

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.08.2018
PRONOUNCED ON : 24.04.2019
CORAM
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
W.P.No.17541 of 2005

The Management of ICICI Bank Ltd.,
registered Office, 'Land Mark',
Race Course Circle,
Vadodara - 390 007.

(Pl amended as per order of
this Court dated 26.07.2018
by PDAJ in WMP.No.22107/18
in W.P.No.17541 of 2005)

...Petitioner

-Vs-

1. The Special Deputy Commissioner of Labour,
(Appellate Authority under Tamil Nadu Shops
and Establishments Act, 1947)
DMS Building, Anna Salai,
Teynampet,
Chennai 600 006.

2.C.Harshad Rai

...Respondents

Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari calling for the records of the 1st respondent in
his proceedings in TSE/140/2001, dated 04.10.2004 and quash
the same.

For Petitioner : Mr.Sanjay Mohan for

M/s.S.Ramasubramaniam & Associates

For Respondents: Mr.M.Ramamurthy-R2

O R D E R

The prayer sought for in this writ petition is for
a writ of Certiorari calling for the records of the 1st
respondent in his proceedings in TSE/140/2001, dated
04.10.2004 and quash the same.

2. The second respondent was an employee of the petitioner's Bank hence, hereinafter, the second respondent would be called as 'Employee' and the petitioner would be called as the 'Bank'.

2.1. The case of the Bank is that, the employee was appointed as Clerk at the Bank and thereafter, got promoted into the Supervisory Grade, called as 'Special Assistant'. Then, the employee was further promoted as 'Scale officer' and was posted as 'Branch Manager' at Malleswaram Branch of the Bank at Bangalore. While he was working at Malleswaram Branch, he was served with the charge memo by the Bank on 16.06.1995, wherein, four charges have been framed against him which reads thus;

"1. He acted prejudicial to the interest of the Bank.

2. He violated and flouted the Rules, Regulations and Procedures of the Bank.

3. He threw the funds of the Bank in jeopardy.

4. He unauthorisedly exceeded his delegated powers and exercised powers, which he did not possess without obtaining confirmation or approval from the higher authorities."

2.2. In response to the charges framed against the employee, he submitted his explanation on 30.08.1995 denying those charges. Further, not satisfying with the said explanation given by the employee, the Bank launched a domestic enquiry against the employee, by thus, the bank appointed an Enquiry Officer on 11.04.1996 and the Enquiry Officer having completed the enquiry, had filed a enquiry report stating that, all charges framed against the employee were proved. Thereafter, a copy of the enquiry officer's report was served on the employee and his comments/explanations were sought for, which had also been given by the employee.

2.3. In this regard, the further case of the Bank was that, while so, on 11.05.1998, the employee had given a letter admitting his guilt and requesting the Disciplinary Authority, for lesser punishment. Further, unmindful of the said letter given by the employee, the Bank had proceeded to complete the enquiry, accordingly, the enquiry was concluded on 22.03.1999. The enquiry officer's report

dated 19.07.1999, was also served on the employee on 29.07.1999 and that was responded by the employee on 13.08.1999 stating that, he could not say anything about the report submitted by the Enquiry Officer.

2.4. Thereafter, the Disciplinary Authority vide its order dated 16.12.2000, inflicted the maximum punishment of dismissal of service on the employee, against the said order of punishment, the employee preferred an appeal before the Appellate Authority, i.e., Deputy General Manager on 25.01.2001 and the Appellate Authority also, vide its order dated 10.04.2001, confirmed the said order of punishment, by rejecting the appeal filed by the employee.

2.5. Thereafter, the employee, as against the order of Disciplinary Authority as confirmed by the Appellate Authority, made further appeal before the first respondent herein i.e., the Special Deputy Commissioner of Labour, who is the Appellate Authority under the Tamil Nadu Shops and Establishment Act, 1947.

2.6. The first respondent, [hereinafter referred to as 'Shops Authority'], after considering the appeal filed by the employee, by its elaborate order dated 04.10.2004, had allowed the appeal filed by the employee, by setting aside the punishment. As against the said order of the first respondent, allowing the appeal of the employee, who is the second respondent herein, dated 04.10.2004, the Bank, has filed this Writ Petition with the aforesaid prayer.

3. I have heard the arguments of Mr.Sanjay Mohan, the learned counsel appearing for the petitioner, who made submissions broadly on the following grounds.

4. That, four charges framed against the employee were definite charges as the employee violated the norms and instructions given by the Bank in this regard. In violation of those norms and instructions, had acted upon, when he was working as Manager at Malleshwaram Branch, Bangalore and in support of those charges, documentary evidences were filed by the Bank, both before the enquiry officer as well as before the Shops Authority. And the Enquiry Officer, having considered those documentary evidence as well as the oral evidence adduced on behalf of the Bank, given a detailed findings in the enquiry Officer's report stating that, all the four charges framed against the employee were proved.

5. Learned counsel would further submit that, at first, an enquiry officer was appointed, who had two hearings only, marked certain documents and at that stage, the enquiry officer happened to be the superior officer of the employee during the relevant point of time, though there was no objection from the employee for the said enquiry officer conducting the enquiry, the Bank, thought it fit to change the enquiry officer, on the ground that, since the said enquiry officer, who was the superior officer of the employee, during the check period or during the relevant point of time, it may not be justifiable by the same officer to be the enquiry officer. Accordingly, an enquiry officer was changed and the Presenting Officer was also changed. The changed enquiry officer, conducted and completed the enquiry.

6. In this context, the learned counsel would further submit that, findings were given by the Shops Authority, in this regard that, the second enquiry officer on his appointment, should have conducted the enquiry de novo and should not have conducted the enquiry from where, it was left by the earlier enquiry officer. This finding, according to the learned counsel, was erroneous because, the earlier enquiry officer did not conduct the enquiry, except marking certain documents. Moreover, there was no opposition from the employee, for the continuation of the first enquiry officer in the enquiry.

7. The learned counsel would further submit that, with regard to the four charges framed against the employee, there has been enough proof to show that, the norms of the Bank as well as the instructions given in this regard, had been violated by the employee. Moreover, atleast on two occasions, the employee had admitted his guilt, one during the enquiry and another is at the time of replying to the enquiry officer's report, which was served on him. Therefore, based on his own admission of his guilt, the employee should be punished. Further, in order to establish the case on the side of the Bank, the Bank proceeded with the enquiry, and only after adopting proper approach in the enquiry by giving opportunities to the employee, including the opportunity of second show cause notice by way of letter along with the enquiry officer's report, the Disciplinary Authority inflicted the punishment. However, the Shops Authority found this aspect against the Bank by stating that, there was no second show cause notice to the employee and therefore, that was considered to be an unlawful one or fatal to the very

enquiry itself and accordingly, the Shops Authority had concluded that the punishment was vitiated.

8. The learned counsel for the Bank has taken this Court by making elaborate submissions relying voluminous documents filed by way of typed set of papers containing four volumes. The learned counsel has relied upon the instructions given by the Bank in this regard by way of Administrative Circular No.HO/ADV/DGM(C)/90/88, dated 28.11.1988 under the heading, 'Delegation of Lending Powers'.

9. By relying upon these Administrative Circular, the learned counsel pointed out that, the limit of purchase of cheques, bills for a 'B' Class Branch Manager was only a sum of Rs.10,000/-. Like that, the Over Draft Facility for Corporate borrowers was Rs.25,000/- and for Non-Corporate borrowers was Rs.10,000/- for a 'B' Class Branch Manager. Like that, purchase of third party cheques also limited only upto Rs.10,000/- to Non-Corporate borrowers and Rs.25,000/- to Corporate borrowers for a 'B' Class Branch Manager. By pointing out these, the learned counsel submitted that, since the employee is a 'B' Class borrower, his power is restricted only with Rs.10,000/- both for overdraft facility as well as for purchase of third party cheques. Since the employee had violated this limit, which is against the Administrative Circular dated 28.11.1988, several instructions and warnings had been given to the employee, despite the same, the employee, since continued to violate these norms, thereby, put the Bank funds into jeopardy and therefore, the said main allegation made against the employee, had been proved beyond doubt.

10. Learned counsel also pointed out that, though a stand had been taken by the employee that, such kind of exceeding of Over Draft Facility and Purchase of third party cheques beyond the Rs.10,000/- limit, as prescribed in the Administrative Circular referred to above, was not considered to be a violation and it was considered only the action of exceeding the limit and the same also had been approved by the superior officer, time and again, learned counsel submit that, though with warning, caution and instructions those transactions had been approved by the superior officer only upto to November 1994, thereafter, none of such action exceeding the limit by the employee had ever been accepted or been approved by the Bank or its superior officer. In this regard, learned counsel has taken the Court extensively by relying upon the documents filed in the typed set of papers.

11. In so far as the said charges with regard to opening of Bank Account in the name of M/s. Bharat Timber Company, a Proprietary concern, is concerned, the employee, by allowing the said company to open a Current Account, without getting any introduction from an account holder of the Bank or without having any discrete or secret enquiry atleast about three months period, prior to the opening of the account on the credibility and the financial stability of the account holder, the norms prescribed by the Bank in this regard, had been violated by the employee.

12. With regard to the finding given by the Shops Authority, that the copies sought for by the employee, had not been furnished to him, that will also add fuel to the fatality of the enquiry is concerned, learned counsel would submit that, no such request had been made by the employee, till the completion of the enquiry and only after punishment was awarded by the Disciplinary Authority, employee had sought for certain documents for the reason that, he wanted to go for an appeal, hence, he sought for those documents. Therefore, the employee has never asked for any documents as he claimed. However, the same had been wrongly interpreted by the Shops Authority stating that, despite the employee sought for documents during the enquiry, the same has not been furnished to him. Therefore, the learned counsel submits that, the said findings of the Shops Authority on the alleged reason of non-furnishing of the documents is completely erroneous.

13. The learned counsel would also submit that, the Shops Authority has also given a finding that, in so far as the loan advanced to the party i.e., M/s. Bharat Timber Company, in order to recover the same, suits have been filed and therefore, there is no loss of money to the Bank. However, in this regard, the learned counsel for the Bank submits that, though suit for recovery of money had been filed, in the meanwhile, the Proprietor, who was the borrower was declared to be insolvent and subsequently, expired therefore, the Bank, though got decree in six suits filed against those account holders which were decreed in the year 2004, for a sum of Rs.69 Lakhs with interest, since the judgement debtor died or became insolvent, the Bank was unable to recover the money decreed. However, in the year 2008, the Bank having no other option, had entered into a Memorandum of Settlement/Compromise, as an one time settlement, at Rs.11.60 Lakhs with the legal heirs of the deceased guarantor. Therefore, these factors would go to show that, the Bank had been put into heavy loss to the tune of nearly about 57 Lakhs and more, because of the

violation on the part of the employee. Therefore, the said reasoning given by the Shops Authority that, the Bank has not lost anything is completely misdirected or misconceived.

14. By making all these submissions, the learned counsel appearing for the Bank would submit that, the Shops Authority, without plausible or satisfactory reasons should not have interfered with the punishment awarded by the Disciplinary Authority, as confirmed by the Appellate Authority, by allowing the appeal filed by the employee and therefore, the said order, which is impugned herein made by the first respondent/Shops Authority is liable to be interfered with and be set aside by this Court.

15. Per Contra, Mr.M.Ramamurthy, the learned counsel appearing for the employee submits that, first of all, the four charges framed against the employee, were vague, though imputations have been given, the sum and substance of the charges was that, the employee acted prejudicial to the interest of the Bank, he went of and floated the Rules and Regulations and Procedures of the Bank, he threw the funds of the Bank in jeopardy and he unauthorisedly exceeded the discretionary powers by exercising the powers which he did not possess, without obtaining confirmation or approval from the higher authorities.

16. In this context, the learned counsel for the employee would further submit that, the main charge against the employee was that, he permitted one M/s.Bharat Timber Company, to open an Current Account at Malleshwaram Branch of the Bank, during the year 1994, when he was working as Branch Manager therein.

17. In this regard, the learned counsel would submit further that, the said account was opened by an introduction of a bank official, as the existing account holder of the Branch had not introduced, the said proprietary company. He would further submit that, in so far as the other charge that, he exceeded the over draft limit as well as the purchasing of third party cheques and bills are concerned, the employee has not violated intentionally in order to get any gain from the account holder and in fact, the said exceeding of Over Draft limit as well as the purchasing of bills and third party cheques are concerned, all those actions have been either ratified or approved by the higher authorities. Further, the learned counsel appearing for the employee would submit that, the current account was opened on 12.08.1994, in the

name of M/s.Bharat Timber Company, proprietor one Nanji Patel. This account was introduced by the Indian Bank Official of same locality at Bangalore and the party was introduced by one Panth, who was residing at Malleshwaram area. Since none of the customers of the Bank knew him, the said customer was introduced by the Indian Bank employee and thereafter, the employee obtained opinion about the party, from Indian Bank on 23.08.1994 and in the meanwhile, the oral report about the party was also obtained from one Ashok Dani, a Corporator.

18. In so far as the purchase of third party cheques are concerned, after the cheques were realised, the employee had sent a report during August 1994 to the Regional office, who had given confirmation on 15.09.1994 in this regard. It is the case of the employee, as projected by the learned counsel that, the bills were purchased only with an intention to improve the business and after careful study of the performance of the party in question. The bills purchased also was reported to the Regional Office, by letter of the employee dated 29.10.1994 and thereafter, regular proposal of the party to the Regional office was sent on 14.11.1994. Therefore, according to the employee, the powers which he has exercised in purchasing the bills and cheques had also been intimated then and there to the Regional Office and the same had been either accepted or approved.

19. Learned counsel would further submit that, like that, the Over Draft Facility given to the Patel group also, had been kept informed by periodical report to the Regional Office or the higher authority and they have either approved or accepted the same. Therefore, the learned counsel submits that, the employee had taken all necessary precaution and steps to protect the interest of the Bank and its money. The learned counsel also pointed out that, in the Disciplinary Authority's proceedings dated 16.12.2000, it has been mentioned that, the employee with an intention to accommodate the party, avoided to make discrete enquiry and due to omission of the said act of the employee, he has thrown the Bank funds in jeopardy, thus, prejudicial to the Bank's interest.

20. By pointing out this, the learned counsel for the employee submitted that, the said allegation made by the Disciplinary Authority is not part of the charges framed against the employee and therefore, the same has been newly introduced by the Disciplinary Authority, without any basis. By making all these submissions, the learned counsel for the employee submitted that, neither

the employee violated any norms, nor he has done anything prejudicial to the interest of the Bank and all of his actions, either exceeding the Over Draft limit or in Purchasing the bills and third party cheques are only towards improvement of the business of the Branch and out of all these transactions, he has not gained anything personally therefore, the findings given by the enquiry officer and the punishment awarded by the Disciplinary Authority as confirmed by the Appellate Authority are completely in violation of the factual matrix of the case and the evidentiary value in this regard and therefore, the findings given and the conclusion reached by the Shops Authority, through the impugned order is fully justifiable and sustainable, therefore, it does not require any interference from this Court, that too, by way of issuance of Writ of Certiorari.

21. I have considered the said submissions made by the learned counsel for the Bank as well as the employee and also perused the materials placed before this Court.

22. Though lengthy submissions have been made by both the learned counsel appearing for the parties and in fact, both sides have filed a thorough lengthy written submissions supporting their respective cases, the issue to be decided in this writ petition, in the opinion of this Court, is in very narrow compass.

23. They are :

(1) Whether the enquiry conducted by the Bank was in accordance with law and was not in statutory violation or violation of Principles of Natural Justice?

(2) Whether the employee did accept his guilt even during the enquiry proceedings as claimed by the Bank?

(3) Whether the employee had violated the norms and instructions given by the Bank and if so, the said violations or exceeding the limited amount permitted, led to any financial loss to the Bank?

(4) Whether the charges framed against the employee were proved as submitted by the enquiry officer?

(5) If so, whether the punishment awarded by the Disciplinary Authority as confirmed by the Appellate Authority against the employee is in commensurate with the proven charges or not?

24. Normally, this Court under Article 226 of the Constitution of India in exercising the powers in a Writ jurisdiction, would not involve in having a roving enquiry, that too, in the factual matrix of the case. However, in the present case in hand, since there has been allegations and counter allegations and the Disciplinary Authority's action inflicting punishment against the employee has been set aside by the Shops Authority in the impugned order, this Court, atleast briefly will go into those aspects, to reach a finality in this case.

25. Though four charges had been framed against the employee, the main charge against him is in two folds. One is that, in opening the account in the name of the M/s.Bharat Timber Company, the employee has violated the Bank norms. Secondly, while giving certain facility to those account holders, such as Over Draft Facility as well as Purchasing of bills and third party cheques, the employee has violated the Bank's Circular/instructions and in view of these two actions, the employee threw the funds of the Bank in jeopardy, therefore, his action was prejudicial to the interest of the Bank.

26. In so far as the opening of the account is concerned, the only oral witness by one V.D.Mohite, on behalf of the Bank deposed before the Enquiry Officer in his Chief examination as well as in Cross-examination, which reads thus:

"P.O. : Please see Exh.B-24 and tell me what do you observe?

V.D.M. : Account Opening Form is properly filled in and signed by the Proprietor Shri N.P.Patel at appropriate places. His account is introduced by Indian Bank, New Guddadahalli Branch, Mysore Road,

P.O. : When do we allow credit facilities to the Current Account Holder.

V.D.M. : It depends upon the nature of credit facility to be extended to the client. However, generally, we observe operations in the account at least for a period of 3

months. If new industry is to be started, at that time, the relations start with the credit facility, if requested."

"C.S.O. : When a new customer is introduced to the Bank and his previous account with his bankers is good what you will presume?

V.D.M. : If the previous transactions with the earlier Bankers is found to be satisfactory based on the Pass Book the account may presumed to be good.

C.S.O. : Before extending any credit facility is it necessary to obtain confidential opinion from his earlier bankers?

V.D.M. : It depends upon the nature of facility to be extended."

27. The aforesaid deposition on the side of the Bank would squarely establish the case that, the opening of an account in favour of the said proprietary concern was almost in order, as there has been no flagrant violation could be noticed, since the said account holder was introduced by yet another Nationalised Bank functioning in the very same locality.

28. Moreover, before the said account was opened, the employee did not have any account or relation whatsoever, with the Bank, therefore, it cannot be said that, for any personal gain or interest, the employee intentionally opened an account in the name of the individual proprietary concern, without getting him introduced, by any existing account holder of the same Branch.

29. In this regard, the Shops Authority has given the following finding:

"On 18.04.1998 exhibits B-20 to B-50 were marked as documents. Admittedly copies of exhibits B-24 to B50 were not supplied to the Appellant. Thereafter, on 09.05.1998 exhibits B52 to B76 were marked and one Shri V.D.Mohits was examined as P.W.1. He was cross-examined by the Appellant. The said officer has deposed that the current account opened by Shri

N.P.Patel under Exhibit B24 (R-33 and 34 in this proceeding) has been properly filled and signed and his account has been introduced by the Indian Bank, New Guddadahalli Branch, Mysore Road, Bangalore. As far as exhibits B24 to 34 (which are marked as R33 to R-51 in this appeal), the said Officer has not shown or cited a provision showing that such an action has been barred or prohibited under the rules. Nowhere has he stated that it is a misconduct. Nor is the case of the Management that it is a misconduct under some service regulation."

30. The second major charge or second part of the charge was that, the employee unauthorisedly exceeded his discretionary powers and exercised the powers, which he did not possess, without obtaining confirmation or approval from the higher authorities. In this context, as has been pointed out by the learned counsel for the Bank, the employee, has, in violation of the Administrative Circular dated 28.11.998, exceeded the limit of Over Draft facility as well as the purchase of third party cheques.

31. In this context, the defence taken by the employee was that, such exceeding of the amount of Rs.10,000/- limit, was then and there approved by the higher authorities/Regional office. But, the learned counsel for the Bank pointed out that, it was not an automatic or unconditional approval and every time, when such approval was given, advice and instructions were given by the Bank authorities to the employee, that hereafter, no violation or exceeding the limit of Over Draft Facility as well as the cheque purchasing facility shall be permitted. Even the said conditional approval was given only upto November 1994, however, beyond November 1994, the employee continued to violate the norms in December 1994 as well as in January 1995 and those cases, had not been approved.

32. In so far as the exceeding of the limit of Over Draft Facility and Purchasing of cheques as given in the Circular referred to above, the Bank witness deposed before the Enquiry officer which reads thus:

"P.O. : What are the precautions that the Branch Manager has

to take while extending Bills discounting facility?

V.D.M. : In general, any type of advance against Bills we will have to obtain confidential opinion and credit worthiness report from the drawee's bankers.

In case of clean bills and where the sight drafts must be accepted by the drawee and that signature of drawee is to be got verified and kept on record. Sight draft must be supported by invoices and delivery challans duly signed by the drawee or his representative. In case of Secured Advances we insist upon Motor Receipts (approved), Railway Receipts etc., supported by invoices. Generally, in case of secured advances against M.R./L.R.s payment is to be made by the drawee to take delivery of the documents of title to the goods and are treated as 'On demand' documents against payment."

33. However, the Shops Authority in the impugned order has not given clear reasoning as to whether, the said violation or exceeding the limit by the employee pertaining to Over Draft Facility or purchasing third party cheques and bills, had been approved. However, the fact remains that, upto November 1994, though approval has been given, it is not an unconditional approval. With caution and advice, such approval had been given and beyond that, i.e., beyond November 1994, no approval seems to have been given by the Bank, for such exceeding the limit and therefore, the said violation against the circular referred to above, can definitely be considered to be in violation of instructions which has been proved by the Bank during the enquiry.

34. In so far as the finding given by the Shops Authority that, the second show cause notice was not given therefore, it is fatal to the Disciplinary proceedings and also since some of the documents have not been furnished to the employee, the enquiry was in violation of Principles of Natural Justice is concerned, the said two findings, given by the Shops Authority may not be justifiable because, in so far as the second show cause notice is concerned, the fact remains that, on 19.07.1999, the enquiry officer gave

his findings holding that, the charges framed against the employee were proved and a copy of the said enquiry officer's report was also given to the employee along with letter dated 29.07.1999, calling upon to show cause, why disciplinary action should not be taken against him, the employee had given his reply on 13.08.1999 which reads thus:

"From,
C.Harsadrai
ACCOUNTANT
CHENNAI BRANCH

To,
The Manager,
Personal And D.P.V. Department,
Disciplinary Authority,
SANGLI BANK LIMITED
Head Office, SANGLI.

Confidential

Dear Sir,

Reg : Domestic Enquiry - Articles
of charges
dated 16.06.1995 findings of
Shri.M.R.V.Prasad
dated 19.07.1999

Ref : H/DPC/AC 101/793/99-2000,
dt:29.07.1999

--
I am in receipt the of above
cited letter No.HO/DPC/AC/101/793/99-2000
dated 29.07.99 alongwith copy of findings
submitted by Shri. M.R.V.Prasad, Enquiry
Officer, on 03.08.1999 and I reply as
under:

I wish to say nothing over the
findings.

Thanking you,

Yours

faithfully,

sd/-

(C.HARSADRAI) "

35. However, the Shops Authority, in the impugned

order has given the following findings:

"Admittedly, without issuing any second show cause notice, the appellant was straight away dismissed from service under order dated 16.12.2000 which has been marked as Exhibits A-21."

36. The said findings of the Shops Authority is erroneous because, admittedly, in fact, the employee on receipt of the enquiry officer's report has given his reply stating that, he has nothing to say on the enquiry officer's report. Therefore, proper opportunity, by way of second show cause notice, was in fact, given to the employee, which was not properly utilised by him. Hence, the blame cannot be put against the Disciplinary Authority and therefore, the findings made by the Shops Authority in this regard, as extracted above, is erroneous.

37. The Shops Authority has also given findings to state that, when the second enquiry Officer was appointed, replacing the earlier one, on the ground that the earlier enquiry officer was the superior officer of the employee, during the relevant point of time, the second enquiry officer should have conducted the enquiry, de novo and he should not have continued from where, it has been left by the earlier enquiry officer.

38. In so far as this finding of the Shops Authority is concerned, this Court feels that, the second Enquiry Officer was appointed, not at the instance of the employee as he has not opted any change of the First Enquiry Officer. Moreover, no much progress had been shown by the first enquiry officer as at the very earlier stage, the second enquiry officer was appointed and he only conducted, almost the whole enquiry and gave the findings. Therefore, the said findings given by the Shops Authority that, the second enquiry officer should have conducted de novo enquiry is also unwarranted.

39. In so far as the other findings given by the Shops Authority that, certain documents sought for by the employee had not been furnished to him is concerned, as has been rightly pointed out by the learned counsel for the Bank, the employee did not ask for any such documents, during the enquiry and he had made such request, only after the punishment was inflicted on him to prefer the appeal before the Appellate Authority, therefore, that findings of

the Shops Authority also erroneous and therefore, it cannot be said that, the enquiry was not conducted properly or was in violation of the Principles of Natural Justice.

40. After having analysed all these factors, two things are emerging. One is that, the enquiry was properly conducted and we cannot find any infirmity in conducting the enquiry against the employee. But at the same time, in so far as the veracity of the charge is concerned, as discussed above, with regard to the opening of the account is concerned, this Court finds that, there is no serious error in the action on the part of the employee as the very deposition of the P.W.1, i.e., Bank witness, has made it clear that, the account was opened by the employee which found to be in order.

41. Mere non-introduction of the account holder by the existing account holder of the Branch in as much as the said account holder having been introduced by a responsible Officer of another Nationalised Bank functioning in the locality is concerned, certainly it cannot be considered to be a violation, that too, for coming to the conclusion, as if the violation would attract such a sever punishment of removal of service of the Bank Employee concerned.

42. At the same time, in so far as the exceeding of the limit of Over Draft Facility and Purchasing of third party cheques, bills are concerned, to certain extent, the said action, on the part of the employee had been approved, either conditionally or unconditionally. However, beyond November 1994, no such approval seems to have been given by the authorities of the Bank and therefore, such violation or exceeding the limit, certainly would be considered to be a violation of the Administrative Circular or instructions given in this regard.

43. Therefore, in sum and substance, part of the charges has been proved and the remaining part of the charge, either have not been proved or cannot be taken into as serious violation of the norms and instructions of the Bank.

44. If this kind of situation arose, what shall be the conclusion towards the punishment to be inflicted on the erring employee is concerned, I rely upon the decision of this Court, reported in 2005 (1) CTC 283 in the matter of Punjab National Bank Ltd., Zonal Office, Chennai - 6 vs. A.K.Jayaprakash and another.

45. In this case also, a similar situation arose where, a Bank Official has been dismissed on the ground that, he granted loans exceeding his limit and gave Over Draft Facility, without getting permission from Head Quarters. Bank conducted an enquiry and dismissed the officer from service, against that order, the Appellate Authority, reversed the punishment and reinstatement with backwages was ordered. The evidence proved that, there was no malafide intention and the officer did not gain any personal advantage by granting of the loan. Therefore, the Court took the view that, the order of the Appellate Authority can be confirmed with modification that, the officer should be reinstated with 60% backwages to be paid. The relevant portion of the said judgement is extracted herein for easy reference:

"6. From a reading of the charges it is seen that the Officer has done some acts without getting the permission of his superiors. But as rightly held by the appellate authority, it was not with any mala fide intention. It is not the case of the Bank that the Officer has gained anything by granting loans. It is common knowledge to give overdraft facilities, at times even exceeding the limits; and discounting of bills is a regular business entertained by the banks. By discounting bills, banks earn profit. Further, by the act of the delinquent officer, the bank has not incurred any loss. In these circumstances, this Court is of the view that there is no mala fide intention on the part of the delinquent officer/first respondent and in fact the business of the bank has improved during his tenure. Hence, dismissal of the first respondent is not legally sustainable. There is no illegality or irregularity in the order passed by the appellate authority.

7. With regard to back wages, the appellate authority ordered reinstatement with full backwages. Considering that 20 years have passed since the officer is out of service, and that he would have engaged himself

in some other activities all these years, this Court is of the view that it would be sufficient if the bank pays 60% of backwages and he shall be reinstated immediately, in any event within a period of four weeks from the date of receipt of copy of this order and there will be an order accordingly."

46. In the present case also, Shops Authorities finds from evidence that, there has been no malafide intention on the part of the employee, in advancing loans to the party, in this regard, the findings of the Shops Authority available in the impugned order is extracted hereunder:

" During the cross-examination, at the final stage when a question was placed before P.W.1 he has given his reply in the following manner.

Question : On the whole do you find that there is any Malafide intention in advancing the loan?

Answer : No malafide intention.

Question : Is there any personal gain ?

Answer : No

So, there is no charge of collusion, there is no charge of personal gain, there is no malafide intention. From the above, I come to a conclusion that the appellant was not given a reasonable opportunity to defend himself against the charge allegations."

47. Though a number of judgements from 1960(2) LLJ 117 to 2015 (3) CTC 374 had been cited by the learned counsel for the employee, in view of the decision that I am going to take in this case, those decisions have not been separately referred to herein.

48. Since the said case in Punjab National Bank i.e., 2005(1) CTC 283 is very apt and relevant to be followed in the present facts of the case, as the facts in both cases are almost similar, I am inclined to follow the said judgement of Punjab National Bank's case and inclined

to pass the following order:

"That the impugned order of the first respondent/Shops Authority is hereby modified to the following extent:

That the punishment awarded to the second respondent/employee by the petitioner Bank through order of punishment dated 16.12.2000 as confirmed by the Appellate Authority by its order dated 10.04.2001 is hereby modified as Compulsory Retirement instead of Dismissal from Service.

(ii) Consequent upon the said modification of the punishment, the employee/the second respondent shall be entitled to get all service benefits available to an employee, who faced a punishment of compulsory retirement and such benefits shall be calculated and to be paid to the second respondent/employee by the petitioner/Bank within a period of 60 days from the date of receipt of a copy of this order.

49. With this order of modification of punishment as well as the impugned order with the aforesaid direction, this writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smi
To

1. The Special Deputy Commissioner of Labour,
(Appellate Authority under Tamil Nadu Shops
and Establishments Act, 1947)
DMS Building, Anna Salai,
Teynampet, Chennai 600 006.

+1cc to Mr. M.Ramamurthy, Advocate SR.No. 39564
+1cc to M/s.S.Ramasubramaniam & Associates , Advocate SR.No.
39136

W.P.No.17541 of 2005

A.SK(21/06/2019)