

Respondent, during the period from 8 March 1975 to 11 July 1988, he misused his position as an employee of the Bank by deriving pecuniary benefit for himself through a loan allowed to one Shri Bala Namdeo Wayal of Rs.6,400/- on 28 October 1983 for purchase of oil engine and (ii) he also issued 'No Due Certificate' in favour of Bank of Baroda on 21 June 1990 in the name of Bala Namdeo Wayal, though there was a debit balance on that date in the loan account of the latter in the sum of Rs.8,769.84. A department enquiry was conducted in pursuance of the charge-sheet. The Enquiry Officer held the Petitioner to be guilty of the charges. The Petitioner was, thereafter, discharged from service by the Respondent-bank. The discharge was challenged by him. The challenge resulted into a reference made by the Central Government to the tribunal. The tribunal in its impugned order held that the enquiry was conducted in a fair and proper manner; there was no violation of principles of natural justice or prejudice to the workman concerned; and there was sufficient evidence before the enquiry officer to conclude that the two charges levelled against him were sufficiently proved.

3 Though there is nothing on record to indicate that the departmental enquiry conducted against the Petitioner was in any way vitiated or improper, the conclusion drawn by the enquiry officer and accepted by the Court, namely, that there was sufficient evidence in proof of the two charges referred to above, is clearly perverse. In support of the charge that the workman, whilst in service with the bank, took a loan for himself through another individual, namely, Bala Namdeo Wayal, there is practically no evidence. The charge has been levied on the basis of a complaint made to the bank by Bala Namdeo Wayal, who is admittedly a

relation of the Petitioner workman. This complaint appears to have been made by Bala about eight years after the loan was taken and two months after the loan was fully repaid and the account was closed. Bala was never examined either before the Enquiry Officer or before the Court. The only evidence worth the name in relation to this charge was a signature purportedly made by the Petitioner on the invoice of the oil engine purchased by Bala acknowledging delivery of the engine. There is, in the first place, nothing on record to show that the signature on this invoice was of the Petitioner. The so called proof of the signature is said to be by the management's own witness by comparing two signatures. This is strange, to say the least. Comparison of signatures can only come from the court under Section 76 of the Evidence Act or analogous principles. A witness of the opponent cannot, without being an expert, compare the signatures, form an opinion and submit such opinion as proof. (In the impugned award the tribunal seems to have proceeded on the footing that it is an admitted position that the delivery of the engine was taken by the workman under his signature. There is nothing to indicate on what basis this observation has been made in the impugned award.)

4 In the premises, this charge is held to be proved practically only on the basis of a complaint purportedly made by Bala Namdeo Wayal and an unproved purported signature of the Petitioner on a certain invoice. That the charge is proved on the basis of this evidence is clearly a conclusion that no reasonable person instructed in law could have arrived at.

5 Ditto for the second charge. This charge concerning 'no due certificate' purportedly issued by the Petitioner in the name of Bala

Namdeo Wayal in favour of Bank of Baroda is said to be proved because “the only person who was going to be benefited was the workman, who managed to get this certificate issued so that Bala Namdeo Wayal may avail loan facility from Bank of Baroda.” The reasoning is beyond comprehension. How on earth was the workman going to be benefited by such certificate is beyond this Court. Besides, the Industrial Tribunal has itself accepted in the impugned order that the workman was not posted at relevant time in the concerned branch, but was transferred to another branch. Yet, on the strange ground that he would be the only person who would have benefited by issuance of this certificate, this charge is said to have been brought home.

6 In sum, though there is nothing wrong to be found with the conduct of the enquiry as such, the conclusion is patently perverse and cannot be sustained in any view of the matter.

7 Learned Counsel for the Respondent-bank, however, submits that if a conclusion drawn by the Enquiry Officer is to be found perverse and yet accepted by a Labour court or tribunal, the impugned order may be set aside but the matter may still have to be remanded to the court or the tribunal, as the case may be, so as to allow the management to prove the charge by leading of evidence. Learned Counsel submits that appropriate leave in this behalf was sought by the management here in its written statement. Learned Counsel relies on the judgment of the Supreme Court in the case of **Bharat Forge Company Ltd. Vs. A.B. Zodge**¹, and of a Division Bench of our Court in the case of **Vinod V. Wani Vs. Permanent**

1 1996 II CLR 345

Magnets Ltd² and a single Judge of our Court in the case of **Maharashtra State Road Transport Corporation Vs. Nilkanth Tukaram Koli³** in support of his submissions. As explained by the Supreme Court, in **Bharat Forge Company's** case, a domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of such vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both cases is well recognised. Relying on this decision, a division bench of our Court in the case of **Vinod V. Vani** held as follows :

21. The first stage of the enquiry before the Labour Court ended by holding that the enquiry was fair and proper and as per the principles of natural justice. Second stage of enquiry before the Labour Court ended by holding that the findings recorded by the Enquiry Officer were perverse and there the third stage starts that of giving an opportunity to the management to lead evidence in support of the charges framed against the employees. Obviously, this third stage is subject to the condition that the management had reserved such right in the written statement filed by the management. It is already pointed out that the management had reserved such right in the written statement. So when the learned Judge came to the conclusion that the findings recorded by the Enquiry Officer were perverse then the learned Labour Judge ought to have called upon the management to lead evidence to substantiate the charges framed against the employees. This position is borne out by the observations made by the Supreme Court in the case of Bharat Forge Company Limited.”

2 2002(94) FLR 66

3 WP No.4049-14

8 Since this Court has come to the conclusion that the finding of the Enquiry Officer, which is accepted by the Industrial Tribunal, is perverse, and since there is a liberty reserved by the management for leading of further evidence in the matter, on the basis of the law laid down by the Supreme Court as well as our Court, as noted above, the matter would have to be remanded to the Industrial Tribunal for an opportunity to the management to lead further evidence, if any, in support of the charge of which the workman was found to be guilty.

9 In the premises, the impugned order of the Industrial Tribunal dated 31 October 2005 is quashed and set aside and the matter is remanded to the Central Government Industrial Tribunal at Mumbai for hearing in the premises noted above. The parties will be at liberty to lead evidence in the matter. Since this is an old matter and the alleged incidents are even older, the Industrial Tribunal is requested to dispose of the reference as expeditiously as possible and preferably, within six months from today.

(S.C. GUPTE, J.)