IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.212 AND 631 OF 2015

WRIT PETITION NO.212 OF 2015

The State Bank of India
Region II,
Hubli Zone, Hubli, Karnataka
Represented herein by its
Assistant General Manager
Shri K. Naramisimha Bhat
major of age .. Petitioner

V/s

Sanjay Nakul Morajkar
Son of Nakul Morajkar
major, married,
residing at H.No.245,
Sumitra Niwas, Aquem,
Malbhat, Margao, Goa
403 601. .. Respondent

Ms. Amira Razaq, Advocate for the petitioner.

Mr. T. P. Pereira, Advocate for the respondent.

AND
WRIT PETITION NO.631 OF 2015

Sanjay Nakul Morajkar
s/o of Nakul Morajkar
Age 53 years, self-employed
r/o House No.245, Sumitra
Niwas Behind Appollo
Hospital Aquem, Malbhat,
Margao, Goa-403 601 .. Petitioner

V/s

The State Bank of India
Through its Assistant General
Manager II
Region II, Hubli Zone,
Sidhappa Kambli Road
Hubli, Karnataka-580 020 .. Respondent

Mr. T. P. Pereira, Advocate for the petitioner.

Ms. Amira Razaq, Advocate for the respondent.

CORAM :- **C. V. BHADANG, J.**

Reserved on:- 1st August, 2017

Pronounced on :- 20th September, 2017

JUDGMENT :

Both these petitions challenge the judgment and award dated 20/08/2014, passed by the Central Government Industrial Tribunal, Mumbai (Tribunal, for short), by which the reference is partly allowed, directing the first party State Bank of India to reinstate the second party workman, without any back wages and withholding his two increments.

The petitions can be conveniently disposed of by this common judgment.

2. The brief facts, necessary for the disposal of the petitions, may be stated thus :

That Sanjay Morajkar (the workman) was appointed temporarily as a Peon in erstwhile State Bank of Mysore (which has since merged into State Bank of India), in the year 1985 and came to be appointed as a *Daftary* on a regular basis with effect from 23/03/1994 and was posted in the Panaji Branch of the Bank.

3. One Prakash Usgaonkar, a constituent of the bank was holding Savings Bank Account No.114 with Panaji Branch, which account had since become inoperative. On 17/06/2000, Prakash Usgaonkar wanted to effect withdrawal from his account, when he was told that there is no balance in the said account. It appears that Prakash Usgaonkar sent a complaint (Exh.73), alleging unauthorised withdrawal of various amounts from his account. The matter was enquired into by one Mr. Somanna, who visited the Panaji branch and it is claimed that the workman voluntarily gave a letter (Exh.89), accepting that he had withdrawn a total amount of Rs.36,100/- from the account of Mr. Prakash Usgaonkar, by forging his signature, obtaining a cheque book and using the same for the said withdrawal. This was allegedly done with the aid of one Mr. Shashikant Jadhav, Mr. R. P. Lawande and Mr. Shamshuddin. The workman also voluntarily deposited the amount in the bank on 20/06/2000. The Disciplinary Authority of the bank placed the workman under suspension on 22/06/2000 in contemplation of departmental enquiry.

4. The workman was served with a chargesheet, alleging misconduct under four heads of charge as under :

> *Charge (1) That on 12/11/1999, the workman had withdrawn Rs.600/- from Savings Bank inoperative account No.114 of Prakash Usgaonkar by forging his*

signature on the withdrawal form and using the services of Shri Shashikant N. Jadhav.

(2) That the workman having withdrawn the total amount of Rs.35,500/- from 18/11/1990 to 02/12/1999 by misusing four cheques and using the services of one Mr. R. P. Lawande and Mr. Shamshuddin.

(3) To facilitate the aforesaid withdrawal, the workman got the inoperative account transferred to operative account ledger on 18/11/1999 by forging the signature of the account holder Mr. Prakash Usgaonkar on the application form.

(4) That the workman having collected the cheque book containing cheques bearing Nos.498631 to 498640 on 10/11/1999 by forging the signature of Shri Prakash Usgaonkar and using the services of Mr. Shashikant N. Jadhav.

5. Before the Enquiry Officer, the parties led evidence. The Enquiry Officer submitted his report on 27/02/2002, holding the workman guilty of Charge Nos.1, 2 and 4 while exonerating him from Charge No.3. The workman was, accordingly, issued a show cause notice and after considering his reply, the Disciplinary Authority discharged the workman from service by order dated 30/11/2002. The workman challenged the same before the Departmental Appellate Authority, which dismissed the appeal on 30/04/2003. Feeling aggrieved, the workman raised an industrial dispute, in which, the following dispute was referred to the Tribunal :

"*Whether the action of the Management of the State*

> *Bank, Mysore, Hubali, in discharging Shri Sanjay Morajkar, Daftary from service with effect from 01/12/2002, is legal and justified ? If not, to what relief, the workman is entitled for ?*"

6. The workman contended before the Tribunal that the departmental enquiry conducted against him, was not fair and proper and material witnesses, including the complainant Mr. Usgaonkar, were neither examined, nor the preliminary enquiry report submitted by Mr. Somanna, was produced before the Enquiry Officer. It was contended that the letter Exh.89 was obtained under undue influence. It was also contended that the workman, who was educated upto 9th standard, had difficulty in understanding English. In short, it was contended that the letter Exh.89 is not given voluntarily or consciously and could not have been relied upon.

7. Before the Tribunal, the workman examined himself while on behalf of the Bank, one Mr. Jerald Lobo, the then Branch Manager came to be examined. The learned Tribunal, by an Award Part I dated 09/02/2010, held that the departmental enquiry conducted against the workman, was not fair and proper and the bank/ management was permitted to justify the findings. After Award Part I, the bank examined Mr. U. B. Gopalkrishnan, Deputy Manager and produced the complaint Exh.73, two letters Exhs.84 and 85, deposit slip Exh.86 and certain other

documents. The workman did not lead any further evidence after the Award Part I.

8. The learned Tribunal framed the following issues :

"1) Whether the workman is guilty for the alleged misconduct of forgery and withdrawal of amount from the account of Mr. Prakash Usgaonkar ?
2) If yes, whether the punishment of discharge from service is shockingly disproportionate to the proved misconduct?
3) What order ?"

The learned Tribunal answered both the issues in the affirmative.

Thus, while upholding the finding of the workman having committed forgery and withdrawal of the amount, the Tribunal was of the view that the workman committed this as his mother was ill for which he was in need of the amount. The Tribunal further took note of the fact that the amount involved was a small amount and he confessed immediately and also deposited the amount. It further held that the workman has learnt a lesson and is not expected to repeat such an act and in such cases, a reformatory attitude is required to be followed. In that view of the matter, notwithstanding the finding on point no.1, the Tribunal found that the punishment of discharge was shockingly disproportionate to the delinquency proved and hence, directed the workman to be reinstated, however, without back wages and withholding his two increments. Feeling aggrieved, the bank has challenged the same in W.P. No.212/2015. The workman has filed W.P. No.631/2015, challenging the adverse finding against point no.1.

9. I have heard Shri T. Pereira, the learned Counsel for the workman and Ms. A. Razaq, the learned Counsel appearing for the Bank. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned award passed.

10. It is contended by Shri Pereira, the learned Counsel for the workman that after the Award Part I was passed, holding the departmental enquiry to be not fair and proper, it was expected of the Bank to produce relevant evidence, including that of the complainant Mr. Usgaonkar and relevant documents, including the complaint and the report of the preliminary enquiry, which is not done. It is submitted that Mr. Gopalkrishnan, who was examined after passing of Award Part I, has simply produced certain documents on record, which are not duly proved and mere production of the documents, is of no consequence. It is submitted that the application by which the inoperative account was transferred as operative account and the application for issuance of the cheque book, which were relevant to establish

the charge nos.3 and 4, have not been produced. It is contended that in the absence of there being any evidence of handwriting expert, the charge about the workman having committed forgery, cannot be said to be established. It is submitted that in so far as the charge no.1 about withdrawal of Rs.600/- is concerned, the said withdrawal slip had travelled through all the officers and has ultimately been passed, which indicates that the signature stood verified. Similar is the contention raised in respect of four cheques, by which the amount of Rs.35,500/- was withdrawn. It is submitted that after the Award Part I, only the chargesheet served on the workman remained, which in the absence of any proof, cannot be acted upon. It is submitted that the letter dated 21/06/2000 was obtained from the workman under coercion and undue influence and on the representation that he will not be proceeded against, if the amount is deposited. It is submitted that the Tribunal was in error in placing reliance on the said letter.

11. On the contrary, it is submitted by Ms. Razaq, the learned Counsel for the Bank, that degree of proof in departmental enquiry proceeds on preponderance of probability and the Tribunal is justified in holding that although the material would not be sufficient to establish the charge in a criminal trial, was sufficient to establish the same in a departmental enquiry. It was submitted that the burden to establish that the letter

Exh.89 was obtained under coercion and undue influence, lay on the workman, which has not been discharged as the workman has not entered into witness box, after passing of the Award Part I. It is submitted that the contention that it was obtained under undue influence or coercion or that the workman had difficulty in understanding English, cannot be accepted. On behalf of the Bank, reliance is placed on the decision of the Supreme Court in the case of 1) ***State Bank of Patiala Vs. S. K. Sharma***, 1996 Law Suit (SC) 671; 2) ***G.M. (Operations), SBI and another Vs. R. Periyasami***; (Civil Appeal No.10942/2014, decided 10/12/2014); 3) ***State Bank of India Vs. Tarun Kumar Banerjee and others;*** (2000)8 SCC 12 and 4) ***Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain***, (2005)10 SCC 84. The learned Counsel was at pains to point out that the workman had accepted the impugned award, including the finding against point no.1 and it is only after the said Award was challenged by the Bank that the workman has approached this Court.

12. It is next submitted that once the party indulging into forgery and unauthorised withdrawal of the amount from the account of constituent is established, the Tribunal could not have directed reinstatement, which is on humanitarian ground. It is submitted that the faith of the public and the constituents, in the banking system, is of paramount importance and the employee,

who is found to be guilty of forgery and unauthorised withdrawal, cannot be foisted on the Bank for the reasons as articulated by the Tribunal.

13. I have carefully considered the rival circumstances and the submissions made.

14. It would first be necessary to deal with the contentions raised in W.P. No.631/2015, filed by the workman. It is only when the charges can be said to be proved, that the question of the punishment being shockingly disproportionate or otherwise, can be examined.

15. The material contention on behalf of the workman is that after the Award Part I was passed on 09/02/2010, holding that the enquiry was not fair and proper, the only material left before the Tribunal was in the form of the chargesheet. It is contended that the Bank failed to lead any material evidence after passing of the Award Part I, so as to substantiate the charges. In my considered view, the contention cannot be accepted. As noticed earlier, prior to passing of the Award Part I, the Bank had examined Jerald Lobo, the then Branch Manager, who was working from May, 1999 to May, 2002, while the workman had examined himself. A perusal of the Award Part I shows that the Tribunal found that Prakash Usgaonkar from

whose account, the amount was withdrawn, was not examined and the complaint filed by him, was not produced. Similarly, the preliminary investigation report prepared by Mr. Somanna, was not produced and he was not examined. The Tribunal further found that three persons with whose aid the workman withdrew the amount, have not been examined and that there was no complaint filed with the police and the letter dated 21/06/2000, by which the workman had confessed of having withdrawn the amount, is not produced. The Tribunal, by way of the Award Part I, permitted the Bank to substantiate the charges. It would be, thus, necessary to look into the evidence led by the Bank after the passing of the Award Part I. The Bank has examined Mr. Gopalkrishnan, the Deputy Manager and produced certain documents. Mr. Gopalkrishnan has stated that he was working as Deputy Manager at the Panaji Branch from 1998 to 2000. On 17/06/2000, when he was in the branch, he was informed that one Shri Prakash Usgaonkar had complained to the Branch Manager about the withdrawal of the amount from his account. He further states that on enquiry by the Branch Manager, the workman voluntarily deposited Rs.36,100/- in the account of Mr. Usgaonkar, confessing that he had withdrawn the amount from his account. He states that in the departmental enquiry, he was one of the witnesses for the management since he had verified the ledger sheet, withdrawal slip and instruments and also other details of the matter pertaining to Mr. Prakash Usgaonkar. He further states that the original documents are not traceable in the Bank, however, the documents produced before the Tribunal are the true copies of the originals and that the bank be permitted to produce secondary evidence. During the course of evidence of this witness, the documents, including the letter written by the workman and the letters written by the persons with whose aid the workman had withdrawn the amount, were produced. The complaint filed by Mr. Usgaonkar was also produced. In cross-examination, a suggestion was given to this witness that Mr. Usgaonkar had not given any written complaint to the Bank. Except this, nothing has come in the cross-examination so far as the complaint is concerned.

16. Before proceeding further, it would be necessary to note the settled legal position about the standard of proof in a departmental enquiry. It is now well settled that the standard is not as high as is required in a criminal case and it essentially proceeds on preponderance of probability.

17. It can, thus, be seen that the Bank, after passing of the Award Part I, examined Mr. Gopalkrishnan and produced relevant documents. It would now be necessary to make a reference to the letter dated 21/06/2000, written by the workman. The workman has in unequivocal terms accepted about having effected the withdrawal of Rs.600/- on the basis of

withdrawal form and withdrawal of various amounts by four cheques from 20/11/1999 to 02/12/1999. He has stated that he had written the cheques and signed as P. S. Usgaonkar and withdrawn the money, which was utilised for treating his ailing and aged mother. He has also stated that he has credited the total amount of Rs.36,100/- and, therefore, has prayed for forgiving him as he has realised his own mistake. The only contention raised in respect of the said letter is that a draft of the letter was given to him by Somanna and he was asked to write a letter as per the said draft, which he did. Secondly, it is contended that the workman being educated upto 9th standard, was not acquainted with English language and was unable to understand the contents. None of these contentions can be accepted. The workman had examined himself before the Tribunal prior to passing of the Award Part I. The workman claimed that on 21/06/2000, Mr. Somanna made a surprise visit to the Panaji branch and called him in his chamber and coerced him to copy a letter already prepared and brought by him. He claimed that Mr. Somanna induced him to sign the same and he had no idea about the contents. However, in the further part of the examination, he states that Somanna told him that a complaint was lodged by one of the account holders by name Prakash Usgaonkar against him (workman), for having withdrawn money on the basis of forged signature and it is only to protect his service, he was advised to repay the amount of

Rs.36,100/-. He claims that he was assured and promised that no disciplinary action would be taken against him. He states that reposing faith in the officer, he collected the amount from some well wishers and deposited it.

In the cross-examination, the workman stated that he was not aware whether Prakash Usgaonkar visited the Bank on 17/06/2000 and made any complaint. He, however, admitted that there was some noise/ commotion made in the branch on 17/06/2000. He admitted that he deposited Rs.36,100/- in the account of Prakash Usgaonkar on 20/06/2000 and deposit slip was signed by him. What is significant is that he admitted that he was explained the background in which he was required to give the letter. He volunteered that the letter was obtained from him on the pretext that no action will be taken against him, if he gave the writing. It can, thus, be seen that the workman has clearly stated in his evidence that he was explained the background in which, he had withdrawn the amount and had also prayed to forgive him. Thus, the contention that the contents of the letter and the context in which it was written by the workman, were not known to him, in my considered view, cannot be accepted. The contents of the letter are further fortified by the voluntary deposit of the amount by the workman. This admission would be sufficient to be acted upon, having regard to the standard of proof, which is applicable in a departmental enquiry. The learned Tribunal in para 11 of the impugned award, has observed, and to my mind rightly so, that the evidence although may not be sufficient to record a conviction in a criminal case, is sufficient to hold the workman guilty in a departmental enquiry.

18. At this stage, a useful reference may also be made to the decision of the Supreme Court in the case of ***Tarun Kumar Banerjee*** (supra). In para 6 of the judgment, the Supreme Court has held that the customer of the bank need not be involved in a domestic enquiry, as such a course would not be conducive to proper banker-customer relationship and, therefore, would not be in the interest of the bank. Thus, non-examination of Mr. Usgaonkar, in my considered view, would not be decisive. Similar is the case about non-filing of complaint with the police. A financial institution such as a bank essentially works on the faith of the general public in the banking system, which may be adversely affected by such incidents. In order to avoid any further damage to the reputation of the bank and the consequent erosion of public faith and confidence, the bank may choose not to file a police complaint, particularly when the amount, which is either misappropriated or unauthorisedly withdrawn, has been realised.

19. The contention on behalf of the workman that after passing of the Award Part I, there was no sufficient evidence led

to substantiate the charge, thus, cannot be accepted. The admission/ confession although may not be acted upon or may not be conclusive in a criminal case, can certainly be taken into consideration in departmental proceedings. The confessional statement Exh.89 is referred to by the workman in his statement of claim. For this reason, the finding recorded by the Tribunal against Point No.1, does not call for any interference.

20. It may not be out of place to mention that the workman challenged the said finding only after the Bank filed W.P. No.212/2015. Thus, it appears that as long as there was an order of reinstatement, the workman was not aggrieved and had not challenged the finding on the point No.1. For the aforesaid reasons, W.P.No.631/2015, is without any merit and is liable to be dismissed.

21. This takes me to the issue raised in W.P. No.212/2015, filed by the Bank. The issue therein is whether the punishment of discharge from service can be said to be shockingly disproportionate to the delinquency proved. In this regard, the learned Tribunal has observed thus in paras 14 and 15 of the impugned Award :

> *"....The workman is a poor fellow, was in need of money for the treatment of his mother. He was serving in the Bank as a Peon. He has withdrawn*

> *small amounts total to the tune of Rs.36,100/-. He has also confessed immediately and deposited the amount. He is out of service since for about last 12 years and has learnt a lesson and not expected to repeat such an act. In such cases, reformative attitude is required to be taken.*
>
> *15. In the circumstances, imposing the extreme punishment of dismissal or discharge from service appears to be shockingly disproportionate. Chance of reformation is required to be given to such workman." In such circumstances, to meet the ends of justice, I think it proper to direct the first party to reinstate the workman without any back wages and withholding of two increments. That would suffice the purpose."*

22. In my considered view, the learned Tribunal, (after holding that the departmental enquiry should not be equated with a criminal trial), has tried to import the considerations, which may be relevant while imposing sentence in a criminal case, into the departmental proceedings. The circumstances as referred to in the observations of the Tribunal may be relevant while considering the quantum of sentence in a criminal case, but not in departmental proceedings, when the employee is an employee of a Bank and charges are about unauthorised withdrawal of amount from the account of the constituent, on the basis of forged signatures.

23. In the case of ***Munna Lal Jain*** (supra), the misconduct alleged against the employee of the bank was about unauthorised withdrawal of Rs.25,000/-. Placing reliance on voluntary deposit of the amount, with interest at the rate of 24 % p.a., there was a plea raised that the amount had to be withdrawn in view of the urgent requirement for surgical operation of the wife. The Supreme Court held that the punishment of removal from service was justified and cannot be said to be shockingly disproportionate to the misconduct proved. The Supreme Court, *inter alia,* held that a higher standard of honesty, integrity, devotion, and diligence is expected from the officers/ employees in a Bank. It is further held that the Court's interference with the punishment is called for only when it is so disproportionate as to shock the judicial conscience and not otherwise.

24. It can, thus, be seen that normally, the question of punishment is within the realm and domain of the disciplinary authority. The Court/ Tribunal would interfere only if the punishment in the context of delinquency proved, is such as would shock the judicial conscience.

25. On a careful consideration of the circumstances, the nature of the misconduct and the delinquency proved, I find that the punishment of discharge cannot be said to be shockingly

disproportionate. In service jurisprudence, an order of dismissal, normally comes with disqualification for reemployment, which is not the case with the punishment of removal or discharge. In fact, the Bank has awarded the punishment of discharge, which is commensurate with the misconduct and the delinquency proved. For this reason, the impugned award, directing reinstatement, deserves to be set aside.

26. In the result, the following order is passed :

ORDER

(i) W.P.No.212/2015 is allowed.

(ii) The impugned award directing reinstatement of the respondent is hereby set aside.

(iii) Reference CGIT No.2/15/2006 is hereby dismissed.

(iv) W.P.No.631/2015 is dismissed.

(v) In the circumstances, parties to bear their own costs.

C. V. BHADANG, J.

SMA