy Xavier and Anr.** (supra).

11. Now it is necessary to examine whether the award passed by the Arbitration Court, as upheld in the judgment of the Co-operative Tribunal, is liable to be interfered with, mainly on the contention raised by the petitioner that the copy of the enquiry report was not furnished to him. The main question to be considered is whether prejudice is caused to the petitioner by the non furnishing of enquiry report. The Arbitration court found that out of the 6 charges, Charge No. 2 and 4 alone were found proved in the ARC. Therefore it cannot be disputed that as far as at least those charges are concerned, prejudice was

caused to petitioner.

12. Therefore the next question to be considered is whether by reason of such procedure the impugned orders are to be interfered with. Normally when once it is found that prejudice is caused on account of the violation of principles of Natural Justice, the immediate step to be adopted is to quash the further proceedings from the stage of submission of inquiry report and to direct to proceed afresh from that stage. In this case, the findings on charge no. 2 and 4 are not set aside. But when it is found that prejudice was caused at least with respect to some of the charges, on account of the non-furnishing of the copy the entire proceedings have to be set aside and the disciplinary proceedings have to start afresh from the stage of submitting of inquiry report. Notwithstanding the fact that the petitioner did not raise such contention up to the stage of appeal, it can be seen that the petitioner had in his explanation to the show cause notice pointed out all the aspects with reference to the evidence on record. But such an explanation could be submitted only at a stage after the disciplinary sub committee arrived at its decision. The petitioner had in his detailed reply to the show cause notice pointed out each and every aspect where the enquiry officer

erred in his findings. In case the petitioner was allowed an opportunity to furnish his explanation before the provisional decision was taken, he could have disabused the mind of the disciplinary sub committee on all the charges. In such an event, the conclusion in the disciplinary action would have been totally different. In the above background it can be seen that serious prejudice has been caused to the petitioner by not furnishing him a copy of the enquiry report before the disciplinary committee arrived at a provisional decision. The fact that the enquiry report was furnished to him along with the provisional decision, but before final decision was taken, will not satisfy the requirement of compliance of the principles of Natural Justice. Therefore, principle and the procedure laid down in the judgment of the Apex Court in **Managing Director, ECIL v. B.Karunakar** (supra) as well as the judgment of this Court in **Chacko v. Thiruvalla East Cooperative Bank Ltd.** (supra) squarely apply in this case. In this view of the matter, it can be seen that the further proceedings after the filing of the inquiry report are vitiated. In that view of the matter it can be concluded that the findings of the Arbitration Court as well as the Co-operative Tribunal are perverse. The fact that the matter

was remitted to the disciplinary committee for fresh orders only in respect of 2 of the charges will not also satisfy the compliance of the principles of Natural Justice, when procedural infirmity is found in the proceedings from the stage of submission of inquiry report. Therefore the orders impugned are liable to be set aside.

13. The learned counsel appearing for the respondent/bank contended that the petitioner had not raised any contention regarding the non furnishing of the enquiry report either before the disciplinary committee when he submitted the detailed explanation to the show cause notice, in the appeal or in the ARC. Similarly it is the case of the respondent/bank that the petitioner was given every possible opportunity to defend in the enquiry and he did not have any complaint as against the enquiry, enquiry report or the disciplinary committee. According to the bank, they have already modified the punishment consequent to the award passed by the Arbitration Court and a punishment of compulsory retirement alone is awarded and as far as the petitioner is concerned, being a person who was due to retire within a short time, no serious prejudice is caused to him since he is eligible for almost all the benefits as in the case of a normal retirement from

service.

14. Going by the judgment of the Supreme Court in **Managing Director, ECIL v. B.Karunakar** (supra), the proceedings subsequent to the furnishing of the enquiry report got vitiated on account of the non furnishing of the copy of the same to the petitioner. Therefore, the award passed by the Arbitration Court as well as the Co-operative Tribunal which considered the validity of the punishment awarded to the petitioner, cannot get validated by the subsequent proceedings.

15. Regarding the judgments referred to by the learned counsel for the respondent, it can be seen that the judgment in **Sarva U.P. Gramin Bank v. Manoj Kumar Sinha** (supra) was a case where the Apex Court held that mere non supply of enquiry report to the delinquent employee will not vitiate the order of punishment, in the absence of any prejudice to the employee. There the Apex Court had given an opportunity to the delinquent employee to explain how prejudice was caused to him by the non supply of the copy of the enquiry report. There the Apex Court found that even in the additional counter affidavit filed by him he was unable to point out the prejudice caused to him. Going through the records leading to the punishment, the

Apex Court found that even at the time of personal hearing the respondent did not have anything to submit except a request to show sympathy towards him. In that view, the case of the delinquent employee was rejected all along. It is pertinent to note that in this case the petitioner had raised the question before the appellate authority, that is the Director Board of the bank itself, in Ext.P4. He had pointed out the infirmity in the findings of the enquiry officer in Ext.P4 explanation to the show cause notice. In the appeal also he had raised the contentions against the enquiry report. In the ARC filed before the Arbitration Court the petitioner had raised the contention regarding non supply of enquiry report in paragraph 9 of the appeal.

16. The learned counsel for the bank pointed out that the petitioner did not appear for the personal hearing, which was held pursuant to the award in the ARC, even after repeated intimations and even made personally by the officials of the bank meeting him at his residence and therefore he is estopped from making any contention as to violation of the principles of Natural Justice without cooperating properly with the bank before the modified punishment of the compulsory retirement was ordered.

But the question raised herein is as to the opportunity afforded to the petitioner immediately after inquiry report was filed.

17. In the judgment of the Apex Court in **Union of India v. P.Gunasekaran** [(2015) 2 SCC 610], the Apex Court reiterated its view regarding the limited scope of interference by the High Court in the disciplinary proceedings. Similar is the cases in the judgments in **David v. Kuruppumpady Service Co-operative Bank** [2015 (2) KHC 301(DB)], **Rajagopal B. v. Jomy Xavier and Anr.** [2010(2) KHC 196] etc., wherein it is held that interference with factual findings of the Tribunal is very limited and unless the decision impugned is palpably perverse or patently unreasonable, as wholly unavailable on record, or in direct conflict with settled principle of law, interference under Article 226 is not warranted.

18. In the judgment reported in **Pushkaran v. State of Kerala & Ors.** [2005 KHC 932 = 2005(3) KLT 657], a Division Bench of this Court also held that unless it is shown that prejudice is caused by the non supply of enquiry report to the delinquent, the proceedings against the delinquent cannot be said to be vitiated. But in this case it is found that the non supply of the enquiry report has caused prejudice to the

petitioner, which is evident from the award of the Arbitration Court itself. Therefore I find that the impugned award as well as the judgment require to be interfered with under Article 226 of the Constitution of India as being in violation of principles of Natural Justice. Hence I set aside the same.

19. The respondent/bank will be free to conduct the enquiry from the stage of furnishing of enquiry report by the enquiry officer, if it is permissible under law.

The Writ Petition is allowed accordingly.

rtr/

Sd/-
(P.V.ASHA, JUDGE)