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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12073 OF 2015

Shri Nazeer Ahmed R. Nesargi ….. Petitioner
V/s
Union of India and Others ….. Respondents.

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Mr. Amitkumar D. Sale, Advocate for the petitioner.
Mrs. Neeta V. Masurkar along with Mr. Vinod Joshi, Advocate for Union of India/respondents No.1 to 4.

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CORAM : SMT. V.K. TAHILRAMANI & M.S.KARNIK, J.J.

DATE : 3rd October, 2017.

ORDER (PER M.S. KARNIK, J.) :-

By this Petition under Article 226 and 227 of the Constitution of India the petitioner is challenging the judgment and order dated 20th June, 2014 passed by the Central Administrative Tribunal ("the Tribunal" for short) in Original Application No.409 of 2009.

2. Briefly stated the facts of the case are thus :-

It is the petitioner's case that after completing 25 years of service with respondents sincerely and honestly, he was surprised to receive a letter dated 14/6/2007 intimating that a sum of

Rs.32,311/- was credited to his Savings Bank Account and it is also informed that the said amount was never sanctioned to him and the same pertains to one Shri Prembahadur Thapa, who was working as a cook in the same department. On receipt of this letter the petitioner checked his Savings Bank Account through ATM. He submitted an application dated 15/6/2007 to the respondent No.4 intimating that he was unaware that an amount of Rs.32,311/- was credited to his Savings Bank Account on 31/3/2007 as he has not checked his account balance since January, 2007 and he had not withdrawn any huge amount. He also prepared a cheque for the said amount and shown his willingness to pay the said amount to the department but the respondents refused to accept the said cheque. The petitioner was placed under suspension with effect from 2/7/2007 as disciplinary proceedings against petitioner were initiated by an order dated 29/6/2007.

3. A charge-sheet dated 27/7/2007 was issued to the petitioner on the following Articles of Charge :-

Article – I

That the said No. CC-638 Shri Nazeer Ahmed R. Nesargi, LDC while functioning as LDC in Depot Battalion, Bombay Engineer Group and Centre, Kirkee, Pune – 3 has engaged himself in lending money.

The aforesaid act of lending money is a 'gross misconduct' on the part of No.CC-638 Shri Nazeer Ahmed R. Nesargi, LDC. This is also in violation of Rule 16(4) of the CCS (Conduct) Rules, 1964.

Article – II

That the said No. CC-638 Shri Nazeer Ahmed R. Nesargi, while functioning as 'Lower Division Clerk' in Depot Bn. Bombay Engineer Group and Centre, Kirkee, Pune – 3 is charged with 'gross misconduct' as a sum of Rs.32,311/- (Rupees thirty two thousand three hundred and eleven only) on account of arrears of ACP in respect of Shri Prembahadur Thapa, Cook of Depot Bn, Bombay Engineer Group and Centre, Kirkee, Pune-3, has got credited in the Savings Bank A/c. No.10655982044 of the said Shri Nazeer Ahmed R. Nesargi, LDC in a fraudulent way after getting the Sy Pay Bill No.accts/5/DB/74/A dated 23rd Dec 2006 of Depot Bn, Bombay Engineer Group and Centre, Kirkee, passed by the Pr. CDA, SC, Pune – 1 in audit, vide their Cheque Slip dated 05 Mar 2007 and credited an Public Fund A/c No.10655958180 of CO Depot Bn at SBI, BEG Branch, Khadki.

On preliminary investigation it has been revealed that the said No CC-638 Shri Nazeer Ahmed R. Nesargi, LDC had submitted a forged copy of Sy Pay Bill No Accts/5/DB/74/A dated 23 Dec 2006 by inserting his own name in place of Shri Prembahadur Thapa, Cook against Ser. No.4 of the said Sy Pay Bill, duly signed by him alongwith five other civilian employees of Depot Bn and Countersigned by IOC Civ Section to the Accounts Branch, Depot Battalion. Accordingly, the Depot Battalion has issued a Cheque bearing Machine No 053932 for Rs.36,549/- to SBI, BEG Branch, Khadki for crediting the amount in the Savings Bank A/c in respect of the following civilian employees from the Public Fund A/c of CO Depot Bn, including a sum of Rs.32,311.00 (Rupees thirty two thousand three hundred eleven only) shown against Ser No.(d) which actually pertain to Shri Prembahadur Thapa, Cook, fraudulently got credited by No CC-638 Shri Nazeer Ahmed R. Nesargi, LDC in his own Account Number.

4. The petitioner pleaded not guilty to the charges levelled against him and submitted his reply dated 27/11/2007 to the charge-sheet. The Inquiry Officer proceeded with the inquiry and on the basis of the materials on record submitted his report which was supplied to the petitioner under letter dated 19/8/2008.

5. The petitioner submitted a representation dated 27/8/2008 against the findings of the Inquiry Officer. The disciplinary authority/respondent No.4 passed the order dated 30/9/2008 awarding the punishment of "Dismissal from Service which shall ordinarily be a disqualification for future employment under the Government". The statutory appeal filed by the petitioner

came to be rejected by the appellate authority by the order dated 29/5/2009. The Original Application filed before the Tribunal came to be dismissed by the order dated 20/6/2014.

6. The learned Counsel for the petitioner contended that the Tribunal ought to have interfered with the order of dismissal as the findings of the Inquiry Officer are perverse. In his submission, an unknown amount of Rs.32,311/- was credited to his personal Savings Bank Account which was on account of negligence and mistake of concerned staff for which he should not be made to suffer. In his submission, when the office informed that an amount of arrears of Assured Career Progression ('ACP' in short) in respect of one Shri Thapa has been credited to his account, he had immediately tried to refund the amount to the Account Officer but the same was not accepted. The petitioner in fact deposited the cheque for the said amount in the account of the employee Shri Thapa, who had confirmed the receipt of the said amount. The learned Counsel submitted that he had no concern with the deposit of the said amount. In any case he had shown his willingness not only to return the amount but in fact the said amount was deposited in the account of the employee concerned.

7. Even in respect of the charge of money lending, the learned Counsel submits that the same is false and frivolous. In his submission, he had only given hand-loan to Shri Yadav as friendly gesture, therefore, the charge of money lending was false and frivolous. In his submission, Shri Yadav, who was called as a prosecuting witness was neither employee of the concerned department nor concerned with the alleged transaction or the functioning of the department and therefore listing him as a prosecution witness is arbitrary and malafide on the part of the department. The learned Counsel submits that Shri Yadav was a family friend and the said amount given by the petitioner was only to help him.

8. The learned Counsel for the petitioner submitted that the inquiry was not conducted in accordance with the principles of natural justice and adequate opportunity was not given to him for representing his case. In his submission, the findings of the Inquiry Officer are based not on the materials on record and hence perverse.

9. The learned Counsel submitted that in any case the punishment of dismissal is shockingly disproportionate to the

misconduct proved. He was at pains to point out the conduct on the part of the petitioner in immediately insisting for returning the amount of Rs.32,311/- which was wrongly credited to his account. In this context, he relies upon the decision of the Apex Court in the case of **Girish Bhushan Goyal vs. BHEL and another [(2014) 1 SCC 82]** to support his submission that the punishment of dismissal imposed by the respondents is shockingly disproportionate to the misconduct proved. In his submission, the petitioner put in 25 years of unblemished service and for this solitary incident it is harsh to foist the dismissal on him.

10. The learned Counsel for the respondents on the other hand contended that the petitioner was given ample opportunity to defend himself during the course of the inquiry. The inquiry proceeded as per the procedure laid down and is in compliance of principles of natural justice. Based on the materials on record the Inquiry Officer has come to the conclusion that the charges levelled against the petitioner are proved. The charges against the petitioner are very serious in nature and in this regard the learned Counsel for the respondents has invited our attention to the findings recorded by the Inquiry Officer. In his submission, the findings recorded cannot be

said to be perverse. The learned Counsel for the respondents further invited our attention to the order passed by the Tribunal. It is her submission that the Tribunal, after considering all the aspects of the matter came to the conclusion that the dismissal order does not warrant any interference. In her submission, the scope of the interference in disciplinary matters in the exercise of the writ jurisdiction under Article 226 of the Constitution of India is very limited. Moreover, the Tribunal has examined all the contentions raised by the petitioner in the Original Application and passed a reasoned order which cannot be said to be in any manner erroneous or contrary to law. In her submission, therefore, order of the Tribunal does not call for any interference. She further submits that under the circumstances having regard to the nature of the charges proved it cannot be said that the punishment of the dismissal is in any manner harsh or disproportionate to the misconduct proved.

11. We have heard the learned Counsel. With the assistance of the learned Counsel we have perused the findings of the Inquiry Officer and also the reasoning of the Tribunal.

12. It is the case of the petitioner that he was not aware that

the amount of Rs.32,311/- was credited to his Savings Bank account on 21/3/2007 as he had not checked his account balance since January, 2007 and he has not withdrawn any huge amount from his Savings Bank account. The petitioner, therefore, contends that the said amount was wrongly credited to his account from the Public Fund Account and after he got knowledge of the improper remittance he has deposited the cheque in the account of Shri Thapa on 15th June, 2007. The Tribunal has recorded a finding upon perusal of the copy of the original pay bill and copy of the forged pay bill attached to the affidavit of the respondents No.3 and 4 which clearly shows that in Serial No.4 of the bill the name of Prembahadur Thapa, Cook, has been substituted by the name of the petitioner Nazeer Ahmed R. Nesargi. The amount of Rs.32,311/- is identical in both bills. The signature of the petitioner on the forged bill as against the payment received matches with his signature in other documents i.e. his application for leave, which is attached to the affidavit of respondents No.3 and 4. Mrs. Sujatha Sasidharan, UDC, Accounts Branch, in her deposition has clearly stated that it is the petitioner who brought the pay bill signed by all individuals. She has deposed that she questioned the petitioner about the claim of Rs. 32,311/- when he informed her that his old medical claim has been passed. On questioning the petitioner as to how his medical claim passed can be clubbed with ACP claims, the petitioner stated that Pr. CDA has passed it and he does not have much knowledge of it. In this light of the matter on the perusal of the original pay bill and the fraudulent pay bill, it is quite clear that the name of Shri Thapa is substituted with the name of the petitioner and the claim of Rs.32,311/- is shown against the name of the petitioner in the fraudulent bill which bears the signature of the petitioner. It is not in dispute that the said amount of Rs.32,311/- has been credited to the account of the petitioner on 15th March, 2007. The petitioner took steps to return this amount only after he was called upon to explain about the credit of this amount in his account which Shri Thapa was entitled to. In these circumstances we are of the opinion that if Inquiry Officer has come to the conclusion that the charges levelled against the petitioner has been proved, we find nothing wrong with the findings recorded by the Inquiry Officer. This is not a case where inadvertently some amount is credited to the account of the petitioner and upon realization the petitioner repays back the amount so credited inadvertently. There is definite material on record in the form of documents indicating that a fraudulent pay bill was prepared replacing the name of Shri Thapa with that of the petitioner which bears his signature whereupon the amount is credited to the account of the petitioner. It has come in the evidence of the petitioner before the Inquiry Officer that while submitting the documents to the Accounts Branch, erroneously his name was typed. When asked as to why the same was not credited by him when the UDC of the Accounts Branch asked him about his name appearing in the list, the petitioner replied that he was under tremendous workload and mental stress due to some personal affairs and therefore, he could not credit it back. The petitioner also admitted that he was aware that Pr. CDA does not pass medical claim along with ACP bills but could not state the reason why he did not check it.

13. Even in respect of the second charge of money lending the petitioner has admitted that he has lent money to Shri Manohar Yadav. According to the petitioner the same was to help Mr. Yadav. He has further admitted that blank cheques were handed over to the petitioner by Shri Yadav to assure the petitioner that money will be refunded to him. It is after Shri Yadav refused to return the money that cheques are encashed. The Tribunal found it difficult to believe that Shri Yadav was only a family friend for if the amount was given as a help to him, the petitioner would not have taken blank cheques

as an assurance for payment. It is in these circumstances that the finding recorded by the Inquiry Officer that the second charge of money lending is proved was accepted by the Tribunal. In our opinion, the findings of the Inquiry Officer are based on the materials on record. It is not possible for us in the exercise of writ jurisdiction under Article 226 and 227 of the Constitution of India to re-appreciate the evidence on record. The misconduct proved against the petitioner is of a serious nature. Looking at the gravity of the misconduct, it cannot be said that the punishment imposed is disproportionate. We do not agree with the contention of the learned Counsel for the petitioner that the punishment is harsh and disproportionate. The facts of the present case and the manner in which the money belonging to some other employee is credited to the account of the petitioner and the finding as regards the role of the petitioner justifies the imposition of the punishment of dismissal. We do not find any error in the view taken by the Tribunal.

14. The petition is thus devoid of any merits and is accordingly dismissed with no order as to costs.

(M.S. KARNIK, J.) **(SMT. V.K. TAHILRAMANI J.)**