IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.15827 of 2000

K.Rajaguru ..Petitioner

-Versus-

1. The Dy.General Manager /
   Disciplinary Authority
   Indian Overseas Bank
   Central Officer
   763, Anna Salai, Chennai-2.

2. The General Manager /
   Appellate Authority
   I.O.B. Central Officer
   763, Anna Salai, Chennai-2.

3. The Executive Director
   (Reviewing Authority)
   I.O.B. Central Office
   763, Anna Salai, Chennai-2. ... Respondents

Petition filed under Section 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records relating to the order of third respondent in proceedings in C:208:VIG:1400:99 dated 21.07.99 confirming the orders of the second respondent in proceedings in DO:GM(ALC): AA:98 dt. 31.08.98 and the order of dismissal passed by the first respondent in proceedings in DO:DGM(VR):DA:19:97 dt.30.08.97. Quash the same.

For Petitioner :Mr.R.Singaravelan
Senior Counsel
for Mr.V.S.Jagadeesan

For Respondents :Mr.K.Srinivasamurthy
For Mr.N.G.R.Prasad

ORDER

This writ petition has been filed to call for the records relating to the order of third respondent in proceedings in

C:208:VIG:1400:99 dated 21.07.1999 confirming the orders of the second respondent in proceedings in DO:GM(ALC):AA:98 dt. 31.08.1998 and the order of dismissal passed by the first respondent in proceedings in DO:DGM(VR):DA:19:97 dt.30.08.1997 and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. Heard Mr.R.Singaravelan, learned Senior Counsel appearing for K.Rajaguru and Mr.Srinivasamurthy, learned counsel appearing for the respondents.

4. K.Rajaguru, the petitioner herein, was working as Manager in Kakkur Branch of Indian Overseas Bank during the relevant point of time. One Manickavachagam & Pappa, V.Sambasivam and M.Krishnammal and V.Sambasivam were holding their savings bank accounts in Chokkikulam Branch of Indian Overseas Bank, where, K.Rajaguru was earlier the Assistant Manager. When K.Rajaguru was promoted as Manager and posted at Kakkur Branch, the savings bank accounts of the said three customers were also transferred to Kakkur Branch and the details of account numbers are as follows :

Name	SB A/C No.
Manickavachagam & Pappa	14434
V.Sambasivam and Mrs.M.Krishnammal	14435
V.Sambasivam	14436

` 5. When K.Rajaguru was transferred from Kakkur Branch to Pudukottai Branch, it is alleged that he approached those three customers and at that time, they requested him to re-transfer all the three savings bank accounts back to Chokkikulam Branch. K.Rajaguru agreed to do that and is said to have obtained blank cheques duly signed by them, for the purpose of transferring money in the accounts from Kakkur Branch to Chokkikulam Branch.

6. It is further alleged that K.Rajaguru had misappropriated the amounts in collusion with one Marimuthu, a private person and Veeraperumal, a Record Keeper, working in the Zonal Office of Indian Overseas Bank.

7. The complainants in this case are the three customers who realized that the money in their accounts have been drained. Pursuant to the complaint lodged by the three customers, Gnanappa (MW1), an officer of Indian Overseas Bank conducted an enquiry and submitted his report. Based on the said report, a charge sheet dated 04.10.1993 was issued to K.Rajaguru containing two allegations viz., (1) that he had misappropriated the money from the three savings bank accounts; (2) that

Sambasivam, one of the account holders, had given Rs.40,000/- in cash to K.Rajaguru for the purpose of drawing a demand draft, which, K.Rajaguru is said to have misappropriated and not drawn the demand draft.

8. K.Rajaguru denied the charges and gave his explanation dated 30.12.1993. Since he denied the charges, one A.Govindaraju was appointed as the Enquiry Officer to enquire into the charges. Later, the enquiry was proceeded with by Ponnambalam, Enquiry Officer.

9. During the enquiry, the bank examined 7 witnesses and marked 34 exhibits. On behalf of K.Rajaguru, two witnesses were examined and no documents were marked. After analyzing the evidence on record, the Enquiry Officer, vide his report dated 05.04.1997, came to the conclusion that the bank has proved the two charges against K.Rajaguru.

10. A copy of the enquiry report was furnished to K.Rajaguru to submit his explanation before the Disciplinary Authority. K.Rajaguru, by his letter dated 24.06.1997, submitted his explanation assailing the findings of the Enquiry Officer. The Disciplinary Authority considered the findings of the Enquiry Officer and also the objections raised by K.Rajaguru in his letter dated 24.06.1997 and negatived K.Rajaguru's contentions and agreed with the findings of the Enquiry Officer and by order dated 30.08.1997, imposed a penalty of dismissal from service. K.Rajaguru preferred an appeal before the Appellate Authority and the Appellate Authority, by order dated 31.08.1998, dismissed the appeal and confirmed the order passed by the Disciplinary Authority. K.Rajaguru preferred a revision petition which was also dismissed by the Revision Authority on 21.07.1999. Aggrieved by the orders passed by the aforesaid authorities, K.Rajaguru is before this Court challenging the punishment of dismissal from service.

11. At the outset, the learned Senior Counsel appearing for K.Rajaguru fairly brought to the notice of this Court that one M.Veeraperumal, who acted in tandem with K.Rajaguru was inflicted the punishment of dismissal from service, which was also confirmed by a learned Single Judge of this Court by order dated 19.10.2011 in WP.No.29372 of 2004, which has been further confirmed by a Division Bench of this Court by order dated 23.04.2012 in WA.No.670 of 2012. However, he submitted that there are certain aspects, which, the Enquiry Officer as well as the Disciplinary Authority have overlooked while deciding the case of K.Rajaguru. The learned Senior Counsel further submitted that even in the enquiry report, it was found that the two cheques dated 18.04.1992 for Rs.1,11,525/- and Rs.1,10,511/- were cleared by Vaikundaraman (MW2), who was the Manager of the Branch, in favour of Marimuthu, which has not been appreciated

by the authorities in a proper manner. He further contended that the said Vaikundaraman (MW2) is a close relative of Gnanappa (MW1), the Disciplinary Authority and in order to save Vaikundaraman (MW2), K.Rajaguru has been made a scapegoat.

12. The learned counsel appearing for the respondents refuted the allegations.

13. This Court gave its anxious consideration to the rival submissions.

14. In this case, the crux of the allegations against K.Rajaguru is that he had earned the confidence of the three customers viz., Manickavachagam & Pappa, V.Sambasivam and M.Krishnammal and V.Sambasivam; that they were holding accounts in Chokkikulam Branch and when K.Rajaguru was promoted and posted as Manager in Kakkur Branch, the three accounts were transferred to Kakkur Branch; that when K.Rajaguru was to be transferred from Kakkur Branch to Pudukottai Branch, these three customers requested him to re-transfer their accounts to Chokkikulam Branch; that at that time, they had given signed blank cheques, which, K.Rajaguru misused.

15. The learned Senior Counsel appearing for K.Rajaguru submitted that the Enquiry Officer had placed undue reliance upon the investigation report of Gnanappa(MW1).

16. This Court carefully perused the enquiry report. During the enquiry, the three customers viz., V.Sambasivam, Krishnammal and Mrs.Pappa have been examined as MW3, MW6 & MW7 respectively. Even if the investigation report of Gnanappa (MW1) is kept aside, there is substantive evidence adduced by the victims themselves before the Enquiry Officer as to what had happened. Therefore, the contention of the learned Senior Counsel appearing for K.Rajaguru that undue reliance has been placed upon the investigation report of Gnanappa (MW1) cannot be countenanced.

17. It is trite that the quality of proof that is required in domestic enquiry is not the one that is required for establishing the guilt of an accused in Criminal Court. Suffice, if the management is able to adduce evidence to satisfy the preponderance of probability test and not the proof beyond reasonable test that is required in a criminal prosecution.

18. Here, the evidence of the three witnesses show that they had trusted K.Rajaguru and handed over the signed blank cheques on the hope that he would re-transfer the three savings bank accounts from Kakkur Branch to Chokkikulam Branch. That apart, Sambasivam (MW3), one of the three customers, has handed over Rs.40,000/- in cash to K.Rajaguru for the purpose of

drawing a demand draft, which was also not drawn by him.

19. The learned Senior Counsel appearing for K.Rajaguru submitted that merely on *ipse dixit*, of the victims the delinquent officer cannot be inflicted with such a serious penalty.

20. In my opinion, in a case of this nature, there cannot be a better evidence than that of the victims themselves. The victims were subjected to cross-examination by K.Rajaguru. They have stated about their closeness to K.Rajaguru and the trust reposed upon him. The three witnesses have no palpable reasons to falsely implicate K.Rajaguru. Therefore, this Court is of the considered view that the management has adduced sufficient evidence in order to prove the charges against K.Rajaguru.

21. As regards the contention of the learned Senior Counsel appearing for K.Rajaguru that Vaikundaraman has to be prosecuted, the Disciplinary Authority has considered this aspect also and has rejected K.Rajaguru's plea on the ground that Vaikundaraman had passed those three cheques that were brought by Marimuthu, because, he knew that Marimuthu was close to K.Rajaguru and that he did not suspect any foul play. In banking transactions, this cannot be said to be unusual. In order to help customers, it is not unusual for Managers to clear such cheques when they knew a customer and that cannot be put against Vaikundaraman.

22. Finally, the learned Senior Counsel appearing for K.Rajaguru made a passionate plea that the punishment of dismissal from service imposed is indeed very disproportionate inasmuch as there is no allegation that K.Rajaguru had received the defalcated amount, whereas, the charge itself is that Marimuthu had received the amount.

23. I am not unable to agree with the submission of the learned Senior Counsel appearing for K.Rajaguru, because, one of the charges against K.Rajaguru is that he had received Rs.40,000/- from Sambasivam in cash for the purpose of getting demand draft which he had not done. That apart, there was money in the savings bank accounts of the three customers, when the accounts were held in Kakkur Branch. Later, the money vanished into thin air. May be Marimuthu stood benefitted, but that can, in no way, mitigate or downsize the role played by K.Rajaguru as Branch Manager who was entrusted with the cheques signed by the customers. The entire banking transactions are built on the edifice of fidelity and trust, especially in our country, where majority are illiterates who look up Bank Managers as demigods. Therefore, when K.Rajaguru has forfeited the trust of the customers, the image of the bank will be tarnished. That apart,

Veeraperumal who is said to have assisted K.Rajaguru in his endeavour, was dismissed from service and his dismissal has been confirmed by a Division Bench of this Court and hence, there cannot be a disparity in punishment.

In the result, this petition is dismissed as being devoid of merits. Costs made easy.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

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   Disciplinary Authority
   Indian Overseas Bank
   Central Officer
   763, Anna Salai, Chennai-2.

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C.C. to MR.R.SINGARAVELAN Advocate SR.NO.73569

C.C. to M/S.NGR PRASAD Advocate SR.NO.73556

W.P.No.15827 of 2000

VD (CO)
VS 05.01.2017