IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.18983 of 2005

M.Palaniappan. ... Petitioner

Vs.

1.The Managing Director,
State Bank of India,
Central Office,
Post Box No.12,
Mumbai - 400 021.

2.The Chief General Manager,
State Bank of India, Local Head Office,
"CIRCLETOP House",
18, College Lane, Chennai - 600 008.

3.The Deputy General Manager (Appellate Authority),
State Bank of India, Zonal Office,
Ambedkar Road, Madurai - 625 002.

4.The Assistant General Manager, Region - II,
(Disciplinary Authority),
State Bank of India,
Zonal Office, Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for records relating to the impugned order of the third respondent in DIS/CON/573 dated 30.10.2004 and the order of the fourth respondent in DIS/CON.295 dated 12.07.2004 and quash the same and direct the respondents to reinstate the petitioner in service with full backwages and all other attendant benefits.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.S.Kanniah

O R D E R

The petitioner was an employee under the respondents and he was initially posted as Clerk on 17.11.1998 and then posted as Assistant at Karaikudi Branch on 22.07.2002. While he was working as Assistant, on 19.12.2002 he was placed under suspension in contemplation of charges. On 16.05.2003, a charge memo containing five charges were issued. The charges were as under :-

"CHARGE 1:

On 26.11.2002, you had fraudulently encashed cheque No.108701 dated 11.11.2002 for Rs.15,000/- issued to one Shri Ghouse Myan by Shri Joohn Batcha, NRE account holder and has failed to handover the amount to the beneficiary. In this connection the payee preferred a complaint on 18.12.2002 to the Bank for immediate recovery of the amount.

CHARGE 2:

You had also encashed cheque No.641 708 dated 11.12.2002 for Rs.4,000/- in favour of Smt.Erudayamari sent to her by her husband Shri Samikannu, NRE account holder without the knowledge of the payee of the cheque.

CHARGE 3:

While working at Tirupattur Branch, you had in connivance with Shri.S.Ulaganahan, Accountant, Tirupattur Branch negotiated cheque No.002539 dated 18.06.2002 for Rs.9,000/- drawn on ICICI Bank, Karaikudi and had retained the above cheque for more than 5 months. Finally, the Bank could get reimbursment for the above DD Purchased cheque only on 16.12.2002.

CHARGE 4:

You had issued the following cheques without sufficient funds in your account.

SL. No.	CHEQUE NO.	DATE	AMT.	RETURNED ON	REASONS FOR RETURN	FAVOURING
1	325282	9/12/02	6500	9/12/2002	Insufficient funds	S.B. Nagalingam
2	325287	6/02/03	2000	7/02/2003	-do-	C.Muthiah

CHARGE 5:

On 07.11.2002 and 09.12.2002, you have absented yourself from the Office after lunch without obtaining prior permission from the Appropriate Authorities. You have not submitted your explanations to the Chief Manager.

Thus you had been unpunctual, irregular in attending office and had failed to mend yourself even after the repeated instructions of the Chief Manager of the branch. Thus you had been disobedient and had shown wilful insubordination for reasonable orders of the Superior.

Your above acts, if proved, would amount to Gross Misconduct in terms of Paragraph 5(c),(j) and (e) of the Memorandum of Settlement dated 10.04.2002."

2. On 15.07.2003, an Enquiry Officer was appointed to enquire into charges. Hearings were held on 08.10.2003, 17.10.2003, 18.11.2003, 17.12.2003, 22.12.2003 and 20.01.2004. On the prosecution side, two witnesses were examined and 14 documents were marked. On the side of the defence, two witnesses were examined and six documents were marked.

3. The Presenting Officer submitted his brief on 09.02.2004 and the petitioner submitted his defence statement on 26.03.2004. The petitioner raised a specific ground that the complainant as well as the concerned official witnesses were not examined to prove the charges, neither opportunity of cross-examination was offered to him. Despite these statements, the Enquiry Officer had held all the charges, except charge No.2, were proved. Based on the enquiry report, the 3rd respondent issued a second show cause notice on 14.06.2004, followed by order of punishment of "Dismissed without notice from bank service" on 12.07.2004. Against which the petitioner preferred an appeal dated 27.08.2004 to the 3rd respondent. By order dated 30.10.2004, the Appellate Authority modified the punishment considering the service rendered by the petitioner to the bank for 14 years from one of dismissal of service to one of "Discharge from service". Aggrieved over the same, the petitioner has preferred the above writ petition.

4. The learned counsel for the petitioner would submit that the very basis for framing the charges 1 and 2, is the complaint given by a customer of the bank, but in spite of request made by the petitioner he was not examined as a witness to prove the charge. Insofar as Charge no.3 is concerned, the allegations is that he is in connivance with one S.Ulaganathan, Accountant, had taken a Demand Draft from the account and without encashing returned the Cheque bearing No.002539 dated 18.06.2002 for Rs.9,000/- for more than 5 months and money was reimbursed to the bank only on 16.12.2002. For this incident, neither the said Accountant S.Ulaganathan nor the Branch Manager were examined nor the dispatch register which was the only proof to sustain the said charge was marked. Insofar as Charge No.4 is concerned, it does not constitute any misconduct to initiate action and charge No.5 is frivolous and motivated.

5. According to the learned counsel for the petitioner none of the witnesses examined to prove the charges and no documents were produced. Without any legal evidence, the finding of guilt is perverse and illegal. In support of his contention, he relied on the judgment of the Division Bench of

this Court in B.Padmaiah Vs. The Union of India rep.by the Secretary, Ministry of Home Affairs, New Delhi and others reported in 2007 Writ L.R.7. For the same preposition, he would rely on the another judgment of the Hon'ble Supreme Court reported in (1999) 8 SCC 582 [Hardwari Lal Vs. State of U.P. and Others]. He would further contend that the punishment order passed by the 4th respondent is bereft of details and without reasons and hence, such cryptic order is clearly violative of principle of natural justice. Even the Appellate authority had failed to discuss the grounds raised by him, but mechanically accepted the findings of the Enquiry Officer. The Appellate authority had modified the punishment considering the service of the petitioner in the bank for 14 years, other than that no reasons were given by the Appellate Authority also. Insofar as the fair treatment was not given, no reasons recorded, principles of natural justice is violated and the impugned order is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondent would contend that the charges were framed on the face of contents of the instrument, namely cheque. The petitioner has not disputed the signature in the instrument and the receipt of money by him. When he had not disputed the signature, it would amount to admission of guilt. Further, he would contend that the charges were very serious in nature. The relationship between the bank and customers is founded on trust and honesty. A bank officer or employee is expected to maintain absolute honesty and integrity. When one is found dishonest, punishment of dismissal is appropriate, and not disproportionate. He would rely on the judgment of Mihir Kumar Hazara Choudhury Vs. Life Insurance Corporation and others reported in 2018 (3) LLN 271 (SC) and (2005) 7 SCC 440 and judgment of the Division Bench of this Court reported in 2020 (1) TLNJ 156 (Civil). The learned counsel for the respondent would also contend that against the order of punishment, the petitioner has approached the Labour Court by raising industrial dispute. Without availing alternative remedy, he has straight away approached this Court under Article 226 of Constitution of India. The writ petition as such is not maintainable for non-exhaustion of alternative remedy. For that purpose, he would rely on the judgment of Uttar Pradesh State Spinning Co.Ltd Vs. R.S.Pandey and Another [(2005) 8 SCC 264].

7. I have considered the rival submissions.

8. Facts are admitted. Admittedly, Charge No.1 is framed on the basis of the complaint given by an account holder by name Ghouse Myan. The complaint is that using his Cheque No.108701 dated 11.11.2002 for Rs.15,000/-, petitioner fraudulently encashed his money on 26.11.2002. The complaint was lodged on 18.12.2002. The said complainant Ghouse Myan was not examined as a witness to speak about the particular letter. The petitioner in his defence statement before the

Enquiry Officer has categorically raised his objection that not only the best evidence was brought on record, but also an opportunity for cross-examination was denied. Further, a perusal of the materials would go to show that on the same day, the very same complainant issued another letter dated 18.12.2002 to the local Manager, wherein it is stated that he has received Rs.15,000/- in full from the charge sheeted employee and he sought to withdraw the complaint unconditionally.

9. Though both the letters were available, the enquiry officer had found fault with the petitioner that the letter was not produced by him, but, surprisingly by the presenting officer on behalf of the bank. I do not find any element to get surprised, because, obviously the letter submitted to the Manager of the branch, shall be available with the bank only. It cannot be omitted to be considered as it was produced by the prosecution. Non-consideration of evidence, as complained by the petitioner, is illegal and violates the principles of natural justice. The finding of the enquiry officer in that view is not fair but appears to be predetermined. Not considering relevant materials or considering irrelevant materials to arrive at an adverse finding amounts to violation of principle of natural justice. Insofar as the 3rd charge is concerned it deals with one S.Ulaganathan, Accountant of Thirupattur Branch for having retained the cheque for Rs.9,000/- without encashing the same even after taking the Demand Draft. Even though a specific allegation is made that the petitioner had acted in connivance with the said S.Ulaganathan, Accountant, he was not examined as a witness by the bank. Even assuming, he would collude with the petitioner, the Branch Manager, who was responsible for counter signing the Demand Draft was also not examined as a witness. None of the dispatch and other registers connected to the transaction and the ratification entries issued by the Bank Manager for issuance of cheque were produced and marked before the Enquiry Officer. The Presenting Officer has taken four grounds in support of the above charge, which are as under:

> " (i) The charge sheeted employee had not obtained authorization for DD Purchase from the Branch Manager but from the accountant and it was done with ulterior motive.
>
> (ii) Except the instrument referred above, all other cheques purchased at Tiruppattur on that day were duly entered in despatch register and dispatched.
>
> (iii) Only a few days short of 6 months from the date of cheque, the cheque surfaced at Karaikudi branch and was paid.
>
> (iv) The drawer of cheque is Sri.S.B.Nagalingam, whose name was appears in charge no.4 as the payee of cheque no.325282 dated 09.12.2002 for Rs.6500/- issued to him by the charge sheeted employee which

leads to an understanding that there existed some financial transaction between these two persons."

10. But surprisingly, none of the witnesses were examined nor the documents were marked. In that event, for want of proof the Enquiry Officer should have held the charge not proved but strangely he would go to the extent of stating that substantial evidence was produced and held the charges proved based on the preponderance of probability. The finding is not based on any evidence. Accordingly, the Enquiry Officer's finding is absolutely perverse and predetermined.

11. Insofar as Charge No.4 is concerned, the dishonour of cheque is between the petitioner and a third party. There is no evidence as to how it amounts to misconduct and as to how it affected the bank. The Charge No.5 pertains to absence during lunch has been explained by the medical record that the petitioner is a ulcer patient and he suffered from severe abdominal pain, but the same was not considered and no reasons were recorded to hold the charge proved. The delinquent was not subjected to medical examination nor the medical records were relied on.

12. In such circumstances, the finding of the Hon'ble Division Bench of this Court in B.Padmaiah case, following the judgment of the Hon'ble Supreme Court come to the rescue of the petitioner, wherein it is held as under:-

> " 8. We have already extracted the Article of charge as well as the Statement of Imputation. The charge against the petitioner is that he was indulging in illegal gratification and collection of money from one Ravichandran, Supervisor of Rajeshwari Contractors. The Statement of Imputation which we have extracted above makes it clear that only at the instance of the said Ravichandran, Supervisor of Rajeshwari Contractors the complaint was made stating that the petitioner demanded money and the said Ravichandran paid the same and on the basis of the said complaint, charge was leveled against the petitioner and proceeded with further. Though the Department has examined as many as four witnesses, admittedly, the said Ravichandran, Supervisor of Rajeshwari Contractors was not examined. There is no material to show whether any attempt was made summoning him to appear before the Enquiry Officer. In such circumstances, Mr.N.G.R.Prasad, learned counsel for the petitioner strongly contended that the said Ravichandran, being a material witness to the charge, and failure to examine him to substantiate his alleged complaint is fatal to the entire proceedings. In support of the above contention, he relied on the decision of the Supreme Court in Hardwari Lal vs. State of U.P. [(1999) 8 SCC 582].

9. In the case before the Supreme Court (Hardwari Lal's case cited supra), the appellant was a Constable in the Police Department in the State of Uttar Pradesh and on the charge that during the night on 16/17.1.1991, under the influence of liquor, he hurled abuses in the police station at Constable Prakash Chandra Pandey, a departmental enquiry was initiated against him and on the basis of the enquiry report, the disciplinary authority passed an order of dismissal which was challenged by the appellant before the Public Service Tribunal, which dismissed his case and the appellant further carried the matter to the High Court by way of writ petition. The ground taken by the Constable before the Tribunal that copies of certain documents like, preliminary enquiry report and the statement of the complainant made to the Inspector Virender Singh were not supplied to him, was rejected by the Tribunal on the basis that the Constable having participated in the preliminary enquiry and inspected the entire records and documents, he should have asked for copies of documents now sought for. Similarly the contention that the non-examination of Virender Singh, who was the complainant in the case and the witness Jagdish Ram, who were allegedly witnessed the incident would be fatal to the proceedings was rejected by the Tribunal on the basis that the examination of Virender Singh was only formal to prove the report dated 17.7.1991 and no prejudice would be caused to the appellant due to such non-examination. The Tribunal also took the view that the evidence of Jagdish Ram was also not important because he had merely accompanied the Constable during medical examination. The High Court affirmed the above findings of the Tribunal and ultimately concluded that apart from the evidence of these two witnesses, there were sufficient material on record to prove the incident and thus, there was no ground to interfere with the order made by the Tribunal and dismissed the writ petition and the same was challenged before the Supreme Court. Before the Supreme Court, the sole ground urged was as to the non-observance of the principles of natural justice by not examining the complainant Shri Virender Singh, and the witness Jagdish Ram. The Supreme Court accepting the above contention, concluded that,

"3. ..... 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 could 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."

10. Highlighting the evidence of other witnesses, the learned Additional Advocate General appearing for the State of Uttar Pradesh submitted before the Supreme Court that there were other materials which were sufficient to come to the conclusion in one way or the other. Rejecting the said contention, the Supreme Court held that,

"4. .... But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant."

After holding so, Their Lordships concluded that,

"5. In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. .... "

The principle laid down by the Hon'ble Division Bench squarely applies to the present case.

13. In the instant case, the complaint given by the account holder and his letter of withdrawal of complaint are vital to the charge framed. The complainant is the best person to speaks its veracity. The delinquent can bring out the facts and will have an opportunity to prove his innocence. Therefore when a request was made by the petitioner, the witnesses ought to have been produced. Even though, the delinquent is entitled to produce them as witnesses, such circumstance will arise only when there is evidence to prove the charge on the basis of other available evidence. In the absence of such evidence to prove the charge, the delinquent is not required to produce them. Worse is the case, when records of the employer form basis of the charge. The transaction with regard to taking a demand draft involves many registers and hierarchy of officers. The accountant shall pass it and the Manager

shall approve it. When a complaint on report based on records leads to framing of charge, those materials are vital to prove the same. To disprove such charge, ample opportunity shall be given to the delinquent, to verify the records and confront the witnesses. Non production of basic records and the connected personnel dealing with those records would be fatal and the enquiry conducted will become a force. Non consideration of relevant records when available, and consideration of irrelevant records or taking the records on its face value without examining the authors amounts to deprivation of opportunity and as such violative of principles of natural justice.

14. The Disciplinary Authority has also not considered the objection raised by the petitioner as to non-examination of the witnesses. The order of punishment simply states that the Disciplinary Authority had gone through the Proceedings of Enquiry, findings of Enquiry Officer, reply submission of the petitioner to the Enquiry Officer's report were considered and after considering the relevant records punishment was imposed. Except saying the materials were considered, actually there is no consideration of the same. The authority has not recorded his reasons for accepting the findings of the Enquiry Officer and reasons for arriving at the capital punishment. Likewise, the Appellate Authority also failed to discuss any of the grounds raised with regard to his grievance of non production of records and witnesses. The appellate order extracts the expected code of conduct of a bank employee, the enquiry findings and taking into consideration the long years of service modified the punishment. But there is no discussion about the findings of the enquiry officer, sufficiency and legality of evidence available to sustain the punishment and as to how the grounds raised in the appeal are acceptable. Without discussing and without recording reasons on the aspect of legal evidence, mechanically held that the finding are correct and that the delinquent had not disproved the same.

15. It is true to state, as contended by the learned counsel for the respondent bank that a bank officer is required to exercise higher standards of honesty and integrity.

16. It is also equally correct that the Hon'ble Supreme Court in 2018 (3) LLN 271 (SC) [Mihir Kumar Hazara Choudhury Vs. Life Insurance Corporation and Others], observed as under:-

> "28) There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as

custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (see some observations in Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik, 1996 (9) SCC 69."

17. But, in the instant case, whether the bank Officer involved in dishonest Act or not? shall be proved at the first instance. For that purpose the bank shall produce acceptable evidence to prove the dishonesty of the employee. Instead, the reports based on the records were taken at its face value and since those charges were not disproved, they were held proved and employee, thereby was held to be dishonest. Such a procedure is alien to service jurisprudence and principles of natural justice. The enquiry proceedings as such is not fair and proper. Hence the above cited judgment will not at all apply to the present case on hand.

18. Insofar as the judgment cited by the learned counsel for the respondent reported in (2005) 8 SCC 264 [Uttar Pradesh States Spinning Co.Ltd Vs. R.S.Pandey and another], is concerned it is categorically held by the Hon'ble Supreme Court, the writ petition can be entertained where exceptional circumstances are made out. In the instant case, the enquiry proceedings were held in violation of principle of natural justice. Wherever, the principle of natural justice is violated, the power under Article 226 can be exercised. As observed by the Hon'ble Supreme Court without examining the material witnesses, the charge were held to be proved without sufficient or no legal evidence. That too by ignoring the documents which on the face of it disprove the charges. Therefore, for violation of principle of natural justice, perverse findings and the ignorance of the material documents by the Enquiry Officer and non-speaking order imposing the punishment by the Disciplinary Authority warrants, interference of the impugned order. Writ petition was admitted in the year 2005, it is pending for more that 15 years and at this stage the exceptional circumstances would compel me to entertain the writ petition rather than remitting it back to the Labour Court.

19. Reliance placed on the judgment reported in 2020 (1) TLNJ 156 (Civil) [Shanmugam G. Vs. The Chief Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai - 600 003.] would buttress the argument of the petitioner which is as under:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding,even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a ending is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has elevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

20. From the above observation of the Hon'ble Supreme Court in 1977 (2) SCC 291 as extracted above will substantiate the decision of this Court in the given circumstances of the case. The ratio of the Hon'ble Supreme Court is that Courts will not normally exercise its limited powers to interfere with the decisions taken on finding of facts, but its is categorically held that judicial review is meant to ensure that delinquent receives fair treatment in the enquiry conducted against him. If fair treatment was not given, this Court, on the obverse, has power to interfere with the punishment imposed on irregular and illegal enquiry proceedings. The instant case is one of the examples, as

discussed above where enquiry proceedings was improper, irregular, deprived the delinquent of fair opportunity and based on no legal evidence as such render the punishment is perverse, illegal and violative of principles of natural justice.

21. In view of the discussion of all these aspects, I am of the considered opinion that the punishment imposed on the petitioner is illegal, perverse and not sustainable in law. Accordingly, the same is set aside. The petitioner would have retired from service. Therefore, the respondents are directed to give all the monetary and consequential benefits to the petitioner as if he had continued in service till the age of superannuation within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
State Bank of India,
Central Office,
Post Box No.12,
Mumbai - 400 021.

2.The Chief General Manager,
State Bank of India, Local Head Office,
“CIRCLETOP House”,
18, College Lane, Chennai - 600 008.

3.The Deputy General Manager (Appellate Authority),
State Bank of India, Zonal Office,
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4.The Assistant General Manager, Region - II,
(Disciplinary Authority),
State Bank of India,
Zonal Office, Madurai.

+1 cc to Mr.S.Kannaiah, Advocate,sr.9819

+1 cc to Mr.TN.Suresh, Advocate,sr.9843.

Sks(cO)
krd 9/10