

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.4981 OF 2012**

J.N.Divya S/o Panchram Divya Aged About 54 Years Vill. Pendri (Sahas),
Post And P.S. Sargaon, Tahsil Pathariya, Dist. Mungeli, Chhattisgarh.

...Petitioner(s)

Versus

1. Chhattisgarh Gramin Bank Through The Chairman, Head Office, 15, Recreation Road, Choubey Colony, Raipur C.G., Chhattisgarh
2. Regional Manager Chhattisgarh Gramin Bank Vyapar Viah Road, Bilaspur, Chhattisgarh.
3. The Disciplinary Authority, Chhattisgarh Gramin Bank Head Office, 15 Recreation Road Choubey Colony Raipur, Chhattisgarh

... Respondent(s)

For Petitioner	:	Shri Prafull Bharat, Advocate.
For Respondents	:	Shri B.D. Guru, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26.10.2018

1. Challenge in this petition is to the order of punishment dated 01.09.2011 passed by the Administrative Officer of the respondent Bank terminating the services of the petitioner. Challenge is also to the order dated 20.03.2012 whereby the departmental appeal preferred by the petitioner has been rejected.
2. Brief facts of the case is that the petitioner was appointed with the respondent Bank as Cashier-cum-Clerk and in due course of time he got promoted on the post of Officer Scale-I. While working on the post of Officer Scale-I, the petitioner was served with charge sheet on 06.08.1993 alleging major misconduct of committing irregularities in releasing the loan to the villagers under the Integrated Rural Development Programme (in short, IRDP). Thereafter, the petitioner submitted a detailed reply and the reply being found unsatisfactory, the authorities ordered for holding departmental enquiry. After conducting departmental enquiry, the enquiry officer submitted a report holding that the charges levelled against the petitioner stand proved. Based on the enquiry report, the impugned order of

termination was passed and thereafter the appeal preferred also stood rejected leading to filing of present writ petition.

3. Challenge in this petition by the petitioner is on more than one grounds. The foremost contention of the petitioner is that the charges levelled against the petitioner was defective in as much as the charge sheet did not reflect the list of witnesses and list of documents which the respondents intended to rely upon against the petitioner. It was also the contention of the petitioner that even the entire enquiry proceedings initiated by the respondents is vitiated on account of utter violation of basic principles of natural justice inasmuch as the petitioner has not been granted sufficient opportunity to defend his case all along and the respondents particularly the enquiry officer had been conducting himself in a predetermined manner to implicate the petitioner in the case.
4. It was also contended that during the course of conducting departmental enquiry also the petitioner was not served with the documents which they have relied upon during the course of enquiry. Even the documents which have been relied upon by the respondent Bank were not proved before the enquiry officer by producing original and it was only attested by producing the photocopy of the records of the Bank. Therefore, it cannot be said that the documents have been properly proved before the enquiry officer. He further submits that the petitioner had moved an application for taking defence assistance which at the first instance was rejected and which was permitted to him only at the intervention of High Court in Writ Petition No.1565 of 1998 decided on 23.04.1998.
5. It was further contended that even during the course of enquiry the petitioner had move an application for getting the document particularly the signatures and other incriminating documents examined from a handwriting expert which too initially was rejected by the enquiry officer, however, the petitioner again had to approach the High Court vide WP No. 15 of 2000

which stood decided on 06.08.2002 wherein the Bank authorities have agreed to permit the documents to be examined by a handwriting expert. However, when the handwriting expert sought for the documents to be provided for her expert opinion, the same was refused by the enquiry officer. The handwriting expert was called for obtaining document before the enquiry officer. On the date when she was called for, she had to attend a court case in a different case as a witness and therefore she had made a request through the delinquent employee for adjournment for another date which was refused by the enquiry officer. This action, according to the petitioner, would establish that the petitioner has not been granted ample opportunity to defend his case.

6. This action was also challenged in WP No.2438 of 2002 and where the court had also granted stay of the enquiry proceedings on 03.01.2003 and the writ petition was finally dismissed as withdrawn on 06.11.2003.
7. It was also the contention of the petitioner that the order of termination is also bad in law for the reason that the petitioner was not provided with the enquiry report as was required while issuing with the second show cause notice and therefore also the petitioner could not effectively give reply to the second show cause notice and only on the ground of non providing of the enquiry report the termination order gets nullified.
8. It was lastly contended by the petitioner that to hold that the petitioner has not committed any misconduct, he has an order of criminal court in his favour inasmuch as for the same set of allegations the respondents Bank had lodged an FIR against the petitioner and a criminal case was lodged against him before the Judicial Magistrate First Class, Simga in Criminal case No.1037 of 2007 (renumbered case). The Magistrate vide its judgment dated 09.02.2017 has honorably acquitted the petitioner of these very charges. Therefore, the counsel for the petitioner submits that on the one hand there is honorable acquittal in his favour from a judicial forum and on

the other hand there is an order of termination based on erroneous/illegal enquiry and therefore the termination order is bad in law and the same deserves to be set aside.

9. The counsel for the respondents Bank on the contrary submits that the contentions raised by the petitioner is not sustainable for the reason that in the charge sheet itself it was mentioned that the petitioner has the liberty of perusal of the records that he wants so far as the allegations are concerned and for which he was free to inspect those records visiting the concerned Branch. It was further contended that the mere fact that list of witnesses and list of documents having not been supported with the charge sheet by itself would not vitiate the enquiry for the reason that no substantial prejudice has been caused to the interest of the petitioner. It was further contention of the respondents that the record would show that original charge sheet was issued to the petitioner in the year, 1993 and the enquiry report was submitted by the enquiry officer on 30.12.2002 that means the departmental enquiry went on for about 8-9 years. Therefore, it cannot be said that the enquiry was conducted in haste.
10. So far as handwriting expert is concerned, the contention of the respondents was that the handwriting expert was granted opportunity to appear before the enquiry officer, but she did not appear and therefore the authorities had no option but to proceed further with the enquiry proceedings. Therefore, there is no scope for interference in the present case as the order of punishment has been passed after detailed departmental enquiry which was conducted and prayed for the dismissal of the writ petition.
11. Having heard the contentions put forth on either side and on perusal of records, particularly the documents relating to the departmental enquiry, some admitted factual position as it stands is that, the charge sheet has been issued without the list of witnesses or list of documents. One can

understand that list of document in departmental enquiry particularly the institution being a Bank could not have been provided by the Banks taking into consideration the nature of document. However, so far as list of witnesses are concerned, it is definitely a right which accrues in favour of the delinquent employee to know as to who are the witnesses appearing on behalf of the Bank to prove the allegations levelled against him. The petitioner or the delinquent could not have been taken by surprise by producing witnesses one by one before the enquiry officer without giving the delinquent employee the list of witnesses in advance so as to enable him to be prepared for a proper cross examination. So far as the documents which are being relied upon even if this document are not provided along with the charge sheet, but the petitioner has a right to know about the contents of the documents which would be relied upon by the respondent Bank in the enquiry proceeding, if not the copy of documents, the respondents should have definitely provided the list of documents which they intend to rely during the enquiry proceedings.

- 12.** This also could have been provided by the Respondent in compliance of the basic principles of natural justice. The employee cannot be taken aback by producing document which he was not aware of to be used against him in the departmental enquiry. From the records it also appears that WP No. 15 of 2000 was disposed of on 06.08.2002 whereby it was agreed by the Bank permitting the handwriting expert to be provided with document for her expert opinion. The record would show that inspite of request being made by the petitioner as also by the handwriting expert, the document was not provided to handwriting expert for matching handwriting for an expert opinion.
- 13.** In the absence of opinion of the handwriting expert the interest of petitioner definitely stands substantially prejudiced. In the same way, the proceedings of the enquiry officer would show that the date on which the handwriting

expert was supposed to appear before the enquiry officer she could not come on date as on said date she had to appear as witness in one of the case before the court of JMFC and document in respect of her requirement before the JMFC was duly intimated to the enquiry officer and the delinquent employee had specifically sought time from the enquiry officer which was refused. This conduct of the enquiry officer also appears to be in contravention to the stand that they have taken in WP No.15 of 2000.

14. Further down, it also reveals that the entire enquiry and the documents which have been produced before the enquiry officer were all photocopies and it has not been proved or attested from the original. Therefore, it cannot be conclusively said to have been proved or exhibited.
15. Another major lapse which is reflected from the enquiry proceeding is that the delinquent employee has not been served with enquiry report while second show cause notice was issued. The enquiry report was furnished to the petitioner only on his request after the appellate authority also had decided his appeal. Law in this regard is also by now well settled right from the landmark judgment of Supreme Court in case of Union of India & Ors. Vs. Mohd. Ramjan Khan, 1991(1) SCC 588 and all other decisions reiterating the same view wherein it has been held that before inflicting punishment the delinquent employee has a right to be served with enquiry report so that he can make his submissions so far as lapses in the enquiry proceedings are concerned to the disciplinary authority. The order of termination on this ground alone is bad in law.
16. Given the aforesaid admitted facts of the case, this court is of the firm view that the enquiry appears to have not been done following the basic principles of natural justice inasmuch as firstly the petitioner was not provided with list of witnesses in advance neither was he provided with any list of documents. At the same time, the handwriting expert was permitted by the High Court to give an expert opinion on the writing in the documents

but the same was not provided and as such the handwriting opinion was not available to disprove the charges. Last but not the least, the enquiry report also was not furnished to the petitioner before the order of punishment was issued upon him.

17. For all the aforesaid reasons, this court is of the firm view that the impugned order of termination and the order of appellate authority so also the enquiry proceedings are bad in law and are not sustainable. The same deserve to be and are accordingly set aside/quashed.
18. Since the orders have been set aside on the ground that enquiry has not been properly conducted, the matter stands remitted back to the Bank authorities for proceeding further with the enquiry from the stage of initiation of the enquiry altogether afresh keeping in view the observations made by this court in the preceding paragraphs.
19. The writ petition accordingly stands allowed and disposed of.

Sd/-

(P. Sam Koshy
Judge)