

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6418 OF 2014

Mr.Avinash Sharad Dagaonkar.)
Age about 50 yrs, residing at)
23, Alakhdham Nagar, Ujjain-456010)...Petitioner.

versus

1.Bank of India)
Star House, Plot No.C-5, "G" Block)
Bandra Kurla Complex, Bandra (E))
Mumbai-400051, through Chairman and)
Managing Director)

2.General Manager (HR), Bank of India)
Star House, Plot No.C-5, "G" Block,)
Bandra Kurla Complex, Bandra (E),)
Mumbai-400051.)

3. General Manager(Chief Vigilance Officer))
Bank of India, Star House, Plot No.C-5,)
"G" :Block, Bandra Kurla Complex,)
Bandra (E), Mumbai-400051.)...Respondents

Mr.Pradyuma M.Mokashi, for the Petitioner.

Mr.Lancy D'Souza with Ms.Deepika Agrawal i/b. Mr.V.M.Parkar, for
Respondent Nos.1 to 3.

**CORAM : ANOOP V. MOHTA &
G.S. KULKARNI, JJ.**

***Reserved on : 29th September, 2016.
Pronounced on : 21st October, 2016***

JUDGMENT: (Per G.S.Kulkarni, J.)

1. By this petition under Article 226 of the Constitution of India, the Petitioner inter alia challenges the suspension order dated 7 June 2011, the order dated 14 February 2013 imposing penalty of dismissal as confirmed by the Appellate Authority's order dated 16 May 2013 as also confirmed by the Reviewing Authority by its order dated 22 October 2013, praying that these orders be quashed and set aside with a further prayer seeking reinstatement in service with full backwages.

The facts in nutshell are:-

2. The Petitioner joined services with the first Respondent in the year 1983 as a clerk-cum-cashier. He received promotions and ultimately in the year 2010 was working as Senior Branch Manager at Mahidpur branch of the first Respondent. The Petitioner states that from January to May 2011, two officers from Mahidpur branch were transferred to the other branches resulting in tremendous work load on the Petitioner and other officers working in the branch.

3. On 7 June 2011 the first Respondent issued an order of suspending the Petitioner in contemplation of a departmental inquiry. The suspension order recorded that the Petitioner had parted with the security documents in respect of KCC loan accounts sanctioned by the Petitioner. The order sets out details of 40 accounts alongwith the details of the sanctioned amount and the disbursed amount. It was recorded that the Petitioner had connived with the local agents and collected bribe for sanction of KCC loans through these agents, which was also widely reported in the local media, which tarnished the bank's image.

4. The first Respondent thereafter issued to the Petitioner a show cause notice dated 26 August 2011, setting out 17 acts of misconduct alleged to be committed by the Petitioner. The details of 41 bank accounts in regard to which the allegations were made were also set out. The Petitioner by his letter dated 7 September 2011 replied to the show cause notice, inter alia, stating that the Petitioner deeply regretted the lapses and requested the first Respondent to forgive him. The Petitioner also stated that he was under tremendous pressure of work after transfer of certain officers. The Petitioner recorded that he was unable to know how the security documents went out of the branch

premises. He also pleaded that he had not given these documents to the middleman Mr.Bherulal. He denied that he has accepted any bribe or commission and stated that this was a conspiracy to tarnish the Petitioner's image and to blackmail the Petitioner and that there is some local politics involved.

5. Being not satisfied with the reply, the first Respondent issued a chargesheet dated 30 June 2012. The charges interalia were of misuse of official position in sanctioning as well as disbursing KCC loans in connivance with middleman Mr.Bherulal, in respect of 40 loan accounts and while sanctioning these loans acceptance of illegal gratification, by way of siphoning of loan amount payable to the borrowers being the Petitioner's illegal share, the details of which were set out. The second charge was that the Petitioner unauthorizedly allowed Mr.Bherulal -the middleman to take physical possession of the bank security documents in respect of 40 loan accounts. It was alleged that after taking unauthorized possession of the bank's security documents, Mr.Bherulal got these documents executed by the borrowers at his private office without the presence of any bank official. Thirdly, it was alleged that the Petitioner extended undue accommodation to Mr.Bherulal by sanctioning him Agricultural Term Loan for purchase of car of Rs.3 lakhs on 18 April 2011

which was disbursed without ensuring to any security for the safety of bank's fund, thereby exposing the bank to financial loss of Rs.3,11,769.30. Fourthly it was alleged that the Petitioner has committed gross dereliction in performance of duties while sanctioning KCC loans inasmuch as no pre-sanction or post sanction inspection was conducted in respect of KCC loan accounts in respect of 40 such accounts.

6. Alongwith the chargesheet, the Petitioner was supplied with copies of the 40 statement of accounts and copies of statement of 15 borrowers and 13 withdrawal forms of different account holders. A list of 17 witnesses that would be examined in the departmental inquiry was also furnished. The Petitioner submitted a cryptic statement of defence dated 10 July 2012 denying the charges, interalia stating that he acted in good faith, honestly and to the best of his ability. The Petitioner stated that he had not committed any mistake, however, some procedural lapses might have been committed by him and which may be due to work pressure. He further stated that there was no intention to put the bank in losses.

7. The first Respondent appointed an inquiry officer to inquire into the charges against the Petitioner and informed about the same to the

Petitioner by a letter dated 24 July 2012. The inquiry officer conducted an enquiry, wherein the Petitioner was granted an opportunity to defend his case. The Petitioner also appointed his defence representative. The Respondent examined witnesses to prove the charges, who were cross examined on behalf of the Petitioner. However, there is one significant aspect in the enquiry, that is during the course of inquiry, the Petitioner submitted a letter dated 18 October 2012 before the Inquiry officer interalia stating that taking into consideration the chargesheet and the evidence of the witnesses and the documents, the Petitioner stated that he unconditionally admitted to all these charges, and the same was being done without any influence and that he did not wish to say anything more in his defence. The Petitioner stated that as he has admitted the charges, his case be sympathetically considered. The Petitioner by a further letter dated 15 December 2012 addressed to the Assistant General Manager of the first Respondent, stated that he was under deep mental stress as also financial stress which had worsened during the inquiry process and to overcome the mental stress, he admitted the charges unconditionally. The Petitioner requested he be forgiven and reinstatement be granted to him at the earliest. He also stated that he shall remain faithful to the Respondent-Bank in his remaining service.

8. The Inquiry officer on the basis of the documentary and oral evidence which had come on record, submitted an inquiry report dated 6 December 2012 holding that all the four charges against the Petitioner were proved, this was apart from the Petitioner's unconditionally admitting of all the charges which was also noted by the Inquiry Officer and recorded. The detailed inquiry report discusses all the documents as also contains analysis of the evidence to record a findings of fact that the charges against the Petitioner are proved.

9. A copy of the inquiry report was furnished to the Petitioner seeking his explanation and defence. The Petitioner accordingly submitted a reply dated 15 December 2012. The disciplinary authority taking into consideration the materials in the inquiry proceedings and the Petitioner's reply, concurred with the findings of the Inquiry Officer and by an order dated 14 February 2013 imposed a major penalty of dismissal with a disqualification for future employment under Regulation 4(j) of the Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976. The Petitioner being aggrieved by the dismissal order dated 14 February 2013 preferred a departmental appeal before the Deputy General Manager/Zonal Manager being the Appellate Authority. The Appellate Authority did not find favour in the grounds of challenge as raised by the

Petitioner and by a detailed order dated 16 May 2014 concurred with the disciplinary authority and rejected the appeal of the Petitioner. The Petitioner thereafter filed review proceedings dated 21 June 2013 before the General Manager/Reviewing Authority. The Reviewing Authority by a detailed order dated 22 October 2013 rejected the review petition. On this factual background, the Petitioner has preferred the present petition.

10. Assailing the impugned orders, the learned Counsel for the Petitioner would submit that the impugned orders are discriminatory and in breach of principles of natural justice as a copy of the report of the preliminary investigation on the basis of which the chargesheet was issued, was not furnished to the Petitioner. In support of this contention, the learned Counsel for the Petitioner has placed reliance on the decision of the Division Bench of Orissa High Court in the case of “***Prafulla Chandra Behera Vs. Dena Bank and Ors.***”¹

11. The next contention as urged on behalf of the Petitioner is that the Petitioner has been victimized/singled out, as no action has been taken against the other officers who were also equally involved and on whom the charges could have been levied. He submits that during the relevant period, the Petitioner was under tremendous pressure of work

1 (1991) ILLJ 130 Ori

and that if the allegations of the chargesheet are seen, then, surely it is not a work of one person. It is submitted that in fact after the events complained in the chargesheet had happened the Petitioner was on privilege leave. Learned Counsel for the Petitioner would submit that the Petitioner was not aware as to how the security documents reached the private person (Mr.Bherulal) who is stated to be a middleman. As regards the Petitioner's admission of the charges before the Inquiry Officer by his letter dated 18 October 2012, it is submitted that the Petitioner was misguided by the Respondent's representative as also the Petitioner was coerced and misrepresented to submit this letter admitting the charges. It is therefore submitted that the inquiry proceedings are vitiated and consequently the impugned orders are required to be quashed and set aside.

12. On the other hand, the learned Counsel for the Respondents would contend that the charges against the Petitioner were serious in nature and stand proved on the basis of documentary and oral evidence which is clear from the detailed inquiry report. It is submitted that the Petitioner was granted complete opportunity to participate in the departmental inquiry and defend the charges. The Petitioner appointed a defence representative who fully represented the Petitioner in the inquiry

proceedings. Further, there was no substantive grievance of the Petitioner as regards non-furnishing of documents. As regards the Petitioner's contention on non-supply of the report of the preliminary inquiry, it is submitted that though this report was not supplied, it did not in any manner cause a prejudice to the Petitioner, inasmuch as the officer who had conducted the preliminary inquiry was himself examined on behalf of the Respondents in the inquiry proceedings and was permitted to be cross examined. It is submitted that in the preliminary inquiry the concerned investigating officer had recorded statements of various witnesses who were the borrowers and the documents in respect of whose borrowings were recovered from Mr.Bherulal. It is submitted that copies of these statements as collected in this preliminary inquiry were furnished to the Petitioner, apart from the Investigating Officer himself being examined before the enquiry officer. Learned Counsel for the Respondents submits that further a full opportunity was granted to the Petitioner to examine his witnesses. It is, therefore, submitted that only because a preliminary report being not furnished, would not cause any prejudice to the Petitioner in the facts of the case. The learned Counsel for the Respondents submits that in any event these grievances are completely irrelevant and are eclipsed in view of the Petitioner's letter dated 18 October 2012 wherein the Petitioner has unconditionally accepted all the

charges levelled in the chargesheet. It is submitted that the Petitioner's acceptance of the charges in the letter dated 18 October 2012 is further compounded in the subsequent letter dated 15 December 2012 whereby the Petitioner has requested to be forgiven and that he be reinstated. Learned counsel for the Respondents in support of his submission that once the Petitioner has admitted the charges, then, imposition of penalty cannot be faulted, relied on the decision of the Division Bench of this Court in the case of *"Employees' State Insurance Corporation, New Delhi & Ors. Vs. A.V.Tungare & Ors."*² and also a recent decision of the Supreme Court in the case of *"Surjeet Singh Bhamra Vs. Bank of India & Ors."*³ In conclusion the learned Counsel for the Respondents would urge that the Petitioner being victimized or that there was breach of the principles of natural justice, and the case of malafides, are wholly unsubstantiated and deserve to be rejected.

13. We have considered the rival submissions at the bar as also we have perused the inquiry report, the orders passed by the disciplinary authority as also the orders passed by the Appellate and Reviewing Authority and the relevant documents which referred and relied on behalf of the parties. We find that the Petitioner was given a complete

² 2014 II CLR 587

³Civil Appeal No.5038 of 2009 decided on 8 February 2016.

opportunity to defend his case in the disciplinary inquiry. He also appointed a defence representative. An opportunity to cross examine all the witnesses examined on behalf of the management, was also accorded to the Petitioner. The first charge which is quite serious pertains to the misconduct of misusing the position as Senior Manager in disbursing KCC loans to 40 borrowers in connivance with a middleman Mr.Behrulal. The charges are also of illegal gain/gratification by the Petitioner by way of siphoning of amounts from the loan amount payable to the borrowers. The other charges are equally serious namely the security documents pertaining to all these borrowings handled by the Petitioner, being recovered from the middleman Mr.Behrulal and the further charge of granting car loan to Mr.Behrulal without taking appropriate security. The last charge is that there is no pre-sanction or post-sanction inspection by the Petitioner in respect of 41 KCC loan accounts and no security documents being available on the record of the bank in respect of the said accounts.

14. A perusal of the inquiry report clearly reveals that all the charges are proved on the basis of substantive evidence both documentary and oral, available on the record of the enquiry officer. In our view, the grievance of the Petitioner that the preliminary investigation report on the

basis of which the chargesheet was issued, was not furnished to the Petitioner, in the facts of the case, cannot be accepted. In this preliminary investigation, the concerned officer recorded statements of the concerned borrowers, in respect of whose loan accounts there were irregularities as noted above. The Investigating Officer who recorded these statements was examined. Thus, the Investigating Officer was available to be cross examined by the Petitioner. Further, copies of the documents/ statements of various borrowers recorded by the Investigating Officer were furnished to the Petitioner. The Petitioner thus was also at liberty to examine any other witness to defend his case. If this is the position, we find that merely because the Investigation Report was not furnished to the Petitioner, would not cause any prejudice. If the Investigating Officer was not to be examined and various statements of the persons whom the Investigating Officer had recorded, were not to be furnished to the Petitioner, then, surely the complexion would have been different. Further learned Counsel for the Petitioner could not point out the prejudice which has been caused to the Petitioner in asserting a breach of natural justice on this count. Thus, in our opinion, the contention on behalf of the Petitioner that non-furnishing of the Investigation report resulted in violating the principles of natural justice, cannot be accepted. In any event, the chargesheet does not refer to any investigation report to

substantiate the charges. In fact, the chargesheet sets out the details of the 40 loan accounts, copies of the said accounts and the copies of the versions of various borrowers alongwith the supporting withdrawal forms. The contention of the Petitioner that there was an investigation report appears to be only on the basis of the following wordings of the suspension order:-

“ SUSPENSION ORDER
Whereas serious acts of omissions and/or commissions surfaced during investigation, as briefly narrated herein below are alleged to have been committed by you during the course of duties as Senior Branch Manager at Bank's Mahidpur Branch from 10.07.2010 to 03.06.2011.” (emphasis supplied)

Surely the Respondent was within its authority to form an opinion on some material to pass a suspension order. In fact this material itself was furnished to the Petitioner. We also do not find any reference to any investigation report in the chargesheet. The contention of the Petitioner of any breach of principles of natural justice on this count, therefore, is required to be rejected. We need not delve any further on this issue.

15. There is much substance in the contention as urged on behalf of the Respondents that in fact none of the assertions on behalf of the Petitioner to challenge dismissal order are worthy of any consideration, in view of the categorical admission of the charges made by the Petitioner in

his letter dated 18 October 2012 wherein the Petitioner has unconditionally accepted these charges and prayed that he be forgiven. This position so taken by the Petitioner is further compounded by the Petitioner's subsequent letter dated 15 December 2012 wherein he has stated that he has accepted the charges because he was under mental and financial stress, and repeated his request to be forgiven as also stated that he shall remain faithful to the Respondent in the remaining part of his service. It is thus clear that not only the Petitioner admitted the charges, albeit the charges stood substantially proved in the departmental enquiry. If the petitioner on his own volition admitted the charges then we see no infirmity in the Inquiry Officer to record a cumulative finding that the charges stood proved. Admittedly the Inquiry Officer did not, merely proceeded on the admission of the charges by the Petitioner, which he could have given the clear position in law, but also recorded his findings on a full-fledged departmental enquiry and in the terms of substantial documentary and oral evidence which unequivocally demonstrated that the Petitioner had indulged into misconduct as alleged in the chargesheet and recorded that the charges against the Petitioner stood proved. This is sufficient for the disciplinary authority in the departmental proceedings to take a decision applying the 'principles of preponderance and probability' and impose a punishment as permissible under the Rules. This approach

cannot be faulted. In the light of this clear factual position, a reliance of the Petitioner on the decision “***Prafulla Chandra Behera Vs. Dena Bank and Ors.***” (supra) is not well founded.

16. As regards the admission of charges by the Petitioner in the inquiry proceedings, the Respondents are appropriate in placing reliance on the decision of the Division Bench of this Court in the case of “***Employees' State Insurance Corporation, New Delhi & Ors. Vs. A.V.Tungare & Ors.***”(supra). The Division Bench of which one of us (G.S.Kulkarni,J.) was a member, advertng to position in law in the decisions of the Supreme Court in the case (I) ***Additional District Magistrate (city) Agra vs Prabhakar Chaturdevi & anr.***,⁴; (II) ***Channabasappa Basappa Happali vs .State of Mysore***⁵; (III) ***Delhi Transport Corporation vs. Shyam Lal***⁶; (IV)***Chairman and Managing Director vs Goparaju Sri Prabhakar Haribabu***⁷; (V) ***Manoj H.Mishra vs Union of India***⁸, has made the following observations:-

“17.In this context, to appreciate the consequence of admission of a fact the general position in law can be seen by referring to the provisions of Section 58 of the Evidence Act. Section 58 deals with the facts which are admitted and hence not required to be proved. It provides that no fact need to be proved in any proceedings which the parties thereto or their agents agree to admit

4(1996)2 SCC 12

51971(1) SCC 1

6(2004 III CLR 287 SC)

7(2008 II CLR 338 SC)

8(2013)6 SCC 313

at the hearing or which before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. The proviso to this section states that the Court may in its discretion, require the facts to be admitted to be proved otherwise than by such admissions.

The 1st respondent in writing had admitted to the charges and hence as a legal requirement such admission becomes relevant. The charges which are admitted by the 1st respondent were not required to be proved and the inquiry can be said to be rightly closed. Pertinently the 1st respondent agreed to close the enquiry.

... ..

25. Having considered the aforesaid settled position in law that once an employee has admitted to the charges and that there is no cogent material to show that the admission of the charges was recorded under duress or force or pressure and that the admission was unconditional and in unequivocal terms, no fault can be found in the Inquiry Officer closing the inquiry proceedings. In the present case the disciplinary authority on the basis of the inquiry report which recorded the admission of the 1st respondent held that the charges have been proved. In our view, there was nothing unlawful on the part of the disciplinary authority proceeding on such admission made by the 1st respondent to pass the order of dismissal considering the seriousness of the charges.”

17. In a recent decision of the Supreme Court in the case of ***Surjeet Singh Bhamra Vs. Bank of India & Ors.***⁹ their Lordships have held that as a matter of fact when the charges in the chargesheet are admitted, there was no need for the bank to hold any inquiry into the charges and the charges having so proved on admission, the bank was

⁹Civil Appeal No.5038 of 2009 decided on 8 February 2016.

justified in imposing the punishment as prescribed in the Rules. It was observed thus:-

“48) As a matter of fact, since the appellant admitted the charges leveled against him in the charge-sheet, there was no need for the Bank to have held any inquiry into the charges. When the charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant as prescribed in the Rules. We, therefore, find no ground to interfere in the punishment order as we also find that having regard to the nature and gravity of the charge, the punishment imposed on the appellant appears to be just and proper, calling no interference therein.

49) The next submission of the learned counsel for the appellant that since the appellant had unblemished career throughout in his service period, the disciplinary proceedings initiated against the appellant were not called for and deserve to be quashed also have no substance.

50) Suffice it to say, once the appellant admitted the charges, appropriate punishment as prescribed in the Rules could be inflicted on him. It was for the Appointing Authority to have taken into account the seriousness of the charge and overall performance of the appellant while imposing punishment. It was done by the authorities concerned in this case as would be clear from mere perusal of the punishment order.”

18. Resultantly the challenge of the Petitioner cannot be accepted and necessarily fails. The Writ Petition is accordingly dismissed. No order as to costs.

(G.S.KULKARNI, J.)

(ANOOP V. MOHTA, J.)