IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 580 OF 2002

Mr.S.Raghuraman
Indian Inhabitant,
having residential address
at Room No. 19, Krishna Palace,
Behind DNC School,
Dombivali (East),
Dist. Thane 421 201. .. Petitioner

Vs.

1. H.M.T. Limited
having its registered
office at 36, Cunningham
Road, Bangalore 560 052.

2. The Executive Director,
M/s. H.M.T. Limited,
Watch Marketing Division,
H.M.T. Bhavan,
59, Bellary Road,
Bangalore 560 032.

3. The Deputy General Manager (Finance)
H.M.T.Limited,
Watch Business Group
H.M.T. Bhavan,
59, Bellary Road,
Bangalore 560 032.

4. The Union of India
Through the Secretary,
Ministry of Industry,
New Delhi. .. Respondents

Mr.C.V. Lad, for the Petitioner.
Mr.P.M.Palshikar, for Respondent No.1.

CORAM : A.A.SAYED AND M.S.KARNIK, JJ.

RESERVED ON : 07th JULY, 2017
PRONOUNCED ON : 19th JULY, 2017

JUDGMENT (PER M.S.KARNIK, J) :

. The petitioner by this Petition filed under Article 226 of the Constitution of India challenges the order dated 31/05/1996 dismissing the petitioner from services of respondents No.1 to 3 and the consequent order dated 26/06/1996 rejecting the Appeal of the petitioner. The petitioner was appointed by the respondent No. 1 – Company H.M.T. Ltd. as a Clerk 'B' in wage grade II and posted at its Bombay office as per its appointment letter dated 04/03/1980. The petitioner joined the Company on 01/04/1980 and was working in Sales Counter. The petitioner was promoted with effect from 01/04/1983 as a Clerk 'A' in wage grade III and continued to work in Sales Counter. The petitioner was promoted as a Senior Clerk in wage grade 'IV' with effect 01/04/1986. The petitioner was further promoted as an

Assistant Superintendent in wage grade V with effect from 01/04/1989 and assigned duties in Sales and Accounts. The petitioner was thereafter promoted as a Junior Officer (Accounts) with effect from 01/07/1993 without any change in original service conditions. By letter dated 18/03/1994, the petitioner's pay on promotion as a Junior Officer (Accounts) was fixed. It is the petitioner's contention that immediately after his promotion as a Junior Officer (Accounts), the petitioner's immediate senior and superior Mr.T.S.Kalika Mardhanan (Regional Accounts Officer) took voluntary retirement and consequently the petitioner was left with no one to guide and correct him in account matters. As the petitioner was recently promoted in Accounts, the petitioner was not properly and fully conversant with the methodology and procedural part of his duties. It is the petitioner's case that certain group of officers from Bangalore office of the respondent No.1 – Company was having grudge over the top officers of the Bombay area probably because they were of the view that certain Bombay officers were spending a large amount of money on marketing and promotional programmes of the respondent No.1 - Company. In this tussle, according to the petitioner he was made a scapegoat.

2. Some time in the month of May 1995, the confidential internal audit of petitioner's office was carried out by Mr.R.P. Sanghavi – A.G.M. (Internal Audit) behind the back of the petitioner. The queries raised in the internal audit were never addressed to the petitioner for his explanation as is the practice. The petitioner was served with charge-sheet on 19/06/1995. The charges of falsification of the Company's records, fraud, dishonesty in connection with the business and property of the Company, charge of willful insubordination of disobedience and negligence were levelled against him. The details of the charges are mentioned in charge-sheet dated 19/06/1995.

3. It would be material to reproduce charges mentioned in the charge-sheet.

"It is reported that while you were working as Jr.Officer, Accounts at Khar Showroom, Bombay, you are alleged to have misused the amounts mentioned below :

You had issued two cheques for Rs.6,000/- and Rs.10,000/- bearing No. 663232 dt. 15.10.94 and 663219 dt. 6.10.94 respectively drawn on UCO Bank in the name of Shri Hariram and drawn the amount yourself.

2. You had detached and misused the TA vouchers submitted by Shri R. Jayaraman vide his claim for Rs.685.50 and preferred another claim by substituting 3 more vouchers and drawn an amount of Rs.795/- vide voucher No. 764 dt. 26.8.1984.

3. Out of Rs.4445/- said to have been paid to M/s.Jaihind Art Printers vide voucher No. 1099 dt. 30.10.94 has not been paid in full but you had paid only Rs.4000/- and the difference of Rs.445/- was drawn by yourself.

4. The payments made to M/s.Jaihind Art Printers, vide voucher Nos. furnished below has received by yourself.

Bill No.	Date	Amount	Voucher	dt.
2504	29.4.94	1572/-	491	30.6.94
2611	15.10.94	1243/-	660	31.7.94

5. An amount of Rs.5000/- said to have been paid vide voucher No. 1041 to M/s. Cute Computers, Bombay was said to have been received and misappropriated by yourself.

6. An amount of Rs.2200/- said to have been paid to M/s.Air Tech vide voucher No. 1100 dt. 30.10.94 was not actually paid to them but alleged to have been drawn yourself and misappropriated.

7. An amount of Rs.29,676/- towards service week expenses was processed and paid without any supporting bills and vouchers.

8. Shri M.A. Pershad, DVM, had refunded an amount of Rs.2,700/- for adjusting the TA advance drawn by him on 20.1.1995 to appropriate the TA claim. This amount of Rs.2,700/- was alleged to have been temporarily misappropriated by you.

9. An amount of Rs.25000/- was paid to M/s. A to Z Furnisher, Bombay vide Cheque No. 654290 dt. 19.04.94 without any prior approval or sanction which is unwarranted.

Further, it is also reported that you have processed and passed for payment the following TA/TE claims of Shri M.G.Mahurkar, the then DGM (W).

1. TE claim dt.14.4.94 for an amount of Rs.855/-.
2. TA claim dt. 11.10.94 for an amount of Rs.855/-.
3. TA claim dt.21.11.94 for an amount of Rs.998/-.
4. TE claim dt. 19.10.94 for Rs.998/-.

The said claims are processed and paid to the DGM (W) without prior approval/sanction by the competent authority."

4. The petitioner by reply dated 24/07/1995 denied the charges levelled against him. The petitioner pointed out that due to heavy workload of work of 3 showrooms along with 8 Time Art showrooms and regional accounting of Sales etc., it was not possible to work single handedly and comply and update all documents as per routine. The petitioner had only the choice of doing his job as per priority. This resulted in the postponement of updating of records in time. The petitioner offered his point-wise explanation denying the charges.

5. The Disciplinary Authority did not find the explanation satisfactory, therefore, by Memo dated 14th September 1995 appointed Mr.P. K.Soman, Assistant General

Manager as Enquiry Officer to conduct enquiry in respect of the charges levelled against the petitioner. The Enquiry Officer conducted the enquiry on 28/10/1995. The Enquiry Officer vide enquiry report dated 24/11/1995 held that except charges No. 5 & 6, all allegations have been proved. The Enqiry Officer's report was served on the petitioner whereupon the petitioner submitted his representation by his letter dated 12/12/1995.

6. The Disciplinary Authority by the impugned order dated 31/05/1996 dismissed the petitioner from services of the Company with immediate effect. The petitioner's Appeal against the order of dismissal was rejected by the Appellate Authority by order dated 26/06/1996. Learned Counsel for the petitioner assailed order of the dismissal and contended that the enquiry conducted was in breach of principles of natural justice. According to him, the enquiry was held only on 28/10/1995 and was completed within 2 hours on the same date. The petitioner was not supplied with the relevant documents which resulted in prejudice to the petitioner. In the submission of the

learned Counsel for the petitioner it was the Presenting Officer and not the Enquiry Officer who conducted and wrote the enquiry proceedings. Even the petitioner's request for documents and examination of witnesses was not recorded in the enquiry proceedings.

7. Learned Counsel for the petitioner relied upon following decisions of the Apex Court to contend that if no documents are supplied to the delinquent along with the charge sheet on the basis of which the charges were framed and if the relevant documents on the basis of which findings are recorded but not made available to the delinquent, the order of punishment cannot be sustained in law.

i) Bilaspur Raipur Kshetriya Gramin Bank and anr. Vs. Madanlal Tandon (2015) 8 Supreme Court Cases 461.

ii) Roop Singh Negi Vs. Punjab National Bank and ors. (2009) 2 Supreme Court Cases 570.

iii) Pepsu Road Transport Corporation Vs. Lachhman Dass Gupta and anr. (2001) 9 Supreme Court Cases 523.

8. Learned Counsel for the respondents on the other hand contends that the petitioner being an Accountant was

expected to properly account the payments made. In fact the charges levelled against the petitioner are serious in as much as the same relate to the petitioner himself using the amounts meant to be paid to others. According to the learned Counsel, the petitioner has been provided with full opportunity and in fact during the course of enquiry, the petitioner had admitted some of the charges & procedural lapses on his part. The admission of the petitioner by itself is sufficient to warrant a dismissal. Learned Counsel for the respondents argued that the Enquiry Officer on the basis of the material on record has come to the conclusion that the charges levelled against the petitioner except charges No.5 & 6 are proved and therefore findings recorded by the Enquiry Officer cannot be said to be perverse so as to warrant interference.

9. Having considered the submissions made by the learned Counsel, we are of the view that the impugned orders passed by the respondents call for no interference. We have gone through the proceedings of the enquiry and the enquiry report. Insofar

as the first charge is concerned, the same relates to issuance of bearer cheques of Rs.6,000/- and Rs.10,000/-in favour of Shri Hariram which the petitioner encashed the same on his behalf but did not hand over cash to Shri Hariram. The Enquiry Officer has taken into consideration the letter dated 15/05/1995 (Exhibit 1) written by Shri Hariram denying receipt of the payment. The Enquiry Officer took into consideration that payment voucher does not bear signature of Shri Hariram acknowledging receipt of payment. In these circumstances the Enquiry Officer was of the view that the petitioner's contention that he handed over the money in good faith cannot be accepted. The Enquiry Officer thus held the first charge as proved.

10. The Enquiry Officer also came to conclusion that the taxi vouchers for Rs.350/- and Rs.300/- submitted by Shri R.Jayaraman along with his T.A. Bill (Exhibit 3) were detached by the petitioner and thereafter he clubbed 3 more vouchers of Rs.125/-, Rs.5.50/- and Rs.15/- totaling Rs.795.50/- which was

misappropriated. The cash payment voucher for Rs.795.50 was made in the name of R.Jayaraman. The petitioner agreed that taxi vouchers of Rs.350/- and Rs.300/- were detached by him and through oversight 3 more vouchers were clubbed. The Enquiry Officer recorded the finding that as the voucher of Rs.795.50 does not bear signature of Shri R.Jayaraman acknowledging receipt of Rs.795.50/-, the said amount of Rs.795.50 was misappropriated by the petitioner.

11. Likewise the petitioner paid Rs.4000/-by cash to M/s.Jaihind Art Printers but prepared and accounted cash payment voucher for Rs.4445/-. The Enquiry Officer took into consideration the letter of M/s.Jaihind Art Printers stating that they have received Rs.4,000/-. On the cash payment voucher (Exhibit 5/6), signature of M/s.Jaihind Art Printers is not seen and the petitioner did not produce any documentary evidence to prove that he indeed paid Rs.4445/- to M/s.Jaihind Art Printers. In these circumstances, the Enquiry Officer came to the conclusion that the difference amount of Rs.445/- was misappropriated.

12. Furthermore, even as regards the cash payment vouchers for Rs.1572/- and Rs.1243/- in favour of M/s.Jaihind Art Printers, they denied the receipt of above payments. The documentary evidence in the form of cash payment voucher of Rs.1572/-(Exhibit – 6), Bill No. 2611 dated 15/10/1994 (Exhibit 7) and part of page 49 of Cash Book No.2 (Exhibit 8) wherein cash payment of Rs.1243/- has been accounted is a part of record. The Enquiry Officer has recorded a finding that Exhibit 6 does not bear the signature of the receiving party and voucher was not traceable in the showroom and therefore, concluded that the amounts of Rs.1,577/- and Rs.1,743/- were misappropriated by the petitioner.

13. Even in respect of an amount of Rs.5,000/- which was said to have been paid to M/s. Cute Computer Forms Pvt. Ltd., the Company had sent a letter dated 10/05/1995 denying the receipt of the payment. The petitioner, however, produced stamped receipt dated 19/10/1994 on the party's letterhead confirming receipt of the payment. The Enquiry Officer found

that the said receipt was not produced during the investigation and therefore it is apparent that payment has been made subsequently and predated receipt obtained from the party. Insofar as this charge is concerned, the Enquiry Officer did not find the charge as proved.

14. Even insofar as the charge that an amount of Rs.19676/- towards service week expenses, the Enquiry Officer concluded that the same was processed without any supporting bills and vouchers. The said amount as per the findings of the Enquiry Officer towards service expenses were paid without proper bills and vouchers. The petitioner agreed that the payments have been made without proper documents and vouchers.

15. In respect of the charge that the petitioner has temporarily misappropriated an amount of Rs. 2700/- which was paid to him Shri M.A.Pershad DVM for adjusting T.A. advance drawn by him, the petitioner agreed that amount was

received by him sometime in the last week of January 1995 and he did not issue receipt on the same day. Instead amount was kept separately in the drawer of his table. The Enquiry Officer took into consideration the request for demand draft of Rs.2700/- through State Bank of India dated 15/04/1995 to prove that amount was accounted for only on that day. In this view of the matter, the Enquiry Officer held that the charge of temporarily misappropriation of Rs.2700/- is proved.

16. As regards payment of amount of Rs.25,000/- to M/s. A to Z Furnishers without prior approval or sanction, the petitioner stated that the same was paid on oral instructions of the then DGM (W) and therefore, he did not have proper approval or sanction.

17. The petitioner has taken a stand that his wife has been suffering from Cancer for about a year at the relevant time and therefore he was under great mental tension. He had to undertake the entire account work after V.R.S. of the Deputy

Manager Accounts and therefore, did not have any immediate superior in Accounts Department who could guide and correct him.

18. The law is well settled that this Court cannot interfere under Article 226 of the Constitution of India with the findings of the Enquiry Officer unless they are perverse nor can the evidence be appreciated as if this Court is an Appellate forum. We are not inclined to accept the contention of the learned Counsel for the petitioner that any prejudice is caused to him by non-supply of the documents. We find that during the course of the enquiry, the petitioner has admitted to some of the charges and in fact accepted that he has not followed the proper procedure while making payments or processing T.E. claims. Based on the material on record, the Enquiry Officer has come to the conclusion that the charges levelled against the petitioner are proved except charges No. 5 & 6. We do not find any infirmity with the findings recorded by the Enquiry Officer. In our opinion, the findings of the Enquiry Officer satisfies the test

of preponderance of probabilities expected in disciplinary proceedings.

19. The petitioner is an Accountant and therefore, working as an Assistant Superintendent with effect from 01/04/1989 and assigned duties in Sales and Accounts and was promoted as Junior Officer (Accounts) with effect from 01/07/1993. In this light of the matter, we do not feel that the punishment imposed on the petitioner is shockingly disproportionate to the misconduct proved. We are therefore not inclined to interfere with the impugned orders.

20. Learned Counsel for the respondents has however indicated that if an application is made by the petitioner claiming his terminal benefits i.e. provident fund, gratuity, Earned Leave encashment, 1992 pay revision arrears, the same would be cleared notwithstanding the order of dismissal. The petitioner is at a liberty to make an application to the respondents for terminal benefits as mentioned above within a

period of 4 weeks from today and if such application is made, terminal dues be paid by the respondents to the petitioner within a period of 6 weeks from the date of receipt of application after adjusting the amount of Rs.20,055/- which is to be recovered from the petitioner. Hence, the following order.

O R D E R

i) Writ Petition is dismissed.

ii) The petitioner may make an application to the respondents for terminal dues within a period of 4 weeks from today. Upon receipt of the application, the respondents to pay to the petitioner the terminal dues i.e. provident fund, gratuity, Earned Leave encashment and 1992 pay revision arrears after adjusting the amount of Rs.20,055/- which is to be recovered from the petitioner within a period of 6 weeks from the date of the receipt of the application.

21. Subject to above, Rule is discharged with no order as to costs.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**