

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.8432 OF 2002

ORDER:

The petitioner, who worked as Sub-staff (Attender) in the respondent-Bank, filed this writ petition being aggrieved by the charge sheet dated 01.02.1995 and dismissal order dated 30.01.2002 passed by the 4th respondent, whereby the petitioner was dismissed from service, as being illegal and arbitrary.

2. The brief facts of the case are that while the petitioner was working as a Sub-staff (Attender) at ABCD Cell, Service Centre, Hyderabad of the respondent-Bank, he is alleged to have committed certain irregularities in the Bank. A charge sheet dated 01.02.1995 was served on the petitioner, with the following charges:

“While functioning as sub staff in Dispatch section of Service Centre during the period 1990-91, it is alleged that you have committed acts of gross misconduct by stealthily removing BA-1 advice pads bearing Sl.Nos.018001 to 018050 and handing over the same to Sri B.A.Satyanarayana, sub staff who forged the BA-1 advice slip No.018003 and send it to Sebastian Road Branch facilitating a private person Sri T.Nagaraj to withdraw an amount of Rs.2,50,000/- exposing the Bank to huge financial loss. It is also alleged that you have caused disappearance of cheque bearing No.876189 dated 17.12.1990 drawn on Canara Bank, Janapath, New Delhi which came in delivery bag of Sebastian Road branch to Service Centre for perpetration of the above fraud. From out of the stolen BA-1 pads which was handed over by you to Mr.B.A.Satyanarayana, another sub staff, he had put to fraudulent use one BA-1 advice bearing No.018003 indicating therein the

realization of bill No.OBC-36 for Rs.2,50,000/- of Sebastian Road Branch and it was sent to the branch. Basing on the above advice, our Sebastian Road branch has credited the amount of Rs.2,50,000/- into Current Account No.505 of one Sri T.Nagaraj who had withdrawn the amount thereby causing financial loss to the Bank. All the aforesaid acts committed by you are considered prejudicial to the interests of the Bank and it is deemed that you have committed acts of gross misconduct as per Clause 19.5(j) of Bi-partite Settlement, liable to be punished under the provisions of the same settlement.”

The petitioner submitted his explanation to the charge sheet denying the charges. The disciplinary authority has appointed an Enquiry Officer and Management Representative. The petitioner participated in the enquiry proceedings along with his Defence Representative. The enquiry was conducted from 26.05.1995 to 21.09.2001. In the enquiry, the Management Representative has submitted six management witnesses and produced eight documents which were marked Exs.Mex-1 to 8. The Defence Representative has produced only one document which was marked as Dex-1. The Enquiry Officer submitted his enquiry report. The Disciplinary Authority, on considering the Enquiry Officer's report, passed the order dated 31.12.2001, dismissing the petitioner from services of the Bank as per Clause 19.6(a) of the Bi-partite Settlement. Then, the petitioner preferred an appeal on 15.03.2002 to the Appellate Authority. The appeal was rejected on 21.03.2002 confirming the order of dismissal from service. Being aggrieved by the same, the petitioner filed the present writ petition.

3. Smt. T.H.Saubhagya Laxmi, learned counsel for the petitioner, would contend that the petitioner while working as sub-staff (attender) at ABCD Cell, Service Centre, Hyderabad of the respondent-Bank, a charge sheet dated 01.02.1995 was issued alleging that the petitioner had committed the acts of gross misconduct by stealthily removing BA-1 advice pads and handed over the same to Sri B.A.Satyanarayana, sub-staff, who forged the BA-1 advice slip and sent it to Sebastian Road branch and facilitating a private person by name Sri T.Nagaraj to withdraw an amount of Rs.2,50,000/- exposing the Bank to huge financial loss. The disciplinary authority appointed an Enquiry Officer and it took six long years to complete the enquiry. In the domestic enquiry, the Management examined six witnesses and marked Exs.Mex-1 to 8 and the defence got marked Dex-1. No fair and proper enquiry was conducted by giving full opportunity to the petitioner to cross-examine the MWs 1 to 6. During the prolonged enquiry, the petitioner was set *ex parte* and an *ex parte* enquiry report was submitted. The Enquiry Officer was totally relied on the deposition of MW5 who stated that during the course of investigation, the petitioner while in the custody of police given a statement to MW5 that he had stealthily removed BA-1 advice pads and handed over the same to Sri B.A.Satyanarayana. Basing on the said oral evidence, without any documentary proof in support of the deposition of MW5, the Enquiry Officer relied on the said

statement of MW5. Even though the said statement was given by the petitioner to MW5 during the course of investigation, it is not legally admissible without there being any documentary and corroborative evidence. But, basing on the said statement of MW5, the Enquiry Officer submitted the enquiry report holding that the charge against the petitioner was proved.

The learned counsel would further contend that the BA-1 advice pads are security items which will be in the custody of higher officials and they are not accessible to the petitioner. The Enquiry Officer acted biasedly and the petitioner was not given full and fair opportunity before the Enquiry Officer. The Enquiry Officer had given his finding that the charge was proved basing on inadmissible evidence and conducted peremptory enquiry, and thereby, the Enquiry Officer's finding suffers from perversity. The Enquiry Officer, instead of proving the charge basing on the evidence, has thrown the entire burden on the petitioner to prove his innocence. The entire evidence before the Enquiry Officer could not drive home the guilt of the petitioner. The impugned order of dismissal from service was passed in total violation of principles of natural justice. The appellate authority being the quasi-judicial authority, without considering the grounds of appeal in its proper perspective, rejected the appeal and confirmed the order of dismissal mechanically. The Enquiry Officer holding that though the

submission of the defence is very just and reasonable, the Enquiry Officer believing the oral evidence of MW5, held that the charge was proved against the petitioner. It is further argued that the enquiry was conducted in an unlawful manner and thereby misused the domestic enquiry for personal gains of respondents to cover up their misdeeds and made the petitioner as a scapegoat in the whole issue.

The learned counsel further contended that the orders of the disciplinary authority and the appellate authority are not reasoned in passing the respective dismissal order and order of rejection of appeal. In support of her contention, she relied on the decision of the Hon'ble Supreme Court rendered in Civil Appeal No.7431 of 2008 in *Roop Singh Negi Vs. Punjab National Bank and others*, wherein relying on the earlier judgment in the case of *M.V.Bijlani Vs. Union of India and others*¹, held thus:

“... Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of material on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the

¹ (2006) 5 SCC 88

witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

In the said decision, it is further held that the orders of the disciplinary authority and the appellate authority must be supported by reasons as the orders passed by them have severe civil consequences and appropriate reasons should have been assigned. The provisions of the Evidence Act may not be applicable to the departmental proceedings, but the principles of natural justice are applicable. As the report of the Enquiry Officer was based on merely *ipse dixit* and on mere surmises and conjectures, the same could not have been sustained. The finding of the Enquiry Officer is not supported by any legal evidence.

4. Per contra, the learned counsel appearing for the respondent-Bank vehemently contended that the petitioner is a ‘workman’ as defined under Section 2(s) of the Industrial Disputes Act, 1947 (for short ‘the Act’) and he has an effective alternative remedy available under the Act, and therefore, the writ petition is not maintainable under Article 226 of the Constitution of India. The disciplinary authority has appointed the Enquiry Officer. The Enquiry Officer conducted fair enquiry giving full and fair opportunity to the petitioner and in strict adherence to the rules and submitted the report holding that the charge was proved against the petitioner.

Basing on the Enquiry Officer's report, the disciplinary authority passed the dismissal order dismissing the petitioner from service. The petitioner's appeal was rejected by the appellate authority confirming the dismissal order. The High Court has no power to re-appreciate the evidence before it to come to a different conclusion to that of the Enquiry Officer.

The learned counsel further contended that this Court has no jurisdiction to interfere with the impugned orders and relied on the judgment reported in *State of Andhra Pradesh Vs. Sree Rama Rao*², wherein it is held that the High Court has no jurisdiction to interfere with the orders of the disciplinary authority. In support of his further contention that this Court has no jurisdiction to re-assess the entire evidence before the Enquiry Officer to come to its own conclusion, relied on the judgment reported in *State of Andhra Pradesh and others Vs. Chitra Venkat Rao*³. In support of his contention that the provisions of the Evidence Act are not required to be strictly complied with while conducting domestic enquiry, relied on the judgment reported in *State of Haryana and another Vs. Rattan Singh*⁴. In support of his contention that when an effective alternative remedy is available, the writ petition is not maintainable, relied on the judgment reported in *B.C.Chaturvedi Vs. Union*

² AIR 1963 SC 1723

³ AIR 1975 SC 2151

⁴ AIR 1977 SC 1512

of *India and others*⁵ and also *United Bank of India Vs. Satyawati Tondon and others*⁶. The learned counsel further contended that it is not at all open to the High Court to re-appreciate the evidence in exercise of power of judicial review under Article 226 of the Constitution of India when the disciplinary authority considered the entire evidence and passed order, which was confirmed by the appellate authority and relied on the decision reported in *Union of India (UOI) Vs. P.Gunasekaran*⁷. The learned counsel finally contended that the writ petition is wholly misconceived and is liable to be dismissed.

5. In the facts and circumstances of the case and in considered view of this Court, it is found that the petitioner while working as sub-staff (attender) at ABCD Cell, Service Centre at respondent-Bank, a charge sheet dated 01.02.1995 was issued alleging misconduct of stealthily removing BA-1 advice pads and handing over the same to Sri B.A.Satyanarayana, sub-staff, who forged the BA-1 advice slip, sent it to Sebastian Road branch, facilitating a private person Sri T.Nagaraj to withdraw an amount of Rs.2,50,000/- and exposing the Bank to huge financial loss, and thus, the petitioner had committed acts of gross misconduct as per Clause 19.5(j) of Bi-partite Settlement and liable to be punished under the provisions of same settlement.

⁵ AIR 1996 SC 484

⁶ AIR 2010 SC 3413

⁷ AIR 2015 SC 545

6. The charge sheet was issued nearly about a decade after happening of the incident. Thereafter, without considering the explanation of the petitioner to the charge sheet, the disciplinary authority appointed the Enquiry Officer and that the enquiry was conducted nearly for about six long years. In the enquiry, the petitioner was not given full and fair opportunity to defend his case. The Enquiry Officer is solely depending on the deposition of MW5, who stated that during the course of investigation, the petitioner had stated that he had stealthily removed BA-1 advice pads and handed over the same to Sri B.A.Satyanarayana, who forged BA-1 advice slip. Basing on the said oral evidence, without any documentary evidence and corroborated by any independent evidence, the Enquiry Officer gave a finding that the charge was proved against the petitioner relying on the inadmissible evidence. The finding of the Enquiry Officer is perverse. When the finding of the Enquiry Officer is perverse, this Court under Article 226 of the Constitution of India while exercising the power of judicial review, has power to re-appreciate the evidence and come to a different conclusion to that of the Enquiry Officer.

7. The contention of the learned counsel for the respondents that the writ petition is not maintainable before this Court under Article 226 of the Constitution of India when an efficacious alternative remedy is available under the Act, is untenable when the order of dismissal is passed in violation

of principles of natural justice. The disciplinary authority had not given any sufficient reasons in coming to the conclusion that the charge was proved against the petitioner and is liable for dismissal from service. The appellate authority being the quasi-judicial authority, without considering the grounds of appeal in its proper perspective, has rejected the appeal confirming the order of dismissal, is wholly illegal and liable to be set aside.

8. Evidently, the writ petition is filed in the year 2002 and since then the same is pending for adjudication before this Court. The petitioner was dismissed from service on 30.01.2002 after conducting enquiry from 26.05.1995 to 21.09.2001 in respect of the charge sheet dated 01.02.2005 for the incident said to have occurred during the period from 1990-1991. In these circumstances, it is not justifiable to remand the matter to the employer or to direct the petitioner to approach the Labour Court for redressal of his grievance at this stage.

9. Accordingly, the Writ Petition is allowed, directing the respondents to reinstate the petitioner into service with continuity of service and all other attendant benefits. This Court felt that to meet the ends of justice, 50% back wages are directed to be paid to the petitioner as he was put to severe financial difficulties and mental agony by illegally dismissing from service. The respondents are further directed

to complete the whole exercise of reinstating the petitioner and payment of back wages within two (2) months from the date of receipt of a copy of this order. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

10-08-2018
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