

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 941 OF 1998

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Harishkumar Gulabbhai Desai	...Petitioner
v/s.	
State Bank of India and ors.	... Respondents

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Mr.J.B.Mishra for the Petitioner.
 Mr.Atul Damle,Sr.Advocate i/b Rupesh Lanjekar for the Respondents Nos.
 1 & 2

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

DATED : 15 JUNE 2017

P.C. :

By this Petition under Article 226 of the Constitution, the Petitioner has impugned the order dated 03-03-1992 passed by the Respondent No.2-Appointing/Disciplinary Authority dismissing him from service and the order dated 31-03-1995 passed by the Respondent No.3-Appellate Authority rejecting his Appeal.

2. The Petitioner was in the employment of the Respondent No.1 Bank and at the relevant time Junior Management Grade (Scale)-1 Officer posted as Foreign Exchange Counter Officer at Centaur Hotel Branch of the Respondent No. 1-Bank. Departmental inquiry was initiated against the Petitioner in respect of shortage of foreign currency and

irregularities/malpractices. There were 11 Charges framed against the Petitioner labelled as Charges I(i) to I(x) and Charge II. The Inquiry Authority held that 3 Charges viz. Charges I(ii) and I(iii) and Charge II were proved. The Inquiry Authority concluded as follows:

“SUMMARY OF FINDINGS:

CHARGE I: Grounds (ii) and (iii) held as proved.

Under Ground (ii), the allegation that FTS form was missing was not proved. Explanatory details have been given while discussing the Ground. Remaining eight (8) grounds/Allegations have not been proved. Most of the latter Grounds contain allegations of a far more serious nature, as compared to the allegations under Grounds Nos.(ii) and (iii). In view of this, the principal charge itself cannot be deemed to have been established, except insofar as Grounds (ii) and (iii) are concerned.

CHARGE II: Proved.”

(emphasis supplied)

3. The Disciplinary Authority, however, differed with the findings of Inquiry Authority and held that all the Charges except Charge I(vi) are proved. In other words, the Disciplinary Authority concluded that out of the 11 Charges, 10 Charges are proved and arrived at contrary findings in respect of 7 Charges.

4. It is not in dispute that while differing with the findings of the Inquiry Authority on the 7 Charges as indicated above, an opportunity to represent his case was not granted to the Petitioner by the Disciplinary Authority.

5. In **Punjab National Bank v/s. Kunj Behari Misra**, 1998 (7) SCC 84, (which decision was rendered upon a reference made pursuant to a conflict of decisions) a three-Judge Bench of the Supreme Court formulated the question for consideration before it in paragraph 1 in the following terms:

“1. In these two appeals, the common question which arises for consideration is that when the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer.”

In para 19 the Supreme Court held as follows:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an

opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.” (emphasis supplied)

6. It is noted that Regulation 7(2) of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations, 1977, which fell for consideration before the Supreme Court in the aforesaid case, is *pari materia* with Rule 68(3)(ii) of the State Bank of India Officers Service Rules by which the Petitioner is governed in the present case. The said Rule 68(3) (ii) reads as under:

“68(3)(ii) The Disciplinary Authority, shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose”.

7. It being an admitted position that the Disciplinary Authority had differed with the Inquiry Authority and gave contrary findings qua 7 of the 11 Charges, in view of the law expounded by the Supreme Court in the aforementioned case, there was a clear violation of the principles of natural

justice, inasmuch as the Petitioner was not afforded an opportunity to make representation on the Charges on which the Disciplinary Authority proposed to differ before passing the final order imposing the punishment of dismissal from service.

8. In view of the law laid down in **Punjab National Bank vs. Kunj Behari Misra** (supra) the submission of the learned Senior Counsel that the order of punishment of dismissal passed by the Disciplinary Authority can still be sustained even if only charges I(i), I(ii) and II which the Inquiry Authority held as proved, are taken into consideration, cannot be accepted. The order of the Disciplinary Authority is passed not only having regard to the said three Charges but also based upon seven other Charges on which he had differed with the Inquiry Authority. It is pertinent to note that after the Disciplinary Authority forwarded the Inquiry Report to the Petitioner, the Petitioner had filed his submissions dated 11 July 1991 on the Inquiry Report which had held him guilty of only 3 Charges. In the facts and circumstances of the case, we are not inclined to accept the contention on behalf of the Respondent that the Petition ought not to be entertained on the ground of delay and laches.

9. In light of the above, we dispose of the Petition by passing the following order:

ORDER

- i) The impugned orders of the Appellate Authority and the Disciplinary Authority are set aside:
- ii) The matter is remitted back to the Disciplinary Authority. The Disciplinary Authority shall examine the matter afresh without being influenced by the impugned orders. In the event the Disciplinary Authority proposes to differ with the findings of the Inquiry Authority on any of the Charges, it shall issue a notice to the Petitioner indicating his disagreement and tentative reasons for the same and grant an opportunity to the Petitioner to file a representation.
- iii) The final decision shall be taken by the Disciplinary Authority expeditiously and preferably before 30 September 2017. Should the Petitioner require to file representation as indicated above, the same shall be done with necessary promptitude.
- iv) All contentions on merits are kept open.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)