Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO. 2539 OF 2000**

Deepak G. Chandane
Indian Inhabitant of Mumbai
Residing at Jayesh Co-operative
Housing Society Ltd., B/206,
Ramchandra Nagar – 2, Opposite
Nitin Company, Vaity Wadi,
Panchpakhadi, Thane(W), 400 604 .. Petitioner

Vs.

1. The Railway Goods Clearing and
Forwarding Establishments
Labour Board for Greater
Bombay, a Statutory Board
establishing under the
provisions of the Maharashtra
Mathadi, Hamal and other Manual
Workers (Regulation of Employment
and Welfare) Act, having its
office at 84/A, Broach Sadan,
Devji Ratanshi Marg,
Dana Bunder, Mumbai 400 009.

2. Shri D.R. Bothale,
Assistant Commissioner of
Labour and Chairman of the
first respondent board – having
his office at 84/A, Broach Sadan,
Devji Ratanshi Marg,
Dana Bunder,
Mumbai 400 009. .. Respondents

Mr.Kiran Bapat a/w Ms.Radha Ved i/b Sanjay Udeshi & Co., for the Petitioner.
Mr.Sanjay Prabhakar Shinde, for Respondent No.1.

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

**RESERVED ON : 25th JULY, 2017**
**PRONOUNCED ON : 09th OCTOBER, 2017**

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

1. The petitioner's challenge by this Petition under Article 226 of the Constitution of India is to an order of dismissal dated 30/08/1999 passed by respondent No.1 with a further prayer that he may be reinstated in service with continuity of service and full back wages. The petitioner joined service of the first respondent – Board in the clerical cadre on 25/07/1977. After successful completion of probation, he was confirmed in the post of clerk. On 06/02/1981 the petitioner was promoted to the post of Supervisor-cum-Senior Clerk. The petitioner was promoted as an Accountant on 01/12/1989. The first respondent detected alleged fraud in RCF unit. The said fraud related to the period from 1987 to 1992. The petitioner was suspended from the service. According to the petitioner, he had no concern with the said fraud.

2. The petitioner was served with a charge-sheet dated 15/02/1994 on the following charges.

1. There was a financial responsibility of the Board on you while working as an Accountant, but that responsibility was not executed, Board's important financial work such as to keep control over the monthly payable wages and paid wages to the workers, but while working as an accountant, not to keep control over the wages paid during the period 1987-88 to 1991-92 misappropriating by showing excess wages and made financial losses.

2. During the audit period for the financial year 1991-92, to hide the factual financial account from the Auditor and prepared two separate Report, to change the figures after completion of Audit.

3. Not to check properly the summary sheets of workers payment received from Table Clerks, to show that the figures are correct as and when the figures of the summaries are wrong and to sign on it and to take the signature of the Secretary.

4. To alter the figures in the Cash Book and Ledger to show less and more figures, deliberately, making wrong entries in the Ledger.

5. Not to confirm the worker's wages figures of the Branch Office as per the Summary by preparing excess amount of cheques, after making wage payment to show carelessness while depositing balance amount of the sub-branch in the Bank.

6. Not to collect payment sheets of wages from the R.C.F. Branch to head office, not to take care of important documents such as Register, Rough cash book, pay sheets, pass book.

7. Deliberately destroying the documentary proof by not disclosing the misappropriation instead of taking care of the important documents while working as an Accountant, to destroy the financial documents such as paysheet, rough cash book, bank pass book etc.

8. Not to apply proper method which is suitable for financial account while working as an accountant as also not to submit financial position day to day to the Board, to keep the Board in dark.

> 9. To do false signatures of the Chairman and Secretary on the Annual Report and to submit it, to deceive the Board and the Government by showing wrong figures, alternatively by cheating the workers of keeping away from profit.
>
> 10. From the above it is clear that withholding inconnection to Boards administration and Assets, to be falsehood and faithless, violating the code of Discipline, not to obey, whether a confenderay is done with other or not, bad result on the discipline in the Board's place and to demolish the good conduct by doing any act, by showing carelessness in the work, by doing negligence in the office work, to prepare false documents, to threat the office bearers, etc. such charges are lodged on you."

3. The petitioner filed his reply to the said charge-sheet on 12/03/1994 pointing out that charge-sheet was issued for the alleged irregularities of the years 1987-88 to 1991-92. However, in the year 1987-88, the petitioner was not working as an Accountant, therefore, the basis of the charge-sheet that the petitioner was guilty of irregularities for the period from 1987 to 1991 itself is without application of mind.

4. Shri Arvind Vaidya was appointed as Enquiry Officer vide order dated 12/12/1994. The examination-in-chief of the only witness Shri Pednekar commenced on 26/12/1996. By order dated 08/12/1997 Shri B.A. Sakhardande was appointed as Enquiry Officer in place of Shri Arvind Vaidya. The examination- in- chief of the sole

witness on behalf of respondents concluded on 02/05/1998. The petitioner demanded certain documents vide letter Exhibit 81. The petitioner however commenced the cross examination. By another letter dated 20/05/1998, the petitioner sought further documents below Exhibit 82. He nevertheless continued with the cross examination on 02/06/1998.

5. On 02/07/1998 because of heavy rains, the Enquiry Officer was absent. The enquiry was hence adjourned. As the petitioner's defence representative was an aged person and since he was not keeping well on 09/07/1998, request for adjournment was sought. It is the grievance of the petitioner that in a very highhanded manner the Enquiry Officer closed the cross examination. In the submission of the learned Counsel for the petitioner, the enquiry has been conducted in the most highhanded manner and in breach of principles of natural justice.

6. Learned Counsel for the petitioner pointed out that on 20/07/1998, an application was filed by the petitioner praying that order of closing the evidence of witness Shri Pednekar be revived and he may be recalled for cross examination. However, the Enquiry

Officer refused to recall the said witness. The petitioner therefore, filed Writ Petition No. 1558 of 1998 challenging the said action on the part of the respondents refusing to recall the witness. This Court was pleased to dispose of the Petition by granting liberty to the petitioner to raise all the issues including the issues raised in the Writ Petition No. 1558 of 1998. After the conclusion of enquiry, enquiry came to be closed on 04/08/1998. The Enquiry Officer by his report dated 12/10/1998 held the petitioner guilty of misconduct alleged. Upon issuance of show cause notice, the petitioner came to be dismissed from service by the impugned order dated 30/08/1999.

7. Learned Counsel for the petitioner invited our attention to the Enquiry Officer's report and took us through the relevant portion of evidence of Shri Pednekar. In his submission, the charge-sheet is as vague as it can be. The charge-sheet does not specify as to what misconduct actually the petitioner has committed. Learned Counsel for the petitioner submits that though the charge-sheet does not disclose the charge of the misappropriation, the Enquiry Officer has held the petitioner guilty of misappropriation on which ground itself the order of dismissal deserves to be interfered with.

8. Learned Counsel for petitioner submitted that respondent No.1 – Board is not governed by any service rule and the suspension which was not supported by service rules itself is illegal. In his submission, the petitioner therefore is entitled as per model standing order to 100% subsistence allowance after completion of 180 days of suspension. Learned Counsel would submit that as the petitioner has not been paid subsistence allowance, the subsequent conduct and continuance of the departmental enquiry has become illegal. Consequently the order of dismissal is rendered illegal and void.

9. In the submission of the learned Counsel for the petitioner, the enquiry was conducted in most high-handed manner and the enquiry officer acted with bias. He submits that the Enquiry Officer was vindictive and the proceedings were conducted in such a manner so as to throw the petitioner out of the service. To demonstrate this contention, learned Counsel for the petitioner pointed out that the Enquiry Officer closed the cross examination of Shri Pednekar when the petitioner was asking for adjournment on the ground that the defence representative was an aged person and suffering from illness and therefore, unable to attend the enquiry on

that particular date. One date before closing the cross examination, the Enquiry Officer himself was unable to remain present. In the midst of the enquiry on 02/04/1997 earlier Enquiry Officer Shri Arvind Vaidya could not remain present and enquiry came to be adjourned to 06/01/1998 which indicates that 9 months were wasted by first respondent. Learned Counsel would thus contend that he was always available for the enquiry but the delay was mainly at the behest of the the Enquiry Officer. Only on one day, when the petitioner's defence representative was absent, the cross examination was abruptly closed. Learned Counsel for the petitioner was at pains to point out that this abrupt closure of the cross examination was at the stage when witness was about to reveal the truth. In his submission, it is at this juncture the Enquiry Officer at the behest of the first respondent - Board chose to adopt the course of rejecting application for adjournment and closing the cross examination.

10. Learned Counsel for the petitioner invited our attention to the evidence of witness Shri Pednekar to submit that as the said witness was completely exposed in cross examination and when the Enquiry Officer realised that the said witness is unable to withstand the cross examination that he chose to close the cross examination.

11. Learned Counsel for the petitioner then pointed out that though he had demanded certain documents which were necessary for his defence vide his letter - Exhibits 81 & 82, the same were never supplied to the petitioner. In the submission of the learned Counsel for the petitioner those were material documents and therefore the petitioner has been deprived of opportunity to effectively cross examine the witness Shri Pendekar on the basis of the documents which ought to have been supplied to him. Learned Counsel would submit that this has prejudiced his defence and the enquiry stands vitiated.

12. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **Anant R.Kulkarni Vs. Y. P. Education Society and ors. (2013) 6 Supreme Court Cases 515** to submit that the enquiry has to be based on specific, definite and clear charges giving details of incident which formed basis of charges particularly in respect of an order involving adverse or penal consequences. In his submission, no enquiry can be sustained on vague charges. Learned Counsel also relied upon the above decision to contend that the purpose of holding enquiry against delinquent is not only with a view to establish charges levelled against him, but

also to establish truth of the matter which may either result in establishing or vindicating his stand. A fair action on the part of the authority concerned is of paramount importance. Learned Counsel therefore would contend that refusing the petitioner's request to adjourn cross examination and closing cross examination at the stage when the witness Shri Pednekar was about to reveal the truth has severally prejudiced the petitioner's case and this would have the effect of vitiating the enquiry.

13. Learned Counsel for the petitioner also relied upon the decision of the Division Bench of this Court dated **07/09/2009 in the case of Pandurang D. Dhumal Vs. Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay in Writ Petition 1445 of 1998** in similar circumstances, this Court had held that the sole witness not having stated that the documents which are produced are from the record regularly maintained by the Board renders the finding of the Enquiry Officer that the petitioner is guilty of misconduct alleged against him only on the basis of such documents cannot be sustained in the absence of the documents being proved. This Court had quashed the impugned order of dismissal and directed holding of fresh departmental

enquiry. Learned Counsel for the petitioner also invited our attention to a chart which was produced by him as regards the deposition and non- deposition of Shri Vijay Pednekar. Learned Counsel for the petitioner on the basis of the said chart tried to contend that no reliance can be placed on the evidence of Shri Pednekar and the same is not sufficient to hold the charges levelled against the petitioner as proved.

14. Learned Counsel for the respondents on the other had supported the findings of the Enquiry Officer. According to him, the evidence of Shri Pednekar and the documentary evidence on record are sufficient to sustain the findings recorded by the Enquiry Officer holding the charge of misconduct as proved. He invited our attention to the findings recorded by the Enquiry Officer. In his submission, adequate opportunity was given to the petitioner to cross examine Shri Pednekar. Learned Counsel invited our attention to the cross examination of witness Shri Pednekar. He pointed out that Shri Pednekar was cross examined on various dates. In his submission, the petitioner's representative had asked as many as 90 question to the witness Shri Pednekar and therefore, it cannot be said that the petitioner was not given adequate opportunity to cross examine him.

In these circumstances, the Enquiry Officer was justified in refusing the request of the petitioner to allow further cross examination of the witness and has rightly closed cross examination of witness Shri Pednekar. Learned Counsel further pointed out that most of the documents which the petitioner asked for were not connected with the enquiry. However the petitioner was asked to inspect all those documents required by him which were related to the enquiry. He invited our attention to the finding of the Enquiry Officer that copies of all documents pertaining to the enquiry were given to the petitioner. The Enquiry Officer took into consideration the evidence of Shri Pednekar who has deposed that the petitioner was required to keep strict watch on income and expenditure and is required to check bank books to see entries made in the bank books are correct. It has come in evidence that during the financial years 1989-90, 1991-92 amounts of Rs.9,18,169.37 & Rs.9,45,865.12 respectively have been shown as wages paid. The witness has deposed that the petitioner was working as an Accountant and it was duty of the petitioner as an Accountant to keep watch on the finance of the Board. Learned Counsel invited our attention to the admissions made by the petitioner in his letter dated 02/08/1993 at Exh. 56. Learned Counsel for the respondents contended that the Enquiry Officer's findings are based on the material on record and it should not be easily interfered with by this Court in exercise of its extra ordinary writ jurisdiction under Article 226 of the Constitution of India. In his submission, the findings of the Enquiry Officer are supported by the materials on record, therefore, the same cannot be said to be perverse.

15. Learned Counsel relied upon the following decisions in support of his submissions.

i) State of A.P and ors Vs. S.Sree Rama Rao AIR 1963 Supreme Court 1723.

ii) Union of India & ors. Vs. Alok Kumar 2010(5) Supreme Court Cases 349.

iii) Mulin Sharma Vs. State of Assam & ors. 2016 (6) JT 467.

iv) Union of India and ors. Vs. P. Gunasekaran (2015) 2 Supreme Court Cases 610.

v) Tripathi K.L. Vs. State Bank of India and ors. 1984 (1) Supreme Court Cases 43

15. We have considered the submissions of learned Counsel

at length. With the assistance of the learned Counsel, we have also gone through the Enquiry Officer's report and the material portion of the evidence of the witness Shri Pednekar to which learned Counsel invited our attention. Insofar as the contention of the petitioner that charge-sheet is vague, we find that the petitioner has participated in the enquiry and defended the charges levelled against him. We find that the charges are specific and not at all ambiguous. The petitioner was well aware of the charges that he was required to meet and has accordingly defended himself. We therefore do not find any merit in the submission of the learned Counsel for the petitioner that charge-sheet is vague and ambiguous.

16. We further find that the petitioner has cross examined the witness Shri Pednekar at length. The Enquiry Officer has recorded the finding that most of the documents demanded were supplied to the petitioner and inspection of those documents which are material to the enquiry was given to him. Even other wise we find that the findings of the Enquiry Officer are based on the materials which are there on record and on the basis of deposition of witness Shri Pednekar. In this view of the matter, we do not find any merit in the contention of the petitioner that enquiry is vitiated on the ground of non-supply of some of the documents. In any event,

we find no prejudice is caused to the petitioner on account of non-supply of some of the documents.

17. It is also pertinent to note that the Enquiry Officer took into consideration the fact that the defence representative of the petitioner had put as much as 90 questions to the witness Shri Pednekar in cross examination. The witness has been cross examined at length. In these circumstances, if the Enquiry Officer was of the view that the cross of the witness is required to be closed by refusing the application for adjournment made on behalf of the petitioner, no prejudice can be said to have been caused to the petitioner It is also pertinent to note that the Enquiry Officer in his report has considered the aspect that almost 90 questions were asked in cross examination out of which not more than 5 questions pertained to the enquiry. The Enquiry Officer in his report has given reasons why he closed cross examination. Even on the adjourned date, the Enquiry Officer called upon the petitioner to cross examine managements witness in the absence of the defence representative after taking into consideration the petitioner's vast knowledge of Labour Law. In our opinion, the petitioner has been granted adequate and ample opportunity to cross examine the witness in the facts of the present case.

18. The Enquiry Officer has also found that various documents filed by the management representative from time to time were shown by the management representative to the witness as and when he put question to the witness during his cross examination. After taking into consideration the deposition of Shri Pednekar he has arrived at a finding that it is the job of an Accountant to keep a strict watch on the income and expenditure and that he is required to take bank books with a view to seeing that entries made in the pass books are correct. It has come in his evidence that during the financial years 1989-90, 1991-92, amounts of Rs.918169.37 & Rs.945865.12 has been paid more than wages actually to be paid. It has also come in his evidence that statutory auditor audits the accounts of the Board and submits its report to the Board and copy thereof to the government. The audit report for the year 1991-92 was submitted by M/s.S.D.Gunjal and Company Auditors to the Government but they failed to submit the audit report to the board. However, the audit report sent by them to the Government and copy thereof obtained from them shows that reports were different. The Government auditors take the help of the Board's Accountant while preparing profit and loss accounts and annual reports which are duly signed by the Accountant and Secretary and the Chairman of the

Board and only thereafter the statutory auditors put their signatures thereon. The witness deposed that any discrepancy if found in the auditors report, it is the duty of the Accountant to bring it to the notice of the auditor. The audit report for the year 1991-92 submitted to the Government shows the total expenditure during the year was Rs.13,97,10,702.29 while copy of the said report sent to the Board shows the expenditure of Rs.12,84,97,734.76. Thus, there is difference of Rs.1,12,12,967.53 and the petitioner has put his signature on both abovementioned reports.

19. Shri Pednekear has further deposed that Exh.72 are summary sheets of one Shri Davkave. The same have been signed by Shri Yewale, the petitioner and Shri Hadkar who was the then Secretary of the Board. In these summary sheets, Rs.2,00,000/- more has been shown as gross pay. So also the summary sheet of Shri N.D.Nashikkar shows Rs.2,00,000/- more as gross pay. Even summary sheet at Exh.74 which is signed by the petitioner shows more gross pay. Thus Exhibits 72 to 75 indicate that Rs.9,00,000/- have been shown more as gross pay. All these aspects have been taken into consideration by the Enquiry Officer while recording his findings. The Enquiry Officer has also recorded discrepancies which

are credited into the Board's account and thus, credited into the Bank. The finding indicates that amount of Rs.1,25,000/- has not been credited into the said Bank, which finding is based taking into consideration Exhibits 78 & 80. Upon consideration of the material on record, the Enquiry Officer has observed thus :

> "It would appear from the various irregularities committed by the C.S.E that wages etc. shown in the documents 1 to 28 mentioned hereinabove are in excess of net wage. Had the C.S.E. been alert, and wedded to the duties assigned to him, he could have very well avoided the payments made to the Mathadis.
>
> Mr.Chandane has in this letter dated 02/08/1973 (Exh.56) admitted that various irregularities made in the accounts for the year 1991-92 have been made with the connivance of Mr.Yevale and some other employees. He has also admitted that the annual reports for 1991-92 submitted by the Auditors to the Govt. and the Board were different, which fact was known to him but he preferred to remain silent which proves that he was very much involved in the same.
>
> All the charges alleged by the Management against the C.S.E. have been proved to the hilt as the C.S.E has been entirely responsible for the misappropriation of the Board's funds, and as such I find the C.S.E guilty of all the charges against him. Had he been prompt, misappropriation would have been easily avoided, but he failed in his duty miserably. The Board may now proceed to take such further action against the delinquent as it may deem fit and proper."

20. From what is observed by the Enquiry Officer, it is apart from that letter dated 02/08/1993 - Exhibit 56, the petitioner has admitted the various irregularities made in accounts in the year 1991-92 which have been made with connivance of Mr.Yewale, himself and some other employee. The petitioner has also admitted

that annual reports for the year 1991-92 submitted by the auditors to the Government and the Board were different which fact was known to him but he preferred to remain silent which proves his involvement in the incident. The Enquiry Officer has recorded a finding that had the petitioner been prompt and diligent, misappropriation would have been easily avoided, but petitioner failed in his duty.

21. The scope of interference by this Court in disciplinary matters is well settled by various decisions of the Apex Court as well as this Court. Learned Counsel for the respondents has already relied upon some of the decisions which we have cited hereinbefore. We find that the Enquiry Officer has on the basis of the materials on record and deposition of the witness Shri Pednekar has arrived at the finding of fact that charges levelled against the petitioner has been proved. The petitioner was working as an Accountant. The charges levelled against him are of serious nature. We do not find that punishment of dismissal for the proved charges is in any manner disproportionate or excessive. Based on the materials on record, the Enquiry Officer has come to the conclusion that charges against the petitioner are proved. In our opinion, ample opportunity has been

given to the petitioner to defend himself during the course of enquiry. We do not find that the enquiry has been conducted in breach of principles of natural justice. We are also of the opinion that the findings recorded by the Enquiry Officer which is based on the documents available on record and the deposition of Shri Pednekar cannot be perverse or irrational so as to warrant any interference in exercise of our extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

22. In this view of the matter, we do not find any merit in this Petition. Writ Petition is therefore dismissed with no order as to costs.

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