

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9366 of 2001

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Shri Shamsheer Singh son of Sri Bali Ram Singh, resident of Mohalla-Yarpur, P.S.
Gardanibagh, District-Patna

.... Petitioner/s

Versus

1. The State Bank of India, through its Chairman, having its Central Office at Madam Cama Road, Mumbai
2. Chief General Manager, State Bank of India, (Appellate Authority), Local Head Office, Judges Court, Patna
3. The General Manager (D & P.B.), Local Road Office, Judges Court Road, Patna
4. The Dy. General Manager, State Bank of India, Zonal Office, Patna
5. Sri B.P. Singh, Chief Manager, State Bank of India, (Enquiry Officer), Chamber Bhawan, Bankipore, Patna
6. The Dy. Managing Director and C.D.O. State Bank of India, Central Office Nariman Point, Back-bay Rickla-notion Madam Cama Road, Mumbai
7. Reviewing Committee, through the Chief General Manager Personnel and H.R.D., Mumbai

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. A.B. Ohja, Sr. Advocate
Mr. Awadhesh Kumar Mishra
Mr. Deo Nath Prasad
Mr. Arun Kumar Jha
Mr. Praveen Kumar
Mr. Ajay Kumar

For the S.B.I. : Mr. Kaushindra Kumar Sinha
Mr. Anjani Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 31-08-2018

The present writ petition has been filed for quashing the order of punishment dated 23.11.1998, whereby and where under the punishment of dismissal from service has been inflicted upon the petitioner herein. The petitioner has further prayed for quashing of the appellate order dated 01.07.1999. The order passed in review



dated 21.05.2001 has also been assailed.

The brief facts of the case are that the petitioner was initially appointed as a Cashier in the State Bank of India and had joined his first assignment in the year 1971 whereafter he continued to work to the satisfaction of all concerned. Subsequently, an FIR bearing Shri Krishna Puri P.S. Case No. 110 of 1992 was lodged against the petitioner and then he was suspended by an order dated 29.05.1992. Thereafter, the petitioner was acquitted in the said criminal case by a judgment dated 05.03.1997 passed by the learned Judicial Magistrate-1st Class, Patna. However, in the meantime, a departmental proceeding was initiated against the petitioner herein and the petitioner was served with a charge sheet dated 12.07.1995 on the allegation of committing fraud while being posted as a Passing Officer in the P.B. Division of Shri Krishna Puri Branch. It was further alleged that five leaves of a cheque book, received by the petitioner, was misused by the petitioner for the purposes of fraudulent withdrawal from the account of the depositors and the petitioner had passed vouchers for payment exceeding the passing power of Rs. 25,000/- vested with him apart from the petitioner having engaged in other irregularities. Lastly, it was alleged that the petitioner had failed to serve the bank with utmost integrity, honesty, devotion and diligence much against Rule 32(4) of the



State Bank of India (Supervising Staff) Service Rules, as retained in Rule 50(4) of the said Rules. The petitioner had submitted his reply and had also prayed for dropping the said departmental proceeding in view of the fact that no charges were made out. The departmental enquiry had then continued against the petitioner and an enquiry report was submitted by the Enquiry Officer dated 23.03.1998, whereby and where under all the allegations levelled against the petitioner were found to have been conclusively proved. A second show cause notice dated 03.04.1998 was issued to the petitioner herein enclosing a copy of the enquiry report and asking the petitioner to submit his reply and representation on the finding of the Enquiry Officer. Thereafter, the disciplinary authority by the impugned order dated 23.11.1998 found the charges to have been conclusively proved as against the petitioner herein, hence imposed the punishment of dismissal from service qua the petitioner herein. The petitioner had then filed an appeal which was also dismissed by an order dated 01.07.1999 and thereafter the review of the petitioner was also dismissed by an order dated 21.05.2001.

The learned senior counsel for the petitioner has submitted that the criminal proceedings and the departmental proceedings were instituted on same and similar facts and the same set of evidence has been led in both the proceedings, however, the



petitioner has been acquitted in the criminal case, hence he should be granted benefit in the disciplinary proceedings, as such the order of dismissal dated 23.11.1998 is fit to be set aside. In this regard, the learned senior counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in ***A.I.R. 2007 SC (suppl.) 1361 (Management, Pandiyan Roadways Corp. Ltd. vs. N. Balakrishnan)***, and the one reported in ***(2006) 5 SC 446 (G.M. Tank vs. State of Gujarat)***, paragraph no. 30 whereof is reproduced herein below:-

“30.The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”



In nutshell, the submission of the learned senior counsel for the petitioner is that since the Hon'ble Apex Court has held, in the aforesaid case, that in cases where departmental proceedings and the criminal case are based on identical and similar set of facts and charge in a departmental case against the appellant and the charge before the criminal court are one and the same, acquittal in the criminal proceedings would result in quashing of the departmental proceedings.

Per contra, the learned counsel for the Bank has referred to a judgment of the Hon'ble Apex Court reported in **(2012) XIII SCC 142 (Avinash Sadashiv Bhosale vs. Union of India & ors.)**, paragraph nos. 47, 48, 49, 50, 51, 55, 56, 57, 58, 59, 60 and 61 wherof are reproduced herein below:-

“47. Having noticed the aforesaid observations, the Court proceeded to distinguish the same with the following observations:-

“The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same.”

48. These observations are of no assistance to the appellant as the charges against him in the criminal trial were with regard to the commission of offences under [Section 120\(B\)](#), [420](#), [467](#), [468](#), [471](#) and [201](#) of IPC. In the



departmental proceedings, the appellant has been punished on the basis of the findings that he failed to discharge his duties with utmost integrity, honesty, devotion and diligence. It was found that he had violated Rule 50(4) of the 1992 Rules. In our opinion, it would be the ratio of law laid down in the cases of Ajit Kumar Nag (supra) and Depot Manager, A.P. State Road Transport Corporation (supra) that would be applicable in the facts and circumstances of this case.

49. *In Union of India & Ors. Vs. Naman Singh Shekhawat, on facts, the whole departmental proceedings were held to be vitiated by bias. It was a case where the offences of the disciplinary authority were held to be based on no evidence. It was also a case where no witness was examined to prove the allegations against the respondent Shekhawat. It was a case in which the only witness examined on behalf of the disciplinary authority was the jeep driver, MS who at the material time was accompanying the respondent. Even this witness did not support the Department's case yet the departmental authorities held the charges against the respondent as proved. Besides, it was also found that the respondent had not been allowed services of a defence assistant of his choice. He was also not allowed to produce defence witness J. In paragraph 27 of the judgment, this Court observed that:*

"The bias on the part of the inquiry officer is explicit from the record. Why the inquiry officer cross-examined the respondent is beyond anybody's comprehension. He was not the prosecutor. A presenting officer had been appointed. The inquiry officer could not have taken over the job of the presenting officer, particularly when he was a superior officer."

In our opinion, there is no parallel in the facts and circumstances of the aforesaid case and the present case.

50. *In Capt M. Paul Anthony's case (supra), this Court reiterated the well established principle of law that proceedings in a criminal case and the departmental proceedings can proceed simultaneously. It was emphasised that the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. The observations made in paragraph 13 which are relevant in the facts of this case are as under:-*

"As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal



case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

51. *In our opinion, the facts of this case do not fall within the little exception culled out by this Court. The departmental proceedings herein and the criminal case are not grounded upon the same set of facts and the evidence. As noticed by the disciplinary authority as well as the appellate authority, the departmental proceedings related to honesty, integrity and devotion of the appellant as a very high ranking bank officer. On the basis of the evidence led before the enquiry officer, it was held that the appellant had failed to maintain the utmost integrity which is required for a bank officer.*
55. *In view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued simultaneously. As pointed out by Mr. Dwivedi, the charges against the appellant in the criminal trial related to the commission of criminal offences under [Sections 120\(B\), 420, 467, 468, 471 and 201](#) of Indian Penal Code. The proof of criminal charges was depended upon prosecution producing proof beyond reasonable doubt relating to the culpability of the appellant alongwith other persons. In the departmental proceedings, the basic charge was that appellant whilst posted as a Branch Manager of Washi Turbhe Branch, failed to discharge his duties with utmost integrity, honesty, devotion and diligence to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer. The aforesaid charge clearly related to the manner in which the appellant performed the duties as the Manager of the Branch of the Bank. It had nothing to do with any criminal liability attaching to such conduct.*
56. *It must be emphasised that Bank officials act as trustees of funds deposited by the public with the Bank. They have an obligation to earn the trust and confidence of not only the account holders but also the general public. The standard of*



integrity required of the Bank officials, particularly the cashiers, accountants, auditors and the Management at all levels, is like the Caesar's wife, they must be above suspicion. Mr. Bhosale failed to maintain such high standards of integrity. He therefore, acted in violation of Rule 50(4) of the 1992 Rules. We, therefore, do not find any merit in the aforesaid submissions of Mr. Jain.

57. *Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence.*
58. *It is a settled proposition of law that the findings of Inquiry Officer cannot be nullified so long as there is some relevant evidence in support of the conclusions recorded by the Inquiry Officer. In the present case, all the relevant documents were produced in the Inquiry to establish the charges levelled against the appellant. It is a matter of record that the appellant did not doubt the authenticity of the documents produced by the Bank. He merely stated that the signature on the documents were not his. The aforesaid statement of the appellant was nullified by Mr. S.M. Mahadik, who appeared as a witness for the Bank. He clearly stated that he recognized the signature of the appellant as he had been working as his subordinate.*
59. *The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings.*
60. *We also do not find any merit in the submissions made by Mr. Jain that the order by the Disciplinary Authority is vitiated by non- application of mind. The extracts reproduced above would clearly indicate that the Disciplinary Authority was*



alive to all the submissions made by the appellant. The Disciplinary Authority had taken into consideration all the relevant material and only then concluded that the charges have been duly proved against the appellant. Furthermore, it is a matter of record that the appellant was duly supplied a copy of the Inquiry Report and he had submitted detailed objections to the same. These objections were placed before the Disciplinary Authority together with the Inquiry Report. Therefore, the appellant can not possibly claim that there has been a breach of rule of natural justice.

61. Similarly, the Appellate Authority has also given cogent reasons in support of its conclusion. This is also apparent from the extract of the order of the Appellate Authority reproduced above.”

In nutshell, the argument of the learned counsel for the Bank is that since in the present case the charges in the criminal case and those in the disciplinary proceedings are different inasmuch as in the departmental proceeding the petitioner has been punished on the basis of the findings that he failed to discharge his duties with utmost integrity, honesty, devotion and diligence and had violated Rule 50(4) of the State Bank of India Officers Service Rules, the aforesaid judgment rendered by the Hon'ble Apex Court in the case of G.M. Tank (supra) is of no benefit to the petitioner herein. It is further submitted that the departmental proceeding and the criminal case, as far as the present case is concerned, are not based on similar charges and one of the charge in the departmental proceeding is that the petitioner has failed to serve the Bank with utmost integrity, honesty, devotion and diligence against the Rule 32(4) of the Service Rules as retained in Rule 50(4) of the said Rules, whereas the said charge was not there in the criminal



proceedings and moreover the said charge has been found to have been conclusively proved in the departmental proceeding for which the punishment of dismissal has been inflicted upon the petitioner herein, hence, no benefit can be derived by the petitioner in the departmental proceedings from his acquittal in the criminal case. It is lastly submitted that the petitioner, in the criminal case has already conceded that in case the petitioner is acquitted from the criminal case, the same would not result in his discharge from civil liability and for negligence committed in carrying out his duties, hence now the petitioner cannot be heard to take the advantage of acquittal in criminal proceedings, based on the fact that the allegations/charges have not been proved beyond doubt.

I have heard the learned counsel for the parties and gone through the materials on record and I find that the charges in the disciplinary proceedings as well as those in the criminal proceedings are not same and similar inasmuch as an additional charge has been levelled against the petitioner in the disciplinary proceedings, which is reproduced herein below:-

“2. You have thus allegedly failed to serve the Bank with utmost integrity, honest, devotion and diligence much against Rule 32(4) of State Bank of India (Supervising Staff) Service Rules as retained in Rule 50(4) of the State Bank of India Officers Service Rules.”

In fact the aforesaid additional charge levelled against the petitioner in the disciplinary proceedings has also been found to



have been conclusively proved as is apparent from the enquiry report dated 23.03.1998 and the impugned order of punishment dated 23.11.1998 and for the said reasons, the order of punishment of dismissal has been inflicted upon the petitioner herein.

Having regard to the facts and circumstances of the case, I am of the opinion that the judgment rendered by the Hon'ble Apex Court in the G.M. Tank case (supra) is of no help to the petitioner herein. However, the present case is squarely covered by the judgment of the Hon'ble Apex Court rendered in the case of Avinash Sadashiv Bhosale (supra), hence the ground urged by the learned senior counsel for the petitioner to assail the impugned order of punishment dated 23.11.1998 as also the appellate order and the review order as well as the disciplinary proceedings, to the effect that since the petitioner has been acquitted in the criminal case, the departmental proceedings cannot stand and are fit to be quashed, is not tenable in the eyes of law, as discussed herein above, thus there is no merit in the present writ petition.

In any view of the matter, even on merits, the petitioner has got no case since the charges levelled against the petitioner have been conclusively proved as is apparent from the enquiry report dated 23.03.1998 and no procedural irregularity has been pointed out by the learned senior counsel for the petitioner as far as the conduct



of the disciplinary proceeding is concerned. In fact no fault can be found with the impugned orders of punishment dated 23.11.1998, appellate order dated 01.07.1999 and order on review petition dated 21.05.2001, which are well reasoned and have been passed in accordance with law.

For the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

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