

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2790/2000

% 28th April, 2015

PRAN KUMAR KAUL

..... Petitioner

Through: Mr.D.S. Chauhan with Ms. Ruchi Singh
and Ms. Tejasvi S. Nandal, Advocates.

versus

INDIAN OVERSEAS BANK & ORS.

..... Respondents

Through: Ms. Snigdha Sharma, Advocate for Mr.
Kunal Tandon, Advocate for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was an Assistant Manager with the respondent No.1/Bank, impugns the orders passed by the departmental authorities; Disciplinary Authority dated 30.12.1995 and Appellate Authority dated 27.05.1996; by which the petitioner has been imposed the punishment of removal from service.

2. The facts of the case are that against the petitioner a charge-sheet dated 25.8.1994 was issued making a total of six allegations. The sum and

substance of these six allegations are that the petitioner had fraudulently withdrawn amounts from accounts of three customers M/s. H.L. Graphics, M/s. Cellulinks Productions Pvt. Ltd and M/s. Kribhco and also made false debit and credit entries. In the imputations of allegations, it is stated that the petitioner illegally withdrew amounts from these accounts totalling to Rs. 13,500/- under charge no.1, Rs. 39,200/- under charge no.2 and Rs. 30,000/- under charge no.3. With respect to charges 4, 5 and 6 petitioner is guilty of creating false debit and credit entries either for offsetting the earlier wrong debits in the accounts of withdrawals or of the petitioner trying to deposit amount of Rs. 57,500/- in the account of M/s. Cellulinks Productions Pvt. Ltd to partially compensate the fraudulent act of total withdrawal of Rs. 79,200/- from the account.

3. The imputations of allegations, in brief read as under:-

“While working as Asst.Manager, of IOB Nehruplace branch, CSO committed certain acts of omission and commission, which may amount to misconduct in terms of regulations 3 (1) (3(3) and 24.

I) CSO dishonestly and fraudulently withdrawn a sum of Rs. 13500/- from the current accounts of M/s. HL Graphics and M/s. Cellulinks Productions P. Ltd. and misappropriated the same.

Title of account	date	amount
HL Graphics	25.6.93	2000.00
HL Graphics	08.11.93	1500.00
Cellulinks Productions P.Ltd.	5.07.93	10000.00

- II) CSO dishonestly and fraudulently transferred a total sum of Rs. 39200.00 from current account of M/s. HL Graphics and credited to SB account of CSO No. 15796.

Date	Amount
25.08.93	25000
07.09.93	10000
29.10.93	4200

- III) On 10.9.93 CSO dishonestly and fraudulently debited Rs. 30000/- from current account of M/s. Cellulinks Productions P. Ltd. and credited to Bankers cheque account fvg.Radhika Anand with Rs. 21000/- and Rs. 9000/- to SB account 15796 of CSO and misappropriated the money.

- IV) CSO dishonestly and fraudulently transferred Rs.39200/- from current account of M/s. Cellulinks Productions P. Ltd. and credited to M/s. H.L. Graphics as below:

Debit	credit	date	amount
Cellulinks Pro.P.Ltd.	HL Graphics	22.10.93	35000
Cellulinks Pro.P.Ltd.	HL Graphics	4.11.93	4200

These fraudulent withdrawals were committed by CSO to offset the fraud committed by CSO in the account of M/s. H.L. Graphics as detailed in para II of the chargesheet.

- V) CSO dishonestly and fraudulently transferred a sum of Rs. 50000/- from the current accounts of M/s. Kribhco and M/s.HL Graphics as per the details given below and to conceal the same CSO destroyed page 1 of the transaction log of computer relating to 7.9.93.

Debit	credit	date	amount
M/s. Kribhco	HL Graphics	7.9.93	25000
M/s. HL Graphics	Kribhco	25.9.93	25000

CSO effected these fraudulent transactions on 25.9.93 to offset the fraudulent debit of Rs.25000/- on 7.9.93 in the account of M/s. Kribhco.

- VI) CSO had remitted cash totalling Rs.57500/- to M/s. Cellulinks Productions P. Ltd. as per details given below by way of internal cash credit vouchers prepared by CSO with a view to partly compensate the fraudulent withdrawals totalling Rs. 79200/- effected by him in the account of Cellulinks on 5.7.93, 10.9.93, 22.10.93 and 4.11.93 as mentioned in para I, III and IV of the charge sheet.

Date	Amount
3.12.93	20000/-
6.12.93	14000/-
7.12.93	3500/-
7.1.94	10000/-
28.2.94	10000/-

4. Before the Enquiry Officer the respondent no. 1/Bank produced two

witnesses and proved 23 documents, and it thus established the charges by showing that all the illegal debit and credit vouchers and related documents were drawn in the hands of the petitioner and that there were no simultaneous supporting documents of the customers in support of the same or of the immediate dates thereafter of the customers for confirming the transactions in the accounts. The petitioner did not lead evidence of any witness and in fact he did not even step into the witness box to depose in his own favour. The petitioner did file two letters of the customers dated 5.1.1994 and 3.12.1994 to show alleged authorisation by the customer, and also an undated cheque for an amount of Rs. 10,000/- of M/s. Cellulinks Productions Pvt. Ltd., however, these two documents were only filed and not proved either from the persons who are alleged to have issued such documents and the cheque or from the Bank Manager, being the person who is alleged to have received the letters or even in the least by the petitioner himself stepping into the witness box.

5. It thus bears note that in the departmental proceedings a charge is proved on preponderance of probabilities like in a civil case. Once the management has led evidence i.e of depositions of its witnesses, and also filing and proving the documents, resulting in proving the charges against the

petitioner, it was incumbent upon the petitioner at the very minimum to at least step into the witness box, but petitioner had no courage of conviction to even depose in his favour. A person, who does not step into the witness box and does not subject himself to cross-examination, and which is the least a charged officer can do, stand of such a person, therefore cannot be believed.

6. The law with respect to scope of a writ petition under Article 226 of the Constitution of India, questioning the orders passed by the departmental authorities is well settled. This Court does not sit as an appellate court to reappraise the findings of facts and conclusions of the departmental authorities, much less, when evidence is led only by the management and not by the charge-sheeted official. Also, once one possible and plausible view is taken by the departmental authorities, this Court will only interfere if the view taken by the departmental authorities is completely perverse and which no reasonable person could have arrived at. Keeping this legal position in view, and the factual position as aforesaid that management proved its case by deposition of witnesses and proving the documents, and the petitioner/charge-sheeted official led no evidence whatsoever, really therefore there is no ground for even entertaining the writ petition. In any case, independent of this aspect, let me examine the arguments, which have

been urged on behalf of the petitioner.

7. The first argument which is urged on behalf of the petitioner is by placing reliance upon Regulation 6 (17) of the Indian Overseas Bank Employees Discipline & Appeal Regulations, 1976 (hereinafter referred to as the '1976 Regulations') and which provides that after the charge-sheeted official closes this evidence, the Enquiry Officer must generally put questions to the charge-sheeted official with respect to the aspects and evidence against him so that they can be explained. This Regulation 6 (17) of the 1976 Regulations reads as under:-

“6(17) The Inquiring Authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examine, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.”

8. What is argued by the petitioner is that since the petitioner was not questioned by the Enquiry Officer in terms of Regulation 6 (17) of the 1976 Regulations, departmental proceedings must be quashed.

9. The argument urged on behalf of the petitioner is not well placed and I have already considered this aspect and rejected the same in the judgment

delivered in the case of *Mahesh Chander Kalra Vs. Bank of India and Ors.* WP(C) No. 1888/1996 decided on 22.04.2013. The relevant paras of this judgment are paras 16 to 18 and which read as under:-

“16. That takes met to the final argument urged on behalf of the petitioner that there is violation of Regulation 6 (17) which provides that the Enquiry Officer after completion of evidence was bound to require the petitioner to give answers to various issues against him and which aspect having not been followed, enquiry proceedings are liable to be quashed for the said reason.

17. In order to appreciate the aforesaid argument on behalf of the petitioner, it will be necessary to reproduce the relevant regulation and the same reads as under:

6(17) The Inquiring Authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examine, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.”

18. In my opinion, the aforesaid regulation cannot be so strictly read that a specific date has to be fixed by the Enquiry Officer for generally questioning the charged/official petitioner on the circumstances appearing against him in the evidence, or for the charged official to explain the circumstances appearing

in the evidence. Really this regulation will stand complied with on the petitioner being allowed to address the Enquiry Office by addressing his final arguments including giving written arguments in support of his case. In the present case it is not disputed that the petitioner not only addressed the Enquiry Officer, but also filed detailed written submissions dated 26.2.1994. In my opinion, therefore in substance Regulation 6(17) shall stand complied with, and since the petitioner has been completely heard in this case, I do not think that there is any violation of Regulation 6(17). This argument is also accordingly rejected.”

10. The aforesaid observations in ***Mahesh Chander Kalra's (supra)*** case clearly apply to the present case, wherein the petitioner had filed written submissions in support of his case, and as noted by the Enquiry Officer in second para of the internal page 2 of the Enquiry Report dated 27.10.1995. Therefore, petitioner cannot seek to question the orders of the departmental authorities by relying on Regulation 6 (17) of the 1976 Regulations.

11. In my opinion, there is another reason for Regulation 6 (17) of the 1976 Regulations not applying in the present case, inasmuch as, a reading of this Regulation shows that it is only when the charge-sheeted official closes his evidence that the requirement of following Regulation 6 (17) of the 1976 Regulations comes in. Putting it in other words, unless the charge-sheeted

official has led evidence but has himself not stepped in the witness box there is no requirement to comply with the technical aspect of Regulation 6 (17) of the 1976 Regulations of putting the questions to the charge-sheeted official. The object of Regulation 6 (17) of the 1976 Regulations is that once the evidence of both sides is led, the charge-sheeted official should be given an opportunity to explain his case and this technical provision will stand complied with, once the charge-sheeted official besides not exercising the option to lead evidence of witnesses in support of his case, in fact files written arguments with respect to his case and whereby he would get complete opportunity to explain all the aspects which are against him.

12. The first argument of the petitioner, therefore, has no merits and is accordingly rejected. I may also note that there is no serious prejudice to the petitioner on account of alleged non compliance of the provision of Regulation 6 (17) of the 1976 Regulations because if the petitioner would have been seriously prejudiced then the petitioner would have surely taken up the same in the appeal which was filed against the order of the Disciplinary Authority, however on a reading of the appeal dated 27.2.1996 by the counsel for the petitioner, he could not show that this ground of violation of Regulation 6 (17) of the 1976 Regulations was urged by the

petitioner before the Appellate Authority. Also, no application was filed by the petitioner before the Enquiry Officer to seek compliance of Regulation 6(17) of the 1976 Regulations. The petitioner thus can also be said to have waived his right under Regulations 6(17) of the 1976 Regulations. The first argument urged on behalf of the petitioner has therefore no merit and is accordingly rejected.

13. The second argument, which is urged by the petitioner is that the petitioner should have been allowed to argue before the Enquiry Officer on the basis of two documents being the two authorisation letters of the customers M/S. H.L.Graphics and M/s. Cellulinks Productions Pvt. Ltd as regards the transactions in the accounts along with the cheque to establish that the charges against the petitioner were not proved. This argument of the petitioner is also misconceived, because mere filing of documents cannot be said to be proof of documents because the documents had to be proved either by the person who issued those documents and the cheque or by the bank manager who allegedly received the two letters and the cheque or at the very minimum by the petitioner stepping into the witness box to prove these documents, but, none of the three aspects exist in the facts of the present case, and therefore, the Enquiry Officer has rightly noted that these

documents could not be relied upon by the petitioner, as they are not proved in the proceedings. Enquiry Officer in this regard has rightly observed while dealing with charges 1 and 2 that it is not as if the persons being the Manager of the bank who received these letters were not available because they were very much available for deposing and thus they ought to have been examined by the petitioner to show that these letters were genuine and were received, but petitioner did not examine the bank officers who allegedly received the two letters. These two letters are dated 3.12.1994 and 5.1.1994 as already stated above. The Enquiry Officer rightly notes that examination of the bank manager was required because then the management would have a right to cross-examine these managers as to when these two alleged letters were received and that whether they were at all received from the customers of the respondent no. 1/Bank. It is also relevant in this regard to be noted that the Enquiry Officer has rightly concluded that petitioner's case of giving good customer service is misplaced one because even if on the original dates when the amounts were withdrawn in cash from the respective accounts or the debit/credit entries were created, then immediately on the same day or on the following day, necessary confirmations ought to have been taken by the petitioner from the customers and which admittedly was

not taken. Thus, the second argument urged on behalf of the petitioner is also misconceived and is accordingly rejected.

14. The third argument urged on behalf of the petitioner is that the petitioner had filed a Review Petition under Regulation 18 of the 1976 Regulations, but petitioner's Review Petition which had to be considered by the Board of Directors was instead only considered by the General Manager of the respondent no. 1/Bank and rejected vide letter dated 9.10.1996. It is argued that petitioner has been prejudiced because petitioner has not been given the right of his Review Petition being considered and which Review Petition could only have been heard and decided by the Board of Directors.

15. On behalf of respondent No.1/Bank, as per its counter affidavit, it is countered that the review is only to be exercised *suo moto* by the competent authority in the respondent no.1/Bank and that the petitioner can have no grievance of his Review Petition being necessarily considered by the Board of Directors.

16. I agree with the contention urged on behalf of respondent no.1/Bank, because the relevant Regulation 18 of the 1976 Regulations specifies that it is the reviewing authority which may call for the record i.e. there is implicit in the same, the aspect that the Board of Directors would have the right to

call or not to call for the record i.e to put in other words, there is no inherent right of review and a review petition may not even be entertained. Of course, counsel for the petitioner is correct in arguing that someone has to bring into the notice of the Board of Directors that a review is prayed, but in the facts of the present case, where the respondent no.1/Bank in terms of its letter dated 9.10.1996 has specifically observed that matter was considered “by us” and it is not the case of the petitioner in his further correspondence with the respondent no. 1/Bank dated 12.3.1998 and 11.7.1998 that the papers were never put up to the Board of Directors or the papers ought to have been considered only by the Board of Directors, which has not considered the same, today at this stage in the year 2015, I refuse to exercise my discretionary power under Article 226 of the Constitution of India to reopen the entire case and by bringing it twenty years back to the year 1996. This especially so when I have on merits considered and upheld the findings of the Enquiry Officer of the departmental authorities being the Disciplinary Authority and the Appellate Authority including noting the aspect that before the Enquiry Officer management duly led both oral and documentary evidence, whereas petitioner led no evidence whatsoever. Therefore, once I have examined the case even with respect to merits of the matter and the

conclusions in the Enquiry Officer's report, I do not propose to allow the technicality of a review petition having not been decided by the Board of Directors of the respondent no. 1/Bank to allow the reopening of this case and send the parties back by twenty years. The third argument, therefore, is also rejected.

17. Fourth and the last argument, which was urged on behalf of the petitioner is that the present case is one of disproportionate punishment being imposed and since the petitioner has always been a good officer hence the extreme punishment of removal of service ought to have not been imposed.

18. Firstly, I may note that the only pleading in the writ petition with respect to the disproportionate punishment is three lines of Ground AA and which only blandly states that penalty imposed is highly excessive and disproportionate punishment. No facts are given and no reasoning supplied in the writ petition as to how, and why, and on basis of which facts, that it can be said that the punishment imposed upon the petitioner is highly disproportionate in the facts of the case. In fact, the facts of the case show that lack of integrity has been proved against the petitioner that he was making fraudulent withdrawals and entries in the customer's accounts. If

making false debit entries for transactions is allowed in banks then people will lose their faith in the banking system. Once the charges of lack of integrity of the petitioner are found/established to be true, the removal from service cannot be said to be such a disproportionate punishment which shocks the judicial conscience of this Court so that the punishment can be interfered by holding it as disproportionate. It is trite that courts do not substitute their own view of punishment as compared to the punishments imposed by the departmental authorities, more so, when no facts are established or shown as to why removal from service is a disproportionate punishment where lack of integrity is found and which must necessarily result in the banking profession with the punishment of removal from service.

19. In view of the above, I do not find any merit in the writ petition, and the same is, therefore dismissed.

20. No costs.

VALMIKI J. MEHTA, J

APRIL 28, 2015/n