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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4628 OF 2017

D. R. Dube	... Petitioner
vs.	
The General Manager	... Respondent
Dena Bank Department	

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Mr. Neel G. Helekar for the Petitioner.

Mr. Sudhir Talsania, Senior Advocate a/w. Mr. Sagar Seth and Mr. Aditya Bhat i/b.
M/s. Sanjay Udeshi & Co. for the Respondent.

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CORAM : A.K. MENON, J.

DATE : 27th MARCH, 2018

P.C.

1. By this Writ Petition the petitioner seeks to challenge the termination of the services by the respondent-bank where the petitioner was working as a Cashier-cum-clerk. The challenge is to two orders one dated 6th May, 2016 and the other dated 10th October, 2016 passed by the Central Government Industrial Tribunal (CGIT) in Reference no. 67 of 2003. In part- I of the award the CGIT vide its order dated 6th May, 2016 held that the enquiry against the workman was fair and proper and that the finding of the enquiry officer were not perverse. Subsequently in part- 2 of the award the CGIT considered whether the action of the Management of Dena Bank, Mumbai terminating the services of the petitioner was justified and if not what relief the workman was entitled to.

2. Mr. Helekar, learned Advocate appearing on behalf of the petitioner submitted that the petitioner was employed as a watchman of the bank since 5th May, 1975 and thereafter on account of his service record he was promoted to clerical cadre on 1st March, 1980. In the course of his services on 31st May, 1999 it is stated that the Manager of the respondent bank asked the petitioner to handover letter heads of the bank to one Mr. Pramod Sitaram Jaiswal and the petitioner carried out these instructions. Later it transpires that the said letter heads were misused by the said Mr. Jaiswal and loans were obtained on the strength of these fabricated letters as a result of which the petitioner was charge-sheeted and suspended.

3. Mr. Helekar, learned counsel for the petitioner submitted that even during the preliminary enquiry he was not allowed to represent his defence and the proceedings before the enquiry officer were conducted in English language with which he was not familiar and therefore he requested the enquiry officer to conduct the proceeding in Hindi which request was not granted. Mr. Helekar invited my attention to the proceedings before the enquiry officer which are reproduced at Exhibit-D. He pointed out that at the hearing held on 12th November, 1999 in response to a query whether he wished to be represented by a defence representative, he answered in the affirmative. However, he submitted that due to pre-occupation of union leaders none of them were in a position to appear as his defence representative and he sought time. Thereafter the enquiry proceeded on 26th November, 1999. He sought time, but at a later date conceded that the defence

representative had not come and he would defend himself. He believed he was in a position of disadvantage since he was not conversant with English, but nevertheless proceeded with the defence.

4. According to Mr. Helekar, the petitioner being unfamiliar with the english language could not fully grasp the contents of the record of the proceedings in the enquiry but he did sign the same. He contended that the finding that the enquiry was fair and proper was incorrect. He submitted that in the course of the enquiry, he disclosed to the enquiry officer that the letter heads were given to Mr. Jaiswal on the instructions of the Branch Manager and in his presence and that he was not aware that the letter heads would be misused. Despite such specific contentions the CGIT had ignored this aspect. There was no cross examination by the Management on this aspect. Mr. Helekar urged the petitioner was not responsible for the fraud. He submitted that the only reason for being charge-sheeted is that he had handed over the letter heads. There was no allegation that he had in any manner facilitated the fraud.

5. Mr. Helekar submitted the finding that the enquiry was not fair and proper and was vitiated. Referring to part-2 of the award Mr. Helekar submitted that the finding of loss of confidence in the petitioner recorded by the enquiry officer was incorrect and the enquiry officer's conclusion that the punishment meted out was not shockingly disproportionate is also vitiated. He therefore submitted that the petitioner was entitled to be reinstated with full back wages and continuity of services apart from claiming compensation.

6. In support of his contention he relied upon decision of this Court under Bombay Industrial Relations Act wherein he relied upon observation of the Supreme Court in the case of *Babulal Nagar and Ors. vs. Shree Synthetics Ltd. And ors, [1984 (supp) [SCC 128]* which were quoted in the case of *Devraj Chandrabali Rai vs. National Textile Corporation (S.M.)Ltd. Mumbai and Anr [WP 5180 of 1996 BHC]* to contend that the Labour Court will have jurisdiction to examine the legality as also the propriety of the order and will permit the Labour Court to come to a conclusion different from the one employer arrived at. Though the Labour Court had gone wrong, it was open for the Industrial Court to correct the same in Revision. The Industrial Court failed to exercise its jurisdiction.

7. On behalf of the respondent-Bank Mr. Talsania submitted that the petitioner has clearly admitted that he had handed over banks letter heads to an outsider which was clearly not within the scope of his duties, even assuming he had done so on instructions of the Bank Manager. He submitted that the challenge to the enquiry proceeding was baseless and there was sufficient material to chargesheet the petitioner. Furthermore on 26th November, 1999 the petitioner agreed to defend himself, since defence representative had not come. Meanwhile, in the course of police investigation, Mr. Jaiswal had admitted that blank letter heads of the Gol Deval Branch were given to him by the petitioner. The enquiry had revealed that the account opening form of M/s. Om Sai Shobha (a firm owned by Mr. Jaiswal) was also signed by the petitioner, having introduced the account holder to the Branch. Mr. Talsania also invited my attention to the fact that in the course

of the enquiry the enquiry officer asked the petitioner whether he wished to bring any document or witness in his defence or whether he wishes to make any clarification in his defence to which the petitioner answered that he did not. Mr. Talsania therefore submitted that action had been taken against petitioner and the then Manager of the respondent-bank one Mr. Ingle who had been discharged from services pursuant to the enquiry. Mr. Talsania therefore submitted there was no merit in the challenge and the petition ought not to be entertained.

8. I have heard the learned counsel for the parties at length and perused record. It is evident that the petitioner has admitted his part in handing over the blank letter heads. It is also admitted position that in the course of preliminary enquiry he had mentioned the fact that the letter heads were handed to Mr. Jaiswal on the instructions of the Bank Manager. This fact has been taken into consideration by the enquiry Officer and the CGIT. In this background it was always open to the petitioner to lead appropriate evidence and summoned of Mr. Ingle, the Branch manager as a witness in order to establish his defence that he had no role to play and that he had simply handed over the blank letter heads on instruction of the Bank Manager. The record indicates that the petitioner pleaded innocence and had handed over the letter heads to Mr. Jaiswal only on the instructions of the Branch Manager. To establish this it was necessary to bring out this fact in evidence inter alia by summoning the then Branch Manager in support of his case. The petitioner's contention that he was unfamiliar with english language and therefore unaware of the proceeding cannot be accepted inasmuch as the proceeding began

on 12th November, 1999 when he sought to be defended by a defence representative. However the proceeding had continued on 18th November, 1999 when he submitted that due to pre-occupation of the union leaders he has not been able to bring his defence representative and he sought a week's time. At his request enquiry was adjourned to 26th November, 1999 on the basis of his statement that he will bring his defence witness definitely on the adjourned date. Accordingly, the minutes of the enquiry reveal that on 18th November, 1999 the matter was adjourned and fixed for 26th November, 1999 at the request of the parties and it was clarified that no adjournment would be given to the petitioner on the ground of non availability of his defence representative. On 26th November, 1999 once again the defence representative did not attend and at this stage the petitioner of his own volition stated that he would defend the proceedings.

9. In the course of the enquiry, as recorded in the proceeding dated 26th November, 1999, the management witness deposed that he came to learn that a particular account was in the name of M/s. Om Sai Shobha but the contact number was not available in the record of the Bank. The witness was informed that the account was introduced by the petitioner who was a clerk at the branch and thereafter was transferred to the regional office. When the petitioner was attending at the said branch office for personal work the witness called him and asked him whether he knew the account holder Om Sai Shobha and whether he had the telephone number. The petitioner answered in the affirmative and he promptly telephoned said Mr. Jaiswal who reached the branch within few minutes upon

which the petitioner introduced him to the management witness. Therefore Mr. Jaiswal and the petitioner were well known to each other which is an important factor to consider the gravity of the misconduct. The attempt of the petitioner to shift the burden to the branch Manager would not relieve all the charges of misconduct against the petitioner. The impugned orders in my view are neither perverse nor illegal. The case of the respondent has been considered at length and the conclusion reached is not without sufficient material. In the circumstances, I find no reason to interfere with the impugned orders. Accordingly, I pass the following order :

- (i) Writ Petition dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)