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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1304 OF 2002

R.B. Mane
Indian inhabitant of Thane
residing at Gajanan Nagar,
Shankar Colony, Chawl No.C/5,
Ulhasnagar, Thane 400 604. ...Petitioner

versus

1. The Railway Goods Clearing and
Forwarding Establishment Labour
Board for Greater Bombay and
Authority constituted under
Section 6 of the Mathadi Act, 1969
having its office at 84-A Broach
Sadan, Devji Ratansey Marg,
Danabundar, Mumbai 400 009.

2. The Chairman,
The Railway Goods Clearing
Forwarding, Labour Board for
Greater Bombay having his office
at 84A, Broach Sadan, Devji Ratansey Marg,
Danabundar, Mumbai 400 009. ...Respondents

Mr. Mahendra Agavekar i/by V.P. Vaidya, for Petitioner.

Mr. Sanjay Prabhakar Shinde, for Respondent nos.1 and 2.

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

RESERVED ON : 2nd August, 2017.

PRONOUNCED ON : 14th August, 2017.

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

The challenge in this Petition is to the dismissal order dated 15/4/2002 passed by the respondent-Board pursuant to disciplinary proceedings initiated against the petitioner. The petitioner joined the services of the respondent-Board as a clerk in November, 1986. Sometime in 1994 the respondent-Board alleged that the petitioner made entries in Provident Fund Register during the period 1989-1990 and 1990-1991 which shows discrepancies resulting in loss to the Board. A charge-sheet was issued to the petitioner on 6/3/1998. The charges in brief are as under :-

> "1) While preparing Resignation cases of total 7 workers during the financial year 1992-93 in the year 1991-92, a sum of Rs.10,000/- is increased in the P.F. Contribution of the worker and a sum of Rs. 10,000/- in the Board's contribution. Thus, you have cause a loss of Rs.20,000/- to the Board (Schedule 'A' is annexed hereto and xerox copies of the relevant documents are being supplied.)
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> 2) By making alterations in the entries in the P.F. Account Book of X Board's workers and by increasing the Board's contribution and obtaining signatures of the Board's Chairman & Secretary, there on, have thereby cheated the Board.
>
> 3) By not discharging your duties as a clerk, you have violated the code of conduct of the Board.
>
> 4) You lost the faith of the Board."

2. The petitioner disputed his involvement and pointed out that handwriting of the disputed entries are not his and asked the respondent to verify the same. Learned Counsel invited our attention to the Inquiry Officer's report and evidence of Shri Pednekar. During the course of the inquiry, the evidence of Shri Pednekar was recorded. In the submission of the petitioner Shri Pednekar joined in 1994 and therefore he deposed merely on the basis of the entries made in the Provident Fund register. The Inquiry Officer recorded findings that the charges levelled against the petitioner are proved. By the impugned order dated 15/4/2002 the petitioner was dismissed from the services of the respondent-Board. Learned Counsel for the petitioner assailed the Inquiry Officer's report. In his submission the Inquiry Officer has based his findings on the evidence of Shri Pednekar who was not competent to depose as a witness. According to him, Shri Pednekar had joined as an Accountant only in 1994 and therefore could not be privy to the alleged incidents of 1989-1990 and 1990-1991, Shri Pednekar has deposed only on the basis of the records. Learned Counsel further submits that his duty was to record the entry in the Register as forwarded to him by the other clerk and therefore he had merely copied what was sent to him. In his submission the petitioner is not responsible for the said

manipulations. His duty was only to verify if the entries in the Register are similar. In the submission of the learned Counsel for the petitioner the Inquiry Officer has not considered his defence and hence mechanically held that the findings levelled against the petitioner has been proved.

3. Learned Counsel further submitted that there is a gross delay in initiating the inquiry which vitiates the inquiry. Learned Counsel relied upon the decision of the Apex Court in the case of **Moni Shankar v. Union of India & anr. (2008) 3 SCC 484** to contend that the evidence adduced during the course of the inquiry will have to be taken into consideration if the requisite standard of proof (preponderance of probability) is met and that this Court has power to interfere where the test of proportionality is not satisfied.

4. In the submission of the learned Counsel the Inquiry Officer has only relied upon that part of the evidence of Shri Pednekar which was favourable to the management and has conveniently ignored the material evidence in favour of the petitioner.

5. Learned Counsel for the respondents on the other submitted as under :-

(a) In the years from 1987-1988 to 1992, a large scale fraud was perpetrated on respondent no.1 Board, by certain employees of the Board about 19 in number (including the petitioner), who misappropriated a huge amount from the wages deposited in the Board, in collusion and connivance with each other and with the Government appointed Auditor. Prior to 1994, in the Kalyan branch office, wages payable to the Mathadi workers were deposited from the 1st day of the month to 12th day of the month, with the table clerks by the registered employers. About seventy-five percent of the wages were in cash. The said table clerks maintained full accounts of the wages and levy received and deposited the same in the Board's bank account. The table clerks also calculated the wages payable to the Mathadi workers, and the Head Office sent the cheque for wages to the table-clerks as per the statements prepared by them. The Personnel Officer of the Board was in charge of the overall supervision of the table-clerks.

(b) The fraud came to light in the year 1992 when the said auditor Mr. S.D. Gunjal appointed by the Government submitted the audited balance sheet for the year 1991-92 along with his report to the State Government. The respondent no.1 Board however was not given a copy of the said balance sheet by the auditor at the relevant time, and it was only in the year 1993 that the respondent no.1 Board received the second copy of the audited balance sheet for the year 1991-92. On going through the balance sheet it was found that there was a glaring discrepancy of 1,12,12,000/- in the two balance sheets for the same year. The respondent no.1 Board therefore undertook scrutiny of the accounts of the Board through special auditor and found large-scale misappropriation of the funds of the Board from the year 1987-88 onwards. About 19 employees of the respondent no.1-Board, (including the petitioner) were involved. These comprised of table clerks responsible for handling cash and payment of salaries, supervisors, accountant, assistant accountants, Inspectors, Personal Officer (the petitioner herein) and the Chartered Accountant Mr. S.D. Gunjal appointed by the Government to audit the accounts of the Board. It was found that the aforesaid sum of Rs.1,12,12,000/- had been siphoned off by these employees in collusion and connivance with each other and in criminal conspiracy. The said employees falsified and fabricated accounts, and in the case of cash misappropriation, they destroyed the relevant documents and records. The respondent no.1 Board lodged a complaint with the Anti Corruption Bureau, and pursuant to the said complaint eight employee including petitioner were arrested. Charge-sheets have been filed against all eighteen employees, and the cases against the said employees are pending in Special Court, Mumbai.

(c) During the year 1990-91 and 1991-92, the petitioner was working as a Clerk in Provident Fund Section. As provident fund clerk, the petitioner was in charge of Main Provident Register in which individual provident fund accounts of the workers was maintained. At the end of every month, the Table Clerks in the Board prepare payment sheets and post the amount of Provident fund deducted from the workers monthly wages in a separate statement called the Provident Fund Deduction Statement or Provident Fund Chart. The table clerk then sends the said statement or provident fund chart to the provident fund clerk. The provident fund clerk, was thereafter required to post provident fund deductions of the worker from the said provident fund chart in the main provident fund register. At the end of the financial year, the concerned table clerk posts calculates the total amount of provident fund deductions and posts it in the provident fund deduction statement or provident fund chart. The provident fund clerk is also required to draw up the total provident fund accumulations of the provident fund and totally it with the total provident fund accumulations shown by the table clerk in the provident fund chart. Where a worker resigned, the provident fund clerk was required to prepare the total provident fund amount payable to the worker as well as the gratuity and to submit the same assistant accountant. The disbursement of the said provident fund and gratuity was done by the provident fund clerk.

(d) The Board in a special audit conducted in the year 1994-95 and 1995-96, found that the petitioner had paid excess amount by way of workers provident fund contributions and the Board's provident fund contributions in 27 cases totaling to Rs.20,000/-. The modus operandi adopted by the petitioner was that such amounts were increased only in the cases of workers who resigned. It was found that the amounts in the last financial years were changed/altered by the petitioner to an inflated amount. The petitioner thereafter showed the same amount as the provident fund contributions payable by the Board. In the audit it was found that the totals worked out by the petitioner in the Main Provident Fund Register did not tally with the totals drawn up and posted by the table clerk in his Provident Fund Chart. It was also found that the amounts in most cases was paid to the workers partly by cheque and partly by cash and in some entirely in cash.

6. In the enquiry the representative of the management produced all documents relied upon by it particularly the provident fund deduction statement/provident fund chart maintained by the table clerk and the main provident fund register maintained by the petitioner and the 7 cases showing the settlement of claims of provident fund wherein inflated provident fund amounts are paid to the workers. The said documents were duly proved by the management representative. The petitioner in his statement of defence has admitted he prepared the 7 cases and that the signature there under was his own.

7. In his submission, on the basis of the documentary evidence and the deposition of Shri Pednekar the Inquiry Officer held the charges as proved. In his submission the charges are serious and in view of the findings recorded by the Inquiry Officer having regarded to the gravity of the charges it cannot be said that the punishment of dismissal is disproportionate.

8. We have considered the submissions made by the learned Counsel. Before the Inquiry Officer the evidence of Shri Pednekar, Accountant was recorded in support of the charges framed against the petitioner. In his deposition he has stated that he does all the work pertaining to the accounts and that the Provident Fund Department falls under his control. In his deposition Shri Pednekar has stated that the petitioner was looking after the work of Table no. 15,16,17,18, 19 and 20. All the resignation cases have been prepared by the petitioner and accordingly has made entries in the Register. The figures at Exh.M-18 are in the handwriting of the petitioner. The Inquiry Officer noted that even the stand of the petitioner while cross examining witness Shri Pednekar appears to be that the petitioner had increased the provident fund amount in order to obey the orders of his superiors and to avoid their grudge. The Inquiry Officer noted that the defence Counsel had attempted to indirectly suggest that Shri Chandane (Accountant who was also proceeded departmental inquiry) directly or indirectly through Shri Savale (also charge-sheeted) had attempted to pressurise the petitioner for showing the excess amount. In the cross-examination the petitioner admitted that the first page in resignation cases in Exh.M-15 to 20 bears his signature. The Inquiry Officer took into consideration the admission

of the petitioner that he does not have any strong evidence in support of the contention that the Assistant Accountant and Accountant may have increased the amount of provident fund. The petitioner has also admitted that seven workers in the resignation cases have been paid Rs.20,000/- of the Railway Board in excess. In so far as these cases are concerned, the petitioner admitted that he had prepared the cases of the seven workers who had resigned. The Inquiry Officer on the basis of the material on record and the admission given by the petitioner has come to the conclusion that the resignation cases were prepared by the petitioner in his own handwriting increasing the provident fund amount. The Inquiry Officer has come to the conclusion that due to the increase in the provident fund amount loss of Rs.20,000/- has been caused to the Board. These amounts have been paid to the workers who had resigned which fact has been admitted by the petitioner in his cross-examination. In this view of the matter, on the basis of the documentary evidence produced by the respondents and the oral evidence the Inquiry Officer held charge nos.1, 2 and 3 as proved.

9. The learned Counsel for the Respondents relied upon the decision of the Apex Court in the case of **Food Corporation of India**

& Anr. Vs. V.P. Bhatia (1998) 9 SCC 131 to support his contention that there is no delay in issuing the charge-sheet. According to us in the facts of the present case we do not feel that the Enquiry is vitiated on the ground of delay.

10. Learned Counsel for the Respondents also relied on the decision of the Apex Court in the case of **Chief Executive Officer, Krishna District Cooperative Central Bank Limited & Anr. Vs. K. Hanumantha Rao & Anr. (2017)2 SCC 528** to contend that the decision qua nature and quantum of punishment is prerogative of disciplinary authority and courts while exercising power of judicial review do not sit as appellate authority. The Apex Court has observed thus:

> *"**7.1**. The observation of the High Court that accusation of lack of proper supervision holds good against the top administration as well is without any basis. The High Court did not appreciate that Respondent 1 was the Supervisor and it was his specific duty, in that capacity, to check the accounts, etc. and supervise the work of subordinates. Respondent 1, in fact, admitted this fact. Also, there is an admission to the effect that his proper supervision would have prevented the persons named from defrauding the Bank. The High Court failed to appreciate that the duties of the Supervisor are not identical and similar to that of the top management of the Bank. No such duty by top management of the Bank is spelled out to show that it was similar to the duty of Respondent 1.*
>
> ***7.2.** Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only*

> *in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority / employer is wholly dis-proportionate, that too to an extent that it shakes the conscience of the court, that the court steps in and interferes".*

11. In this view of the matter we do not find any reason to interfere with the impugned order. The findings of the Inquiry Officer are based on the evidence on record and it is not possible for us to re-appreciate the evidence on record in the exercise of writ jurisdiction. We do not find that there is any perversity in the findings recorded by the Inquiry Officer. The inquiry has been conducted by following principles of natural justice and adequate opportunity has been granted to the petitioner to defend the charges levelled against him. We therefore do not find any merit in the present Petition and the same is therefore dismissed with no order as to costs.

12. Rule to stand discharged.

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