BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.02.2020

DELIVERED ON : 02.11.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.21046 of 2015
and
M.P.(MD).No.2 of 2015

K.Muthukumar ... Petitioner

Vs.

1.The Regional Manager,
Central Bank of India,
Regional Office,
Rajamuthiah Mandram 1st Floor,
Madurai.

2.The Deputy Regional Manager,
Central Bank of India,
Regional Office,
Rajamuthiah Mandram Ist Floor,
Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings in RO/HRD/DAD/2015-16/124 dated 23.09.2015 and quash the same as illegal.

For petitioner : Mr.H.Mohammed Imran,
for M/s.Ajmal Associates

For respondents 1 & 2 : Mr.R.Ravindran

ORDER

This writ petition has been filed by the petitioner challenging the order dismissing him from service, passed by the first respondent dated 23.09.2015.

2. The learned counsel appearing for the petitioner submitted that the petitioner joined in Central Bank of India as Clerk/Typist on 15.06.1989 and he was promoted as Head Cashier on 01.08.2001,

Assistant Manager (Scale-I) on 09.10.2006 and Branch Manager (Scale II) on 04.09.2012. While he was working as Branch Manager, one Paulchamy submitted an application seeking educational loan for his second daughter. The said Paulchamy gave a complaint to the CBI to the effect that the petitioner demanded Rs.15,000/- as bribe in order to sanction education loan and based on the said complaint, a trap was arranged by CBI and subsequently, the petitioner was arrested. Consequently, a FIR was registered under Section 7 of the Prevention of Corruption Act, 1988 against the petitioner and on 31.12.2013 a charge sheet was filed in C.C.No.6 of 2014 on the file of the Special Judge, CBI Cases, Madurai. In the meantime, the petitioner was placed under suspension on 26.10.2013. A show cause notice was issued on 02.01.2015, for which the petitioner gave his detailed reply. Thereafter, on 26.02.2015, a charge memo was issued alleging a charge by the first respondent. The petitioner did not submit his reply. Then, the first respondent appointed the 2nd respondent as an Enquiry Officer. As the respondents started enquiry without furnishing requisite documents, on 20.03.2015, the petitioner had sent a representation to the Enquiry Officer seeking a list of documents relied on by the Bank. However, the said request was turned down on the ground that the said documents will be provided only during the course of enquiry. On 04.06.2015, the petitioner has sent a further representation seeking documents relied on by the Bank. The said request was again turned down reiterating the very same reason.

3. The learned counsel for the petitioner would further submit that in the meanwhile, the petitioner preferred a writ petition in W.P.(MD).No.4961 of 2015 seeking to defer the departmental proceedings till the completion of the criminal proceedings. On 17.04.2015 the respondents intimated the petitioner through a letter that the departmental enquiry conducted on 07.04.2015 and in order to provide an another opportunity, the enquiry adjourned to 04.05.2015. The petitioner had sent another representation seeking relied on documents, but the same was again denied. Enclosing relevant documents, on 12.08.2015, the first respondent had sent a communication intimating the petitioner that the enquiry against the petitioner has been concluded and that the first respondent is in consonance with the 2nd respondent's enquiry report. The petitioner gave his reply to the said communication and requested the first respondent to remand the disciplinary proceedings to the 2nd respondent for fresh adjudication in the light of the documents furnished to him. But, the first respondent, by the impugned order dated 23.09.2015, dismissed the petitioner from service. Aggrieved by the same, the petitioner has filed this appeal.

4. The learned counsel appearing for the petitioner would next submit that the respondents have not furnished relevant documents relied on by them and therefore, the petitioner could not able to appear before them and defend his case. Non furnishing of documents amount to violation of principles of natural justice. The impugned

order of dismissal is not supported by any material fact and the disciplinary authority has not proved the charge leveled against the petitioner in the manner known to law. He would further submit that during the pendency of this writ petition, the criminal case registered for the same offence ended in acquittal by judgment dated 16.08.2017 and therefore, this Court may set aside the impugned order and the petitioner may be reinstated in service with all service and monetary benefits.

5. The learned counsel appearing for the respondents submitted that on 25.10.2013, the Central Bureau of Investigation, Anti-Corruption Branch, informed the first respondent that the petitioner caught red handed on 24.10.2013 while demanding and accepting Rs.7,000/- as illegal gratification from Paulchamy for sanction of education loan and that he was remanded to judicial custody. Thereafter, the petitioner was suspended and charge memo was issued. The writ petition filed by the petitioner in W.P.(MD).No.1699 of 2015 against the order of suspension was dismissed and another writ petition filed by the petitioner in W.P.(MD).No.4961 of 2015 seeking for deferment of departmental proceeding till the completion of criminal proceeding is still pending. In the counter affidavit filed in W.P.(MD).No.4961 of 2015, the respondents have specifically stated that if the petitioner is in need of any copy, he ought to have appeared in the enquiry and requested to provide the documents. But, the petitioner has not done so. Further, though the second respondent posted the enquiry on 18.03.2015, 07.04.2015, 04.06.2015 and on 16.07.2015 and provided several opportunities to the petitioner, the petitioner wantonly failed to appear even for a single day and the petitioner was only sending letters to adjourn the hearing. The petitioner has also failed to submit his written statement of defence to the charges. Hence, he was set *ex parte* as per Central Bank of India Office Employees (Discipline and Appeal) Regulations, 1976. After full-fledged enquiry, it is concluded that the charge is proved by the Enquiry Officer. The disciplinary authority, after verifying the same, has dismissed the petitioner from service.

6. The learned counsel appearing for the respondents would further submit that this writ petition is not maintainable, as the service rules provide an effective alternative remedy of appeal. He would next submit that the criminal case was ended in favour of the petitioner due to the death of the complainant therein. It is a settled legal position that the criminal case proceedings are entirely different from departmental inquiry and only preponderance of probability is enough in deciding the departmental proceedings. Therefore, the petitioner has no *locus standi* to get a favourable order on the basis of fate of the criminal case. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. The main ground on which the learned counsel appearing for the petitioner sought to set aside the impugned order is that by not furnishing relied on documents, the respondents have violated the principles of natural justice. According to the petitioner, he submitted several representations to the second respondent seeking to furnish the copy of documents relied by the Bank, but the same has not been supplied by the respondents.

9. A perusal of record shows that the petitioner caught red handed in the trap laid down by the Central Bureau of Investigation, Anti-Corruption Branch on 24.10.2013, while demanding and accepting Rs.7,000/- as illegal gratification from one S.Paulchamy for sanctioning educational loan and then, he remanded to judicial custody. Pursuant to the same, the petitioner was placed under suspension and he was issued a notice to show cause as to why disciplinary action should not be taken against him. It appears that the petitioner did not furnish his explanation. Thereafter, the respondents issued a charge memo on 26.02.2015. On 11.03.2015, the 2nd respondent has sent a communication to appear for enquiry. On 20.03.2015 the petitioner has sent his first representation seeking to furnish the documents relied by the Bank, for which the second respondent has given a reply on 23.03.2015. The reply dated 23.03.2015 reads as follows:

> "It is clearly mentioned in the Memorandum RO/HRD/DAD/2014-15/147, dated 26.02.15 issued by the Disciplinary authority that you will be given full opportunity at the inquiry to inspect the documents which will be filed by the Management. Hence, all the documents listed in the said memorandum will be produced in the inquiry and you will be given all opportunity to inspect the said documents. Copies of said documents will also be provided to you in the inquiry. You also will be allowed to produce documents and witnesses to support your case. As such the undersigned will not accept any type of representation from you either orally or in writing henceforth and whatever you want to say or present, the same may be produced / argued in the departmental inquiry.
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> However, as per your request the inquiry scheduled to be held on 23.03.15 is hereby postponed and the next sitting will be held on 07.04.2015 at Theni Branch at 11 a.m. You are advised to remain present at the inquiry on the date, time and venue mentioned above."

10. From the above reply, it is clear that the 2nd respondent was ready to furnish the documents relied by them on the presence of

the petitioner in the inquiry, but the petitioner purposefully evaded to appear before the enquiry officer and to receive the documents. Therefore, there is no violation of principles of natural justice as alleged by the petitioner.

11. It is seen that the petitioner, thereafter, filed a writ petition in W.P.(MD).No.4961 of 2015 seeking to defer departmental proceeding till the completion of criminal proceeding. Even in the counter affidavit filed in W.P.(MD).No.4961 of 2015, the respondents have specifically stated that if the petitioner is in need of any copy of documents, he ought to have appeared in the inquiry and requested to provide the documents. But, the petitioner has not done so. Even thereafter, the petitioner has been repeatedly sending only representations seeking relied on documents and adjournments, which cannot be accepted. It is seen from the record that though the second respondent has adjourned the enquiry to 18.03.2015, 07.04.2015, 04.06.2015 and on 16.07.2015 and provided several opportunities to the petitioner, the petitioner wantonly failed to appear even for a single day. The petitioner has also failed to submit his written statement of defence to the charges. Hence, he was set *ex parte* as per Central Bank of India Office Employees (Discipline and Appeal) Regulations, 1976. After enquiry, it was concluded by the Enquiry Officer that the charge is proved. The enquiry report, along with relevant documents, forwarded to the petitioner. The petitioner has sent his reply dated 18.08.2015 requesting to remand back the enquiry proceedings on the ground that the enquiry officer had not followed the principles of natural justice by not furnishing the documents relied by the Bank. After considering all the aspects, the disciplinary authority has dismissed him from service in terms of Regulation 4(j) of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976.

12. When the very same issue arises for consideration, the Hon'ble Supreme Court, in an unreported decision dated 14.01.2013 in **State Bank of India and others Vs. Narendra Kumar Pandey**, (Civil Appeal No.263 of 2013) has held in paragraph Nos.18 to 27 as follows:

> "18. We are of the view that the High Court has committed an error in holding that the charge-sheet should have mentioned about the details of the documents and the names of the witnesses which the Bank proposed to examine and a list to that effect should have been appended to the charge sheet. We may point out that the charge-sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge-sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of

copies of the documents or list of witnesses along with the charge-sheet. Of course, statement of allegations has to accompany the charge-sheet, when required by the Service Rules.

19. We notice the presenting officer had informed the inquiring authority that the list of bank's documents was forwarded to the charged officer vide his letter dated 21.05.1997 but the charged officer did not accept that letter. Charged officer's related letter would also indicate that he was advised not to accept the letter along with its enclosure. Presenting officer had again sent the list of bank's documents to the charged officer vide his letter dated 27.06.1997, the same was also not responded to by the charged officer. The Inquiring Authority further directed the presenting officer to make arrangements for the charged official to inspect the bank's documents. Consequently, the presenting officer vide his letter dated 30.05.1997 and 27.06.1997 made arrangements for inspection of bank's documents on 13.06.1997, 14.06.1997, 09.07.1997 and 10.07.1997 respectively. Presenting officer was also present for facilitating the inspection but the charged officer did not turn up for inspection of the bank's documents. In fact the Inquiring Authority himself had written a letter dated 25.06.1997 to the charged officer advising him that the presenting officer had again been instructed to forward the list of bank's documents and witnesses by 30.06.1997 and get the bank's documents inspected by him in his presence before 12.07.1997 which was the last opportunity given to the charged officer. One more opportunity was given by the Inquiring Authority to the charged officer to submit the list of defence documents and witnesses by 19.07.1997 but the charged officer did not give any list of defence documents and witnesses and on most of the days, the charged officer did not appear before the Inquiring Authority. On 06.11.1997, the charged officer walked out of the inquiry. Under such circumstances, the Inquiring Authority had no other alternative but to hold the inquiry ex parte. We are of the view that the Inquiring Authority and the presenting officer had followed procedures laid down under Rules 68(2)(v), 68(2)(ix)(a), 68(2)(viii) and 68(2)(xix) of the Service Rules.

20. We are of the view that the High Court also committed an error in holding that since no witness was examined in support of charges, it was a case of no evidence. In an ex parte inquiry, in our view, if

the charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the Inquiring Authority should not have relied upon the documents which were not made available or disclosed to him. Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges.

21. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court reported in Union of India v. Sardar Bahadur; (1972) 4 SCC 618 and R.S. Saini v. State of Punjab and Others; (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.

22. In Bank of India v. Apurba Kumar Saha ; (1994) 2 SCC 615, this court held:

"A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing".

23. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an

alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In State Bank of India and Others v. Ramesh Dinkar Punde (2006) 7 SCC 212, this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.

24. This court in State of Andhra Pradesh v. Sree Rama Rao; AIR 1963 SC 1723 held:

"Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence especially when the charged officer had not participated in the inquiry and had not raised the grounds urged by him before the High Court by the Inquiring Authority."

25. This Court in Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup; AIR 1957 SC 82 held where a workman intentionally refuses to participate in the inquiry, cannot complain that the dismissal is against the principles of natural justice. Once the inquiry proceed ex parte, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. We cannot appreciate the conduct of the charged officer in this case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.

> 26. We are also conscious of the fact that even if the Inquiring Authority set the charged officer ex parte that would not absolve him from deciding that the charges levelled against him were proved or not. In other words, no punishment could be imposed without an inquiry. We notice in this case the Inquiring Authority had elaborately considered the charges levelled against the charged officer and also the materials produced by the bank because some evidence is necessary to establish the charges. In some cases, proof may only be documentary and in some cases oral. The requirement of proof depends on the facts and circumstances of each case. Appellant - Bank in this case has succeeded in establishing the charges levelled against the delinquent officer and was rightly dismissed from service which called for no interference by the High Court under Article 226 of the Constitution of India.
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> 27. In view of the above-mentioned reasons, we find it difficult to support the judgment of the High Court. Consequently, the appeal is allowed and the impugned judgment is set aside with no order as to costs."

13.The above decision is squarely applicable to the facts and circumstances of this case. Having failed to avail opportunities, the petitioner now cannot be permitted to contend that he had been denied reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceedings conducted against him by the Bank in violation of the principles of natural justice. As the petitioner did not appear for enquiry, he was set *ex parte* and after enquiry, the impugned order has been passed. This Court does not find any reason to interfere with the impugned order.

14. The learned counsel for the petitioner lastly submitted that he was acquitted from the criminal case and therefore, he may be reinstated. A perusal of the judgment passed in the criminal case shows that the complainant himself died before trial and based on the other evidences, the petitioner was acquitted on benefit of doubts. As stated by the respondents, the criminal case proceedings are entirely different from the departmental inquiry and only preponderance of probability is enough in deciding the departmental proceeding. Further, it is needless to say that each case has to be decided according to its own facts and circumstances of the case. Therefore, this Court is not inclined to accept the above submission of the learned counsel for the petitioner.

15. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

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Sub Assistant Registrar(CS)

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+1 CC to M/s.R.RAVINDRAN, Advocate (SR-20832[F] dated 02/11/2020)

order made in
W.P(MD)No.21046 of 2015

02.11.2020

PU(CO)
NR (10/11/2020) 10P : 2C