NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1715 of 2002

Reserved on : 04/07/2019

Delivered on: 24/09/2019

Md. Akhtar Son of Moh. Jibrail, aged about 53 years, Ex.Record Keeper, State Bank of India, Branch : Akaltara (C.G.)

---- Petitioner

Versus

1. Assistant General Manager, State Bank of India, Region -V, Zonal Officer, Raipur, (C.G.)
2. Sri B. P. Nayak, Investigating Officer, State Bank of India, Janjgir Branch (C.G.)
3. Branch Manager, State Bank of India, Branch Office, Akaltara (C.G.)
4. Dy. General Manager, State Bank of India, Raipur, (C.G.)

---- Respondents

For Petitioner	:	Ms. Naushina Afrin Ali, Advocate.
For Respondent/s	:	Mr. P. R. Patankar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

CAV Order

1. The present writ petition has been filed by the petitioner challenging the order dated 01/08/2001 (Annexure P-2) whereby the petitioner has been inflicted with a punishment of dismissal without notice. The petitioner has also challenged the order dated 19/12/2001(Annexure P-3) whereby the departmental appeal which the petitioner had preferred was rejected.
2. The relevant facts necessary for adjudication of the present writ petition are that the petitioner in the instant case was an employee of the

State Bank of India and was working as a Record Keeper at Akaltara Branch of the State Bank of India in District Janjgir, Champa. The petitioner while working on the said post of Record Keeper was placed under suspension vide order dated 15/02/1999. The reason for placing the petitioner under suspension was a complaint which was received from one Nanki Bai Kaushik, Daughter of Smt. Remkunvar. The allegation in the complaint was that, the petitioner is said to have fraudulently got saving account singly operated in the name of Smt. Rem Kunvar converted into joint Account by adding the name of Shri Bhagwat Prasad Baghel. That the petitioner also assisted in the withdrawal of an amount of Rs. 7000/- on 24/05/1995 from the savings Account No. 9027 in the name of Smt. Rem Kunvar and the said amount has been retained by the petitioner himself. Further that the petitioner had accepted and forwarded an application for premature withdrawal of a fixed deposit in the name of Smt. Rem Kunvar for an amount of Rs. 20,000/- and the said amount was released on an application signed by Bhagwat Prasad Baghel wherein the petitioner has identified the thumb impression of Smt. Rem Kunvar.

3. The petitioner was subsequently issued with a charge-sheet on 28/05/1999 on these charges. Subsequently, an enquiry officer was appointed and the enquiry officer submitted a report in which most of the charges were found to have been proved. That based on the enquiry report, the disciplinary authority vide Annexure P-2 dated 01/08/2001 inflicted the petitioner with a punishment of dismissal from service. The said punishment order was subsequently subjected to challenge in the departmental appeal and the Appellate Authority also

vide (Annexure P-3) dated 19/12/2001 rejected the appeal affirming the punishment.

4. It is these two orders which are under challenge in the present writ petition.

5. The main ground on which the entire punishment order and the subsequent rejection of appeal has been challenged is that the charge-sheet was not complete in as much as it did not have articles of charges neither did it have a list of witnesses nor was it enclosed with a list of documents or the documents which the management intended to rely on for issuance of the charge-sheet. The second ground of challenge to the disciplinary proceedings was that the entire enquiry was conducted in a mechanical manner whereby charges have not been effectively proved before the enquiry officer neither was the petitioner called upon to lead evidence in his defence. Thirdly, it was contended by the petitioner that for the same set of charges the Bank had also lodged an FIR and a criminal case was also initiated against the petitioner and the said criminal case resulted in his acquittal. That against the petitioner's acquittal the State Government also preferred an appeal. The appeal of the State also got dismissed thereby getting the order of acquittal confirmed.

6. It was the further contention of the petitioner that the nature of allegations which have been levelled against the petitioner is primarily of filling up of the forms and identifying the account holder which is a common practice in a Bank particularly when the branches are in rural areas where the account holders do not have the knowhow of filling forms for different transactions to be made in Bank.

7. According to the petitioner the entire enquiry proceedings also is liable to be vitiated on the ground that the material document in respect of allegations made against the petitioner have itself not been produced before the enquiry officer. The counsel for the petitioner lastly contended that from the plain reading of the charge-sheet dated 28/05/1999 it would clearly reveal that the incident alleged against the petitioner was of a period of about 5 years prior to the issuance of the charge-sheet and unless cogent materials are provided to the petitioner for his defence and the same are also duly produced before the enquiry officer through proper witness, the petitioner could not have got a chance of proving his innocence. As after 5-6 years, the petitioner could not have been expected of still remembering the details of the transactions which were made about 5-6 years back and for this reason the disciplinary proceedings deserves to be quashed and thus prayed for the same.

8. Per contra counsel appearing for the respondent Bank opposing the petition submits that plain perusal of the enquiry report would itself be self explanatory to establish that the entire enquiry has been conducted following all the principles of natural justice and the petitioner also was granted an effective opportunity to defend himself. Further there has been no prejudice caused to the interest of the petitioner with which he should be aggrieved of. Counsel for the Bank further highlighted the aspect of the scope of interference by the High Court in a disciplinary matter under Article 226 of Constitution of India. According to the respondent sheer perusal of the enquiry report would itself show the decision making process and it would also establish that

in the process of decision making all due care has been ensured for providing a fair opportunity of defence to the petitioner. According to the respondent in a disciplinary proceeding, it is the principle of preponderance of probability which is applied and that strict law of evidence is not applied.

9. Counsel for the respondent referring to the merits of the case took the Court through each of the charges which were levelled against the petitioner tried to highlight the aspect of the active role played by the petitioner in the course of committing misconduct and the misconduct also being quite serious particularly when the respondent establishment is a banking institution. According to the counsel for the respondent Bank, allegations against the petitioner is that of allegedly filling up of the form to convert the singly operated savings account into joint account along with the name of Bhagwat Prasad Baghel and that in these documents employee/petitioner is said to have also identified and attested the alleged left thumb impression of the original account holder, Smt. Rem Kunvar knowing fully well that the said Rem Kunvar is a person who is missing since long and is not presently available in the village for quite some time. Those filled up forms were processed and transactions were carried out which would show the petitioner has played an active role in the whole transaction. For all these reasons counsel for the respondent prayed for rejection of the writ petition and in support of his contention counsel for the Bank relied upon a series of judgment of the Supreme Court as well as by this Court.

10. Having heard the contentions put forth on either side and perusal of record what is necessary at this juncture is to take note of all

the charges which are levelled against the petitioner. Charge No. 1 was that on 21/07/1993 without there being any request, the petitioner is said to have illegally without following the procedure required to convert the saving account no. 9027 singly operated account into a joint account by adding the name of Shri Bhagwat Prasad Baghel to be the joint account holder along with Smt Remkunvar Jaiswal the original account holder. Charge No. 2 was that on 25.04.1995 from the saving account no. 9027 of Smt. Remkunvar a withdrawal of Rs. 7000 has been made, on a withdrawal slip, filled and signed by the petitioner. That from the facts what is not in dispute is that

(i) the said Rem Kunvar was a person who was missing since long.

(ii) In the said withdrawal form there was a fake thumb impression of Smt. Rem Kunvar and beneath the thumb impression the petitioner has put his signature identifying the thumb impression.

(iii) that on 25/04/1995 an amount of Rs. 7000/- was withdrawn. The petitioner himself put his signature and a token No. was issued with his signature and on his signature the amount was released. The petitioner himself made an entry in this regard in the ledger folio and also put his signature in the ledger. After filling up the withdrawal form by the petitioner himself the same was also got approved from the Branch Manager and received cash on withdrawal.

11. The next charge which was levelled against the petitioner was that though Smt. Rem Kunvar was missing for a long period, on 05/06/1995, the fix deposit receipt No. 930865 in the name of Smt. Rem Kunvar was put up for premature withdrawal on an application being put. In the said application the petitioner is said to have got the

signature of Bhagwat Prasad Baghel and also is said to have got a fake thumb impression of Smt. Rem Kunvar on the form and beneath the thumb impression the petitioner is said to have written LTI of Smt. Rem Kunvar. After the premature withdrawal of the fix deposit receipt No. 930865 of Rs. 20,000, the petitioner made an endorsement of having received the amount with interest.

12. At this juncture, it would be relevant to mention that there was no dispute whatsoever as regards Smt. Rem Kunvar being missing w.e.f. 31/07/1993. An FIR also was lodged so far as the missing of Smt. Rem Kunvar is concerned. What is also surprising is that the FIR was lodged by the daughter of Smt. Rem Kunvar namely Nanki Bai Kaushik and for the purpose of lodging the FIR, the petitioner had also accompanied Nanki Bai Kaushik to the police station. The petitioner had accompanied Nanki Bai Kaushik in the capacity of being a neighbour. The fact that the petitioner has gone to the police station proves that he was fully aware of the fact that Smt. Rem Kunvar was missing from her house for a considerable period of time. Further being a neighbour he was also aware of the fact that the said Rem Kunvar was not available in the village. Yet, the petitioner is said to have acknowledged the thumb impression and have also filled up the withdrawal forms both withdrawing cash from the saving account and also encashing a fix deposit prematurely showing the same to have been done physically in the presence of original account holder Smt. Rem Kunvar.

13. Further perusal of the enquiry report would reveal that management of the Bank examined as many as seven witnesses and produced as much as 15 documents in respect of the alleged

transactions made from the saving account of Smt. Rem Kunvar and also in respect of premature withdrawal of fix deposit again which stood in the name of Smt. Rem Kunvar. The management also in the process of ascertaining the charges had sent relevant records to the hand writing expert namely Dr. S. K. Dhengre and the hand writing expert also in her report submitted that those thumb impressions are not that of Rem Kunvar and the same is a fake thumb impression.

14. From the aforesaid given admitted position what clearly reflects is that there is ample evidence to show that the petitioner did play an active role for converting the single operated savings account into a joint account. At the same time knowing fully well that the original account holder is missing for a considerable period of time as petitioner himself had gone to the police station for lodging the FIR yet he had entertained an application for a premature withdrawal of fixed deposit and has himself processed the form which had a fake thumb impression and the petitioner himself had endorsed beneath it “left thumb impression”. This is an ample proof glaringly evident from the document itself and for which there is no denial or rebuttal. Thus, primary charge against the petitioner of having played an active role in commission of two charges levelled against him stands established from the documents itself.

15. What has to be accepted is that though there were serious allegations levelled against the petitioner vide the charge-sheet that was issued to the petitioner, before the enquiry officer the respondent Bank has adduced some evidence to prove the charges that were levelled against the petitioner. It is by now a well settled principle that

so far as the departmental enquiry is concerned, a fair and reasonable procedure has to be adopted by the enquiry officer before giving an enquiry report.

16. On perusal of the records what is culled out is that there were primarily three charges levelled against the petitioner. The first being, that on 21.07.1993 the petitioner is said to have without following the procedure required got converted savings bank account No.9027 in the name of Smt. Ren Kunwar which was a singly operated account into a joint account by adding the name of Bhagwat Prasad Baghel. The second charge is that on 25.04.1995 the petitioner is said to have assisted in moving withdrawal slip for withdrawing an amount of Rs.7000/-from the savings account No.9027 which was initially singly operated by Smt. Ren Kunwar, but later on was allegedly converted into a joint account by adding the name of Bhagwat Prasad Baghel. The petitioner in the said withdrawal slip is said to have put his signature and token number was issued. The petitioner also made relevant entries in the ledger folio and has also put his signature in the ledger folio and thereafter the said amount was released. The third charge is that, the petitioner is said to have processed an application on 05.06.1995 for premature withdrawal of the fixed deposit which was lying in the name of Ren Kunwar. In the said application, the petitioner is said to have attested the thumb impression of Ren Kunwar by putting his signature underneath the thumb impression identifying it as the LTI and the amount was released to Bhagwat Prasad Baghel.

17. From perusal of the records what is also evident is that during the course of departmental enquiry the Presenting Officer is said to

have produced 15 documents and got it exhibited. Further there are around 7 witnesses examined on behalf of the Management which are as under:

i) Dhannu ram Sagar, Messenger
ii) Janak Ram Sahu, Senior Assistant
iii) Ku. Meena Arora, Manager Personal Banking
iv) S. K. Juneja, Accountant
v) Shankar Banerjee, Assistant
vi) Smt. Nanki Kaushik D/o Smt. Rem Kuwar
vii) V. K. Desai, Deputy Manager

18. Statement of these witnesses was also recorded and they have also supported the case of the Bank. The petitioner was granted ample opportunity of defence. He had also taken assistance of a defence Assistant/Representative. The petitioner and his defence Assistant participated in the departmental enquiry intermittently. In spite of being fully aware of the proceedings drawn by the Enquiry Officer and after participating in the enquiry proceedings for quite sometime, the petitioner as well as his defence Assistant left the enquiry proceedings boycotting the same on lame frivolous excuses. Having voluntarily walked out of the proceedings, the petitioner now cannot protest of not being granted a fair opportunity of defence.

19. Once the petitioner had tried his luck by filing a writ petition i.e. WP No. 739/2000 seeking stay of the departmental proceedings and the High Court having dismissed the writ petition, there was no reason why the petitioner should not have thereafter appeared before the Enquiry Officer and should have effectively participated by cross-examining the material witnesses and also by producing all the relevant and cogent materials and witnesses in his support. The

petitioner having not availed these chances cannot be permitted now to agitate the same so far as the manner in which the departmental enquiry proceedings have been conducted.

20. It is settled position of law that the standard of proof required for establishing the charge before the Enquiry Officer is applying the doctrine of preponderance of probability. Strict law of evidence is not required as in the criminal case where the standard of proof has to be beyond all reasonable doubts.

21. Now if we look at the factual matrix of the case, there are many allegations which the petitioner has accepted of having done as a matter of routine working in the banks in rural areas where a large number of people who are ignorant get their forms filled up either for withdrawal or for deposit or for other purposes by the staff of the Bank itself and on this plea of the petitioner it stands established that the petitioner definitely must have filled up the forms and made necessary entries in the ledger folio etc. which would further strengthen the allegation made against the petitioner. There have been 15 documents produced by the Management before the Enquiry Officer and the contents of all these 15 documents also reflect the role of the petitioner that he has played in the entire episode.

22. The Supreme Court, in a judgment reported in (1997) 4 SCC page 565 in the case of **Tara Chand Vyas Vs. Chairman & Disciplinary Authority and Others** dealing with the manner in which an employee and officer of a banking business should work, has held as under:

> “The nationalised banks, therefore, are the prime source and pillars for establishment of socio-economic justice for

> the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption the disciplinary measure should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary actions to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve to constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purpose resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society."

23. Dealing with the scope of judicial review in disciplinary proceedings relating to employee working in banking industry, the Supreme Court in the case of **Lalit Popli v. Canara Bank and others, AIR 2003 SC 1796**, in paragraph 20, held as under :-

> "As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt

> requirement to act carefully. Any carelessness invites action.”

24. A similar view was also taken by the Supreme Court in the case of **Regional Manager,U. P. SRTC, Etawah and Others Vs. Hoti Lal & Another, (2003) 3 SCC 605,** wherein the Supreme Court in paragraph 10 has held as under :-

> “It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable.”

25. A same view has been reiterated by the Supreme Court in the case of **U.P State Road Transport Corporation, Dehradun Vs. Suresh Pal, (2006) 8 SCC 108** & **Uttar Pradesh State Road Transport Corporation Vs. Pradeep Kumar, (2016) 15 SCC 122.**

26. Dealing on the issue of proportionality of punishment or the quantum of punishment, the Supreme Court in the case of **Divisional Controller, KSRTC (NWKRTC) Vs. A. T. Mane, (2005) 3 SCC 254** in paragraph 12 & 13 held as under :-

> “12.Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

> 13.This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment."

27. Again in the case of **U.P. State Road Transport Corporation Vs. Suresh Chand Shrama, (2010) 6 SCC 555,** the Supreme Court dealing with the issue of proportionality and quantum of punishment has taken a similar view placing reliance upon the judgment passed in the case of **Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, (2006) 6 SCC 187** & **U.P. State Road Transport Corporation Vs. U.P. State Road Transport Corporation Vs. Vinod Kumar, (2008) 1 SCC 115**.

28. Given the aforesaid legal position as it stands and also considering the nature of allegation levelled against the petitioner and on perusal of the record particularly considering the decision making process, there is not much which could be said to be either violative of natural justice or hit by the malafides. Considering the gravity of the offence particularly when the respondent establishment is a bank this Court finds it difficult firstly to hold the action of the Bank to be bad in law and secondly allowing the petition particularly when no substantial material brought on record by the delinquent employee to disprove the charges and the allegations made in or to disbelieve the respondent Bank

29. Thus, for the forgoing reasons, this Court does not find any strong case made out by the petitioner calling for an interference with

the impugned order. The writ petition thus being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge

Khatai