

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WP(C).No. 20712 of 2011 (L)

PETITIONER(S) :

G.S. NARAYANAN,
S/O.SUBRAMANY, AGED 47, OFFICER, MM GS III (DISMISSED),
STATE BANK OF INDIA, FORT BRANCH,, THIRUVANANTHAPURAM,
RESIDING AT 1565(2), ANUGRAHA,, VEERABHADRA GARDENS,
V.B.G.R.A. NO.6, POTTEKKUZH, PATTOM, THIRUVANANTHAPURAM.

BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN

RESPONDENT(S) :

1. STATE BANK OF INDIA,
REPRESENTED BY ITS MANAGING DIRECTOR,
SBI HEAD OFFICE, MUMBAI.
2. CHIEF GENERAL MANAGER,
APPELLATE AUTHORITY, STATE BANK OF INDIA,
LOCAL HEAD OFFICE, THIRUVANANTHAPURAM - 695 001.
3. GENERAL MANAGER AND DISCIPLINARY AUTHORITY,
STATE BANK OF INDIA, LOCAL HEAD OFFICE,
THIRUVANANTHAPURAM - 695 001.

R1 TO 3 BY ADV. SRI.P.GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXT. P1 TRUE COPY OF THE SUSPENSION ORDER.

EXT. P2 TRUE COPY OF THE DISCIPLINARY STRUCTURE OF THE SBI.

EXT. P3 TRUE COPY OF ARTICLE OF CHARGE ALONG WITH STATEMENT OF ALLEGATIONS.

EXT. P4 TRUE COPY OF THE REPLY TO P3.

EXT. P5 TRUE COPY OF THE LETTER DATED 25/11/2009.

EXT. P6 TRUE COPY OF THE LETTER DATED 25/05/2010.

EXT. P7 TRUE COPY OF THE INQUIRY REPORT.

EXT. P8 TRUE COPY OF THE VIEWS OF THE DISCIPLINARY AUTHORITY ON P7.

EXT. P9 TRUE COPY OF THE REPLY TO P6.

EXT. P10 TRUE COPY OF THE ORDER OF PUNISHMENT.

EXT. P11 TRUE COPY OF THE APPEAL DATED 14/09/2010.

EXT. P12 TRUE COPY OF THE ORDER IN APPEAL DATED 09/12/2010.

EXT. P13 TRUE COPY OF THE COMMUNICATION DATED 24/10/2008.

EXT. P14 TRUE COPY OF THE LETTER DATED 05/04/2010.

EXT. P15 TRUE COPY OF THE REQUEST DATED 13/02/2010.

EXT. P16 TRUE COPY OF THE APPRECIATION LETTER DATED 14/03/2001.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

rvs.

C.K.ABDUL REHIM, J.

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W.P.(C). No.20712 OF 2012

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Dated this the 16th day of February, 2015

JUDGMENT

While the petitioner was working as a branch Manager in the State Bank of Sourashtra at Thiruvananthapuram he was placed under suspension by issuing Ext.P1 order dated 3.1.2008, alleging serious irregularities of opening dubious Current Deposit Accounts and allowing high value clearing transactions in which clearing affects were released without ensuring matching credits in RBI Account and similar other serious irregularities. The suspension was ordered pending further investigation/initiation of disciplinary action in terms of the relevant service Regulations. Thereafter the 'State Bank of Sourashtra' got merged with the 1st respondent Bank, with effect from 12.8.2008. Thereafter the 3rd respondent issued Ext.P3 Articles of charges and 'Statement of Allegations' against the petitioner on 15.9.2009, to which the petitioner submitted Ext.P4 reply. An enquiry was conducted by appointing an Inquiring Authority and a Presenting officer. The petitioner participated in the enquiry through a defence representative. On culmination of the enquiry, Ext.P7 report was

submitted before the 3rd respondent. The petitioner was furnished with a copy of the inquiry report along with views of the disciplinary authority on the findings entered by the Inquiring Authority. The petitioner submitted Ext.P9 reply stating that, he is not in a position to submit any proper explanation because he was denied of opportunity to peruse and examine the relevant records. But the 3rd respondent had issued Ext.P10 order imposing penalty of dismissal from the service under Rule 67 J of the State Bank of Saurashtra Officers' Service Regulations. The amount of gratuity was directed to be forfeited as per Section 4(6)A of the payment of Gratuity Act. The petitioner preferred an appeal against Ext.P10 before the 2nd respondent. But the appeal was also dismissed through Exts. P7 and P12. It is challenging Exts.P7, P10 and P12, the above writ petition is filed.

2. One of the main contentions raised is that the disciplinary action was initiated in terms of the relevant Rules contained in the State Bank of Sourashtra Officers Regulations. According to the petitioner, the said Regulations ceased to be in operation after merger of the State Bank of Sourashtra with the 1st respondent Bank, on 12.8.2008. Therefore the entire disciplinary proceedings initiated from the issuance of charge sheet onwards,

are null and void. Learned senior counsel appearing for the petitioner contended that, at the time when the disciplinary action was initiated, the State Bank of Sourashtra was not in existence and the petitioner was an employee of the 1st respondent Bank. Since State Bank of Sourashtra became not in existence, the Regulation applicable to the said Bank could not have been used for proceedings further against the petitioner, is the contention.

3. Learned Standing Counsel appearing for the respondent Bank had refuted the above contention stating that, the irregularities for which disciplinary action was initiated pertains to the period during which the petitioner was employed at the State Bank of Sourashtra and therefore the disciplinary action could be proceeded only under the relevant regulations applicable at that time. He had pointed out a decision of the hon'ble Supreme Court in ***SBI v T.J. Paul [(1999) 2 KLT 293 (SC)]***. In an identical situation, where Bank of Cochin got merged with the State Bank of India, it was observed that the State Bank of India (supervisory staff) service Rules will not apply with respect to a charge pertaining to the period prior to the merger and the Rules applicable to the Cochin Bank would apply. Even otherwise it is a basic principle that an employee cannot be punished under any

Rules which are not applicable to him at the time of committing the misconduct or irregularity. Merely because the State Bank of Sourashtra became non existent, it cannot be said that the disciplinary action initiated and pursued against the employee under the Regulations applicable to the said Bank cannot be continued when the Bank got merged with the 1st respondent Bank and when the employees were absorbed by them. When the petitioner became an employee of the 1st respondent Bank, it is left open to the said Bank to initiate proceedings with respect to any misconduct or irregularity which was committed prior to the merger, by applying the Regulations which were prevailing at the time of committing such irregularity/misconduct.

4. Findings rendered by the Inquiring Authority as well as the conclusions arrived by the 3rd respondent were challenged contending that there occurred clear denial of opportunity to the petitioner in effectively defending the charges. Such an allegation is raised on the basis that the petitioner was denied of access to all the relevant documents based on which the charges were formulated. According to the petitioner, despite specific request, the Inquiring Authority had failed to supply copies of all the relevant documents based on which the allegations are found. It

is pointed out that, only the copy of documents marked in the proceedings of inquiry were served on the petitioner and he was denied of opportunity to have access to all other documents pertaining to the opening and transactions of the accounts concerned, with respect to which the allegations are levelled against the petitioner. In Ext.P9 letter issued to the 3rd respondent the petitioner had stated that the defence was denied of permission by the Inquiring Authority to peruse/examine the relevant records of the case relating to the charge sheet, inspite of repeated request, and therefore the petitioner was unable to make any submissions responding to the show cause notice. Since there was denial of opportunity and violation of principles of natural justice the report of inquiry could not have been accepted and the punishment imposed based on such report cannot be sustained, is the contention.

5. Learned Standing Counsel had pointed out that, in the report of inquiry it is categorically mentioned that the defence representative was advised to verify the prosecution documents and the Inquiring Authority has ordered him to furnish the list of documents and list of defence witnesses, for which the presenting officer was advised to provide all assistance. It is stated that the

Inquiring Authority had instructed the Presenting Officer to provide all assistance to the defence representative to verify the original of the prosecution documents, before the next hearing. It is further evident that the defence representative along with the petitioner was permitted to visit the Branch, in order to verify the prosecution documents. Admission of various documents before the Inquiring Authority was objected by the defence and those documents were admitted only after proper attestation and certification/notarization. It is stated in the inquiry report that, on several occasions the defence representative was asked during the inquiry to inform the documents/records if any he wanted to peruse in connection with the inquiry. But no list of such documents was furnished. However, it is evident that various objections were raised before the Inquiry Officer with respect to admission of certain documents. It is also evident that certain documents which could not be admitted in evidence were rejected by the inquiring authority.

6. Question to be decided is as to whether there was any specific denial of opportunity which will vitiate the inquiry proceedings. A total re-appreciation of the evidence in the inquiry proceedings is not warranted in the case of judicial review. Unless the petitioner is able to establish that severe prejudice has

been caused because of denial of opportunity before the Inquiring Authority, no interference is warranted by this court in exercise of power vested under Article 226 of the Constitution of India. From the charges levelled against the petitioner it is evident that the irregularities were committed with respect to certain specific accounts permitted to be opened by him and with respect to clearances of certain cheques presented during when the petitioner was officiating as Branch Manager in charge. There is no serious dispute on the factual aspects with respect to opening of those Accounts as well as with respect to the relevant transactions affected through such accounts. Further, it is evident that, copies of all the records relied on by the prosecution was furnished to the petitioner and the petitioner and his representative was afforded with opportunity to have access to the records in the Branch, which pertains to those transactions. Therefore this court is of the opinion that there is no material irregularity committed by the Inquiring Authority by denying opportunity by non-furnishing of any specific documents to the petitioner.

7. Learned Senior Counsel appearing for the petitioner had placed reliance on various decisions of the hon'ble Supreme Court in order to contend that, the non furnishing of copies of

documents and statements on the request of the delinquent employee, after rejection of his specific request, would vitiate the inquiry proceedings. In the decision in ***Kasinath Dikshitha v Union of India and Others*** [AIR 986 SC 2118] the apex court observed that, when a Government servant is facing disciplinary proceedings he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. No one facing a departmental inquiry can effectively meet the charges unless copies of the relevant statements and documents to be used against him are made available. In the said case refusal of a specific request made by the delinquent for supply of the copies of relevant documents and statement of witnesses was refused and the court observed that, the failure to supply those materials would tantamount to denial of reasonable opportunity to have proper defence.

8. So also in the case of ***UP State Transport Corporation v Muniruddin*** [(1990) 4 SCC 646] the apex court observed that, purposeful withholding of important documents will result in prejudice to the employee. On the facts of the said case the entire inquiry was based on some documents and all the requisite documents against him was not served since

such documents were not furnished. It was observed that it had caused prejudice to the delinquent.

9. In the case at hand, defence attempted by the petitioner is that, opening of the relevant accounts as well as the transactions relating to clearing of the cheques in those accounts are done only on the basis of specific instructions given from the Head Office of the Bank. It is contended that the parties in question were introduced only by the Head Office and by the higher authorities and all the transactions were approved by the higher officials of the Bank. Hence it is contended that no irregularity or misconduct was committed by him as a Branch Manager. As observed above, it is evident that copies of all the documents produced before the Inquiring Authority was furnished to the petitioner. It is also evident that the admission of certain documents were objected and those objection were considered and those evidences were admitted only on production of necessary certificates/notorization. It is also evident that the documents which are found by the Inquiring Authority as not admissible were rejected. It is true that the petitioner made request for perusal of the entire documents pertaining to the transactions. But despite specific direction issued by the Inquiring

Authority to name the documents with respect to which the petitioner/defence representative wanted to peruse, no such list of documents were furnished. It is further evident that the petitioner as well as his representative were permitted to visit the Branch and to have perusal of the documents relating to the specific transactions. Despite the same, there is no evidence to show that the petitioner had made request for furnishing the copies of any specific documents. Considering the defence put forth by the petitioner, the petitioner could have requested for furnishing copies of documents relating to opening of the accounts in question or relating to the transactions by specifying or naming the documents. Since no such specific request was seen made, it cannot be said that there occurred a denial of opportunity to the petitioner for perusal of any particular document or that there occurred denial of opportunity by non-furnishing of copies of any particular document. Hence this court cannot countenance the challenges made based on the allegation that there was failure to furnish copies of relevant documents.

10. Learned Standing Counsel appearing for the respondents have relied on decision of the hon'ble Supreme Court in ***State of Tamil Nadu v Thiru K. V Perumal and Others***

[(1996) 5 SCC 474]. It is observed by the apex court that the Inquiry Officer is not bound to supply each and every documents that may be asked by the delinquent employee, and on the other hand, the duty is only to supply the relevant documents and not each and every documents asked for the delinquent Officers. It is further observed that it was the duty of the delinquent to point out how each and every document is relevant to the charge or to the enquiry being held against him and whether and how their non supply had prejudiced the case.

11. Learned Standing Counsel for the respondent had also pointed out that, in the inquiry proceedings the petitioner was given opportunity to examine himself as a witness. But he has not chosen to do so. It is further pointed out that, despite opportunity granted by the Inquiring Officer to submit 'defence brief', the defence representative submitted that he will not be submitting any 'defence brief'. Further it is pointed out that, despite opportunity granted, the defence representative had declined to cross examine the prosecution witnesses and no 'defence brief' was submitted. Under the above mentioned circumstances, this court is more justified in rejecting the contentions regarding denial of opportunity in the enquiry

proceedings. Learned Standing Counsel had further pointed out that in the decision of the hon'ble apex court in ***State Bank of India and Others v Narendrakumar Pandey [(2013) 2 SCC 740]*** it is observed that, an employee who had refused to avail opportunities provided to him in a disciplinary proceedings for defending himself against the charges of misconduct, cannot be permitted to complain later that he had been denied for any reasonable opportunity for defending himself for the charges levelled and that the disciplinary proceedings had resulted in violation of principles of natural justice.

12. Another, specific contentions raised on behalf of the petitioner is that, the findings arrived by the Inquiring Authority has no basis on the evidence on record and the reliance placed on the oral evidence of two officers having no personal knowledge about the transactions, was absolutely erroneous. But on a perusal of the Ext.P7 document, which is the report of inquiry, as well as Ext.P8 tabulated details which contains views of the disciplinary authority expressed on each and every findings contended in the inquiry, it is evident that the charges levelled against the petitioner was examined based on various documents produced and oral evidence adduced and it is clear that out of the 10 charges

charges Nos.3, 5 and 6 were proved and charge Nos.1,2,4 and 8 were partly proved. The reasonings based on which the conclusions are arrived by the Inquiring Authority is clearly mentioned in the above said documents. Therefore this court is of the opinion that the findings contained in the Inquiry report which was confirmed by the disciplinary authority does not warrant interference.

13. Yet another contention raised by the petitioner is that, the respondents had shown discrimination in the matter of imposition of punishment. It is pointed out that 3 other officers of the Bank were also proceeded against in the very same inquiry and the petitioner alone was dismissed from service. In the counter affidavit filed on behalf of respondent it is pointed out that the irregularities committed by the petitioner and the two other officials of the Branch were subject matter of investigation conducted by the C.B.I, Bangalore Unit and the Bank had initiated disciplinary proceedings against the petitioner and two other Officials viz., M.P.Chandrasekharan, Manager and Sri. V.P. Nair, Assistant Manager. Sri. M.P.Chandrasekharan was dismissed from service while Sri. V.P. Nair was imposed with punishment of reduction to the first stage of his pay, for a period of two years with

cumulative effect, with further direction that the officer will not earn increments during the period of such reduction. Therefore it is contended that there was no discrimination as occurred in the matter of imposition of punishment.

14. Contentions urged on behalf of the petitioner is mainly that he was discharging duties as Branch Manager only under the instructions from higher officials and from the head office of the Bank. Further it is contended that such activities were done only in the interest of the business development of the Bank. Whereas the respondents contended that, the petitioner had acted in violation of specific Regulations governing the service. The officials of the Bank are required to exercise high standards of honesty and integrity and they are required to take all possible steps to protect the interest of the Bank. In the case at hand, the petitioner had not discharged duties with utmost integrity, honesty, devotion and diligence, is the allegation. He had failed in handling the funds of the Bank with utmost care and caution and had violated Banking norms in keeping the funds as a trustee of the Bank. Referring to various decisions of the hon'ble Supreme Court, learned Standing Counsel appearing for the respondent contended that the type of misconduct committed by the petitioner

would amount to severe irregularity and negligence for which termination of service was warranted. It is pointed out that, if the inquiry was conducted in a proper manner and if the misconduct is proved then it is for the disciplinary authority to decide what is the fit punishment and therefore it could not be said that the termination of the service is not an appropriate punishment. He had placed reliance in this regard on the decision of the apex court in **Karnataka Bank Ltd. v A. L. Mohan Rao** [(2006) 1 SCC 63]. Learned Standing counsel had also placed reliance on the decision in **State of Meghalaya and Others v Mecaken Singh** [(2008) 7 SCC 580]. It is held therein that, in the matter of imposition of sentence the scope of interference is very limited and restricted to exceptional cases. Eventhough the High Court has jurisdiction to consider the question regarding the quantum of punishment in appropriate cases, it has only a limited role to play. In exercise of power under Article 226 High Court cannot interfere in the quantum of punishment, unless there exists sufficient reasons therefore. Unless the punishment imposed by the authority is shocking to the conscious of the court, it cannot be subjected to judicial review. In the decision in **State Bank of India and Another v Bela Bagchi and Others** [(2005) 7 SCC

435] the Hon'ble Supreme Court observed that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of Depositors and Customers. Every employee of the Bank is required to take all possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable form of functioning of every employee of a Bank. The very discipline of an organization, more particularly a Bank, is depended upon each of its officers and on the officers acting and operating within their allotted sphere. Acting beyond once authority by itself is a breach of discipline and is a misconduct.

15. In the case at hand on an overall appraisal of the documents pertaining to the disciplinary action, it is evident that the inquiry authority had examined each and every charges levelled against the petitioner and the documents produced by the Presenting Officer had come to conclusions that most of the charges were proved. In a departmental enquiry the disciplinary authority is expected to prove the charges on preponderance of probabilities and not on any proof beyond any shadow of doubts. Therefore as held by the hon'ble Supreme Court in ***Union of India***

v Sardar Bahadur [(1873) 4 SCC 618] ***and in RS Sainy v State of Punjab*** [(1991) 8 SCC 90], when the documents produced by the Bank were not contravened by the delinquent officer and when it support all the allegations and its charges levelled against the officer concerned, it is always left open to the Inquiring Authority to accept the same and to make use of the same for holding the charges of guilt against the delinquent. In the case at hand, S it is evident that the petitioner as Manager in Charge of the Branch in question had failed in following proper procedure, Regulations and instructions in the matter of opening of the relevant accounts and in the matter of transactions conducted in those accounts. It is revealed that the Bank had suffered a total loss of 7.93 crores with respect to the transactions in question. However, learned Senior Counsel appearing for the petitioner had pointed out that almost all the amounts were already recovered through coercive steps and ultimately the Bank had not suffered any loss as mentioned above. It is evident that the irregularities and the misconduct had resulted actions which are unbecoming of a Branch Manager who was in charge of Branch and it is evident that the petitioner is found guilty of serious irregularities and misconduct and failures in taking due diligence in handling money transactions in the Bank.

Therefore this court is of the opinion that the disciplinary action, which resulted in imposing termination of service which was confirmed by the 2nd respondent, requires no interference.

Consequently the writ petition fails and the same is hereby dismissed.

Sd/-

C.K.ABDUL REHIM, JUDGE

SKV