

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.31375 of 2016

T.Anbu

..Petitioner

Versus

1. The State Bank of India,
rep. by its Chief General Manager,
(Appellate Authority),
HR Department, Local Head Office,
'Cireletop House',
Post Box No.737,
16, College Lane, Chennai-600 006.
- 2.The General Manager(NW-2),
(Appointing Authority),
State Bank of India,
Network-2, Local Head Office,
'Circletop House',
16, College Lane, Chennai-600 006.
- 3.The Deputy General Manager(B&O) (Zone-2),
(Disciplinary Authority),
State Bank of India,
Disciplinary Proceedings Cell,
Administrative Unit, NW-2,
Tiruchirapalli-1.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, to call for the records from the second respondent and third respondent relating to the order of dismissal dated 30.01.2013 bearing reference No.DIS/CON(Ex.A) as confirmed by the first respondent Appellate Authority vide order dated 27.06.2014 bearing reference No.Nil(Ex.B), and quash the same as the same is illegal, arbitrary, baseless and contrary to principles of natural justice and consequently direct the respondents to reinstate the petitioner into service with continuity of service, backwages and with all service benefits.

For Petitioner : M/s.Row & Reddy
For Respondents : Mr.Ravi Shanmugam

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner while serving as Rural Marketing and Recovery Officer, was put incharge of the Kallakurichi branch of the respondent bank. However, alleging that the petitioner in his such capacity, had unauthorisedly, transfer the funds from the account of one Mr.Neelakandam by manipulating the procedure by a forged withdrawal slip and misappropriated the funds, asked to face a departmental proceeding on such charges. According to the petitioner, in such departmental proceeding, without any proof and also without adhering to the relevant rules and giving an appropriate opportunity to the petitioner to repel the charge to be groundless, he was terminated from service by the second respondent vide order dated 30.01.2013, which was communicated to the petitioner by the third respondent intimating his right of appeal against the same. Accordingly, the petitioner made an appeal to the first respondent on 30.03.2013 which came to be rejected on 27.06.2014 by the first respondent. The petitioner came to challenge the same in this writ petition to be illegal and arbitrary inasmuch as the aforesaid order of dismissal was passed contrary to the procedure prescribed for enquiry and also the principle of Audi Alteram Partem, a salutary principle of natural justice with a prayer to quash such order of the disciplinary authority as well as the appellate authority confirming the same and direct reinstatement of the petitioner into service with all service benefits, which the petitioner would have got, if he had not been dismissed from service.

3. Counter affidavit has been filed by the respondents disputing the averment made in the writ petition that the departmental proceeding was conducted without adhering to the procedure that is State Bank of India Officers Service Rules and also without adhering to the principle of natural justice that is principle of Audi Alteram Partem. It is the case of the respondents that in every stage the petitioner was given appropriate opportunity to repel the charge of misappropriation of funds from the customers accounts and he has also participated in the proceeding on such charges and as such the writ petition filed challenging the order of dismissal for such proven misconduct which is serious in nature, is without any substance and accordingly, the same is liable to be dismissed, moreso when the petitioner has admitted his guilt and deposited the same in the customer's account.

4. During the course of hearing, the learned counsel appearing for the petitioner submits that in the disciplinary proceeding, the respondent having not produced the customer from whose account the petitioner stated to have managed the withdrawal by a spurious withdrawal slip and misappropriated the amount to test the veracity of such allegation, the officer concerned before whom he stated to have admitted the guilt in writing, for his cross examination, the disciplinary proceeding was conducted in utter disregard to the procedure and also the violation of the principle of natural justice, as such, the finding on the misconduct recorded in such a disciplinary proceeding cannot be sustained scrutiny in the eye of law. The same is moreso, in view of the fact that the customer has already intimated the fact that he had handed over the withdrawal slip for the withdrawal of the amount. Therefore, the finding on the charge having been recorded without any evidence on record and contrary to the procedure prescribed with regard to conduct of the disciplinary proceeding, the same cannot be sustained and liable to be quashed. Reliance in this regard has been placed on decisions of the Apex Court reported in 2008 (8) SCC page 236 (State of Uttaranchal and Others Vs. Kharak Singh), 1999 (8) SCC page 582 (Hardwari Lal Vs. State of UP & Others) so also in 2009 (2) SCC page 570 (Roop Singh Negi Vs. Punjab National Bank & Others) to buttress the submissions made.

5. In response, learned counsel appearing for the respondents though does not dispute the fact that the customer Mr. Neelakandam and the Bank Officer before whom the petitioner stated to have admitted in writing have not been examined in the disciplinary proceeding to prove the charge but according to him, it being not disputed that the petitioner had redeposited the money in the account of Mr. Neelakandam in two installments and also admitted the same in writing, which have been proved, the non-examination of the aforesaid persons in the disciplinary proceeding has caused no prejudice to the petitioner when he admittedly having not disputed regarding redepositing the aforesaid money and also not ask the department in the disciplinary proceeding to produce them for his cross examination in spite of opportunity given, at this stage he cannot be heard of saying that the same has caused prejudice to the petitioner inasmuch as he was not given a reasonable opportunity of hearing in such enquiry. Therefore, the petitioner in this case, has no case to challenge the disciplinary proceeding on the aforesaid ground. The ratios laid down in the aforesaid cases, cited supra were rendered in the peculiar facts and circumstances of those cases which have no application to the case of the petitioner, therefore, this Court in exercise of writ jurisdiction should not interfere with

the finding arrived at by the disciplinary authority recording the misconduct to have been proved appreciating the materials on record, moreso, when the appellate authority has also not thought it proper to interfere with the same in exercise of power under Article 226, moreso when the power of judicial review on such decision is not an appellate one. Hence, he submits this writ petition is liable to be dismissed.

6.To appreciate the contention raised by the counsel for the parties it would be apposite to mention here that in the disciplinary proceeding the documents such as the withdrawal slip to withdraw the amount from the account of Mr.Neelakandam, the deposit slip redepositing the amount in two installments by the petitioner recouping the loss to Mr.Neelakandam for such manipulated withdrawal and also the confession of the petitioner manipulating the withdrawal before the authority had been exhibited. But it is not in dispute that Mr.Neelakandam, subsequently, stated to have given a statement before the Police that the withdrawal was at his instance. The petitioner has also retracted from the confession regarding admitting the withdrawal by a spurious withdrawal slip. In such premises, non examination of the customer Mr.Neelakandam as well as the officer before whom the petitioner stated to have admitted the guilt by the enquiry officer to test the veracity of the allegation of the department to prove the charge, has been assailed by the petitioner to be without any substance inasmuch as the non-examination of the aforesaid persons has resulted in the violation of the principle of natural justice i.e., the principle of Audi Alteram Partem and as such according to him the finding of guilt recorded against him is liable to be quashed, consequently the punishment imposed. It appears that reliance in this regard has been placed in the three decisions of the Supreme Court cited supra.

7. In the case of 2008 (8) SCC page 236 (State of Uttaranchal and Others Vs. Kharak Singh), wherein, in paragraph no.15 it is held as follows;

'The following are some of the basic principles regarding conducting of departmental enquiries, (i) The enquiries must be conducted bonafide and care must be taken to see that the enquiries do not become empty formalities, (ii) If an officer is a witness to any of the incidents which is the subject matter of enquiry or if enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after appointment of enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer, (iii) In an enquiry, the

employer/department should taken steps first to lead evidence against workman/delinquent charged and give an opportunity to him to cross examine witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give an explanation about the evidence led against him, (iv) on receipt of enquiry report, before proceeding further, it is incumbent on the part of disciplinary/punishing authority to supply a copy of enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

8. In the case of 1999 (8) SCC page 582 (Hardwari Lal Vs. State of UP & Others), wherein, in paragraph no.3 it is held as follows;

3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the tribunal and the High Court were justified in thinking that non-examination of these two persons would not be material. In these circumstances, we are of the view that the High Court and the tribunal erred in not attaching importance to this contention of the appellant.

9. In the case of 2009 (2) SCC page 570 (Roop Singh Negi Vs. Punjab National Bank & Others), wherein in paragraph No.15, it has been held as follows:

'A departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties.

The
purported evidence collected during investigation

by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said document. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

The appellant being an employee of the bank, his confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the Bank draft book., There was no direct evidence. Even there was o indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

10. Keeping in mind the aforesaid facts and also the ratio laid down in the decisions cited supra, when the contention of the learned counsel for the parties with regard to the sustainability of the order passed in the disciplinary proceeding by the third respondent which has been upheld by the second respondent is addressed to, it appears that the enquiry officer report regarding the misconduct to have been proved is on the documentary evidence adduced without examining the witnesses such as the customer from whose account the petitioner stated to have withdrawn the amount by a spurious withdrawal slip stated to have been proved and also the redeposit of the amount by the petitioner, and also the petitioner confession in writing before the Branch Manager concerned. But the department has not examined the customer and the Branch Manager in the departmental proceeding inspite of the petitioner disputing the same and indicating the circumstances in which such documents stated to have came into existence which exculpate the petitioner from the charge. The department has taken the stand that the petitioner did not asks for their examination in the departmental proceeding. But the same does not absolve the department in examining the witnesses and place them for cross examination by the petitioner disputing such charge in the disciplinary proceeding raised against him. Since the same has not been done, this Court placing reliance on the ratios of decisions cited by the petitioner supra quash the finding of guilt recorded against the petitioner in the disciplinary proceeding and remit back the matter to conduct the enquiry by examining the aforesaid witnesses and giving a chance of cross

examination to the petitioner to the witnesses to be examined to prove the charge expeditiously as possible and conclude the same within a period of six months from the date of receipt of the copy of this order. Needless to say the petitioner shall be kept under suspension as he then was during the continuance of such disciplinary proceeding and during the interregnum i.e., from the date of removal from service till the date the order is produced he shall not be entitled to any back wages or subsistence allowance.

11. With the aforesaid order, this writ petition stands disposed of. However, in the circumstances, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dn/lok

To

1. The Chief General Manager,
(Appellate Authority),
HR Department, Local Head Office,
'Cireletop House',
Post Box No.737,
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- 3.The Deputy General Manager(B&O) (Zone-2),
(Disciplinary Authority),
State Bank of India,
Disciplinary Proceedings Cell,
Administrative Unit, NW-2,
Tiruchirapalli-1.

+1cc to Mr.Row & Reddy, Advocate, S.R.No.47706

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.47231

W.P.No.31375 of 2016

BR(CO)
GSP(16/10/2018)