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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1305 OF 2002

S.C. Desai
Indian inhabitant of Thane
residing at C/52, Ramchandra
Apartments, Yashodhan Nagar,
PAHADA no.II, 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 petitioner challenges the order of the dismissal dated 15/4/2002 passed by the respondent-Board dismissing him from their service. The petitioner joined the services of the respondent-board as clerk in November, 1986. In 1994, respondent-board alleged that on account of certain entries made in provident fund register during the period 1989-1990 and 1990-1991 resulted in loss to the board on account of certain discrepancies. A charge-sheet dated 16th March, 1998 was issued to the petitioner and disciplinary proceedings were started against him.

2. Following charges were framed against the petitioner :-

1) While preparing in all 44 Resignation matters during the financial year 1989-90 & 1990-91, an amount of Rs.62,955.88 in the workers Provident Fund contribution and Rs.62,955.88 in the Boards contribution has been increased. Thus he has caused a

financial loss of Rs.1,26,911.76 to the Board.

2) By making incorrect entries in the Provident Fund Account of the Board's workers and by increasing the same amount the Board's contribution by & obtaining signatures of Chairman & Secretary thereon, has cheated the officers & thereby the Board.

3) Without discharging the duties responsibilities as clerk, has violated the code of conduct of the Board.

4) Has lost the faith of the Board.

3. The petitioner disputed his involvement and pointed out the handwriting of the disputed entries are not in his handwriting and asked the respondent to verify the same. During the course of the inquiry the evidence of Shri Pednekar was recorded. Learned Counsel for the petitioner submitted that Shri Pednekar has deposed only on the basis of the entries made in the provident fund register and he could not have any knowledge about the relevant period as he joined only in the year 1994 as Accountant.

4. Learned Counsel for the petitioner submitted that the

findings recorded by the Inquiry Officer are perverse and based on no evidence. According to him Shri Pednekar was not competent witness to depose. Learned Counsel for the petitioner submitted that the petitioner was assigned the duties to maintain the register of provident fund showing the accounts of provident fund deducted and due to the employees on their superannuation. According to him, it is a normal practice prevailing in respondent no.1 Board that the account of provident fund is maintained on the basis of the muster register (Khate Pustak) maintained by some other clerk. The petitioner on the basis of the provident fund register maintained by the petitioner and duly verified and certified by the accountant under whom he was working, the Mathadi workers were paid their legal dues towards the provident fund on their superannuation. It is a submission of the learned Counsel for the petitioner that during the period 1989-1990 and 1991-1992, 44 workers resigned from the respondent-board and were paid provident fund amounts due to them.

5. Learned Counsel for the petitioner submits that there is a delay in issuing the charge-sheet as the same has been issued after a lapse of ten years from the alleged incident and after lapse of about

four years from the knowledge of the incident and therefore on this ground itself the inquiry is vitiated. It is a submission of the learned Counsel for the petitioner that the petitioner has made entries in the register on the basis of muster register prepared by the another clerk and the same is verified by the accountant from time to time and also audited by the Auditor who did not find irregularities in maintaining the said account, the petitioner cannot be held responsible. It is also pointed out by the petitioner that the figures entered by the petitioner in the provident fund register are the figures given to him by the accountant under whom the petitioner was employed and the said figures were tallied with the figures in the muster register. According to petitioner, it is Shri Savale and Shri Nighut who intelligently carried out this idea of inflating the figures in all the registers maintained by the petitioner and two others and that the petitioner is not concerned with the alleged fraud.

6. Learned Counsel for the petitioner was at pains to point out that Shri Pednekar who was examined during the course of inquiry had no personal knowledge about the incident and he has merely deposed on the basis of the documents placed on record by him. In his submission the inquiry conducted was not fair and proper

and in as much as he could not defend the charges as the respondent withheld the material evidence that of disciplinary proceedings held against Shri Savale and Shri Nighut who were found guilty. In the submission of the learned Counsel the petitioner was working under Shri Savale and that they should have examined Shri Savale. He could have proved his contention that the provident fund register maintained by him was duly verified and certified from time to time by Shri Savale. In his submission at the highest the act of the petitioner can be that of negligence but surely the charges proved against him do not justify the punishment of dismissal from service.

7. Respondent-board on the other hand has filed affidavit-in-reply. Learned Counsel for the respondent pointed out that 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 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.

8. Learned Counsel for the respondent further pointed out that the fraud came to light when in the year 1992 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. He submits that charge-sheets have been filed against all eighteen employees, and the cases against the said employees are pending in Special Court, Mumbai.

9. Learned Counsel for the respondent pointed out that 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, is 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 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 tally 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 to the assistant accountant. The disbursement of the said provident fund and gratuity was done by the provident fund clerk.

10. Learned Counsel for the respondent pointed out that 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/alterd 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 cases entirely in cash.

11. In the submission of the learned Counsel for the respondent-board the petitioner has admitted that during the period 1989-1990 to 1990-1991 when he was working in the provident fund department he has prepared all 44 cases of resignations and that the

signature thereunder were his own. In the submission of the learned Counsel in the 44 cases involved in the charge-sheet, the amounts shown by the petitioner in the main provident fund register did not tally with amount shown in the provident fund deduction statement maintained by the table clerk and that the amount shown in main provident fund register were inflated amounts. According to him, it is the main duty of the petitioner to tally the final figures arrived at the end of the financial year with the final figures shown in the statement of the table clerk. In his submission the defence of the petitioner that the auditors of the Board did not find any discrepancy is of no consequence, as the auditor of the Board, Shri S.D. Gunjal was himself a party to the fraud. According to him, the inquiry is conducted in consonance with principles of natural justice and fair opportunity was given to the petitioner to defend the charges levelled against him. In his submission the findings recorded by the Inquiry Officer cannot be interfered by this Court in the exercise of writ jurisdiction under Article 226 of the Constitution unless they are perverse and based on no evidence.

12. We have heard learned Counsel for the parties. Learned Counsel for the petitioner invited our attention to the findings

recorded by the Inquiry Officer. The Inquiry Officer has taken into consideration the evidence of witness Shri Pednekar who has deposed that table clerk prepares payment-sheets, writes the amount of provident fund to be deducted from the workers' monthly wages, thereafter the clerk who distributes workers' wages who then passes on the said statement of wages to the clerk who is responsible for filling up provident fund deductions of the workers. In his deposition Shri Pednekar has stated that the clerks then fills in provident fund figures in the respective workers provident fund as above and this work was being done by the petitioner. Shri Pednekar has deposed that all papers connected with the resignation of the Mathadi workers have been prepared by the petitioner and he has initialed on such papers. Shri Pednekar has deposed that while noting down provident fund figures from the board as well as from workers side, the petitioner has increased the provident fund figures from both sides. He further deposed that the petitioner has put the board into heavy financial loss. In his deposition Shri Pednekar has stated that during the period 1989-1990 and 1990-1991 he was not working as an accountant but one Shri D.G.Chandane was working as an accountant. Shri Pednekar admitted that the work of the Accountant is to see that the provident fund deductions are done properly. He

further deposed that Shri Chandane was placed under suspension and did not give any information about misappropriation in the workers provident fund accounts during the above mentioned period.

13. It has come in his deposition that in the year 1992-1993 the Railway Labour Board came to know that there were certain irregularities in the boards financial transactions and as such the board appointed special auditor to check the accounts and he came to the conclusion that the petitioner had ahand in such irregularities. He deposed that on account of substantial increase in the provident fund accounts in respect of such resigned workers the board had to suffer financially.

14. The petitioner during his examination agreed that in the Annexure annexed to the charge-sheet there is increase of Rs.1000/- or Rs.2000/- in respect of the provident fund that was paid to the 44 Mathadi workers who had resigned during the period of 1989-1990 and 1990-1991. The petitioner also agreed that in all 44 resignation cases he had put his own signature. He however did not agree that he was responsible for showing increase in the provident fund amount in respect of the Mathadi workers who had resigned.

15. The Inquiry Officer while holding the charges levelled against the petitioner as proved took into consideration the deposition of Shri Pednekar that while noting provident figures from board side as well as from the workers side, the petitioner has increased the provident fund figures from both sides. The Inquiry Officer took into consideration the fact that this was not disputed either by the Defence Counsel or the petitioner. We do not find the approach of the Inquiry Officer unreasonable or perverse. The findings are based on the documentary evidence and the oral evidence of Shri Pednekar. The Inquiry Officer has also taken into consideration the statement given by the petitioner during course of the inquiry. The petitioner was given opportunity to cross-examine Shri Pednekar. The inquiry is conducted in accordance with the principles of natural justice and every possible opportunity has been given to the petitioner to defend the charges levelled against him. As the findings of the Inquiry Officer are based on the evidence on record it is not possible for us to re-appreciate the evidence on record and arrived at our own findings.

16. Learned Counsel for the petitioner 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.

17. 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.

18. 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”.

19. There is thus no merit in the present Petition and the same is dismissed with no order as to costs.

20. Rule to stand discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)