

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.5694 OF 2001

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the order of the 1st respondent dated 30.11.1999 in ZO:PRS:DAW:99-2000/3803, as illegal and arbitrary, and to set aside the same and to issue a consequential direction to the respondents to reinstate the petitioner into service with all consequential benefits.

2. Heard Sri J. Satya Prasad, learned Counsel for the petitioner, Sri Ch. Siva Reddy and Sri A. Krishnam Raju, learned Counsel for the respondents.

3. The case of the petitioner in brief is as follows:

(i) The petitioner was appointed as clerk in the Central Bank of India in the year 1985 and posted at Narsampeta Branch in Warangal District. He worked there from 30.10.1985 to 28.6.1989 and subsequently, he was transferred to a far place i.e., Mandapeta in East Godavari District. The respondents initiated criminal proceedings and departmental enquiry against one N. Hari Babu, the then accountant of Narsampeta Branch alleging that he had involved in fraudulent D.D. transactions and money transactions,

and they recovered the amounts from him and removed him from service after conducting enquiry.

(ii) Nearly after 10 years of transfer of the petitioner from Narsampeta Branch, a charge was levelled against him alleging that he had removed one blank demand draft leaf bearing No.879437 from the book of Narsampeta Branch and that the said D.D. was written in favour of one K. Sudhakar for an amount of Rs.65,000/- and the said amount was withdrawn by Madan Mohan and Sudhakar alias Damodar. A criminal case was also registered against the petitioner on the said allegation.

(iii) After receipt of memo dated 16.10.1998, the petitioner gave a reply denying the charge. Being not satisfied with the same, the respondents conducted enquiry. In the enquiry, the charge levelled against the petitioner was proved and the disciplinary authority imposed the punishment of removal from service. Aggrieved by the same, the petitioner filed appeal before the 1st respondent. But the said appeal was rejected. Hence, the present writ petition has been filed.

4. The learned Counsel for the petitioner submits that on 12.4.1996, a charge memo was issued by the management, for which, he gave reply, and as the enquiry officer did not find any misconduct, the management delayed the matter and again, issued a charge memo on 16.10.1998 and that the action of the management

in issuing charge memo one after the other, is illegal. He further submits that no reasonable opportunity was given to the petitioner to put forth his case and that the punishment of removal is very disproportionate to the charge alleged to have been proved against the petitioner.

5. The learned Counsel for the respondents submits that the allegations made in charge memos dated 12.4.1996 and 16.10.1998 are different and that the earlier charge memo dated 12.4.1996 was issued to the petitioner for claiming false L.F.C. bill and for taking bribe, and in that regard, enquiry was conducted and charges were proved and the punishment of reduction of pay scale by two stages was imposed on the petitioner and that the nature of misconduct committed by the petitioner as alleged in charge memo dated 16.10.1998 and proved in the departmental enquiry warrants extreme punishment of removal and therefore, the disciplinary authority imposed such punishment. He further submits that the disciplinary authority as well as the appellate authority after considering the material imposed the punishment of removal and their action does not warrant any interference by this Court.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. The petitioner has relied on the notarized affidavit said to have been given by one

K. Damodar alias Sudhakar. Perusal of the said notarized affidavit discloses that nowhere the deponent therein had given any statement to the effect that he had given any statement by force before the Enquiry Officer. It only discloses the statement said to have been given before the Bank Officials, but not in respect of the enquiry, which was conducted against the petitioner. Except relying on the notarized affidavit and taking a plea that he is innocent, the petitioner could not point out any lacunae either in the enquiry or the procedure, based upon which a punishment of dismissal was imposed.

7. Further, it is the contention of the petitioner that he was acquitted in the criminal case during the pendency of this writ petition and since he was acquitted by a Criminal Court and since the criminal proceedings and the departmental proceedings are based on the same set of facts, the order of dismissal from service deserves to be quashed and set aside.

8. This Court is unable to accept the above contention raised by the petitioner. It is well settled law that acquittal of the delinquent officer in criminal proceedings does not ipso facto absolve him from the charge under the disciplinary jurisdiction of the department. The two proceedings, criminal and departmental, are entirely different. The rule relating to appreciation of evidence in

the two proceedings is also not similar. Even though the delinquent officer is acquitted in criminal proceedings, in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability.

9. In the departmental proceedings, the charge against the petitioner is that he had stolen a blank demand draft and given it to K. Damodar alias Sudhakar, who encashed it and the petitioner had acquaintance with him and he borrowed money from him. In the enquiry, the said charge was proved and therefore, the disciplinary authority imposed punishment of dismissal from service. The appellate authority was not inclined to interfere with the same. In view of the gravity of the charge proved against the petitioner and in view of the findings recorded by the disciplinary authority, this Court is also not inclined to interfere with the order impugned.

10. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 3rd August, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



3/08/2018

Nn.