

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO. 4761 OF 2018**

**PETITIONER:** Parmanand Matasharan Dubey,  
aged about 60 years, Occ. Nil,  
R/o. Manas Bhavan, Khandelwal Nagar,  
Behind S.T.V. Colony, Akola.

**...VERSUS...**

**RESPONDENTS:** 1] The Central Government Industrial Tribunal  
cum-Labour Court, 1<sup>st</sup> Floor, N.S.Building,  
Civil Lines, Nagpur, through Presiding  
Officer

2] The Cheif Manager (SS & P),  
Bank of India, Zonal Office,  
S.V.Patil Marg, Post Box No.4  
Nagpur-1 ( Org. Party No.1)

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Mr. S.V.Sohoni, Advocate for petitioners.  
Mr. A.T.Purohit, Advocate for respondent No.2.

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**CORAM : AVINASH G. GHAROTE, J.**  
**DATE : 3/12/2021.**

1] Heard Mr. Sohoni, learned counsel for petitioner and  
Mr. Purohit, learned counsel for Respondent No.2. Respondent No.1  
is a formal party.

2] Rule. Rule made returnable forthwith. Heard finally by  
consent of the learned counsel appearing for the parties.

3]           The petition challenges the award dated 05.09.2012 passed by the Respondent No. 1 by which the action of the management of the Bank of India in awarding the punishment of dismissal to the Petitioner was held to be legal and justified and the claim of the Petitioner for quashing the action of the management of termination and consequent reinstatement was denied, and so also the order dated 22.03.2012, by which the Respondent No. 1, has held the departmental inquiry against the Petitioner to be legal, proper and in accordance with the principles of the natural justice.

4]           Mr. Sohoni, learned counsel for the Petitioner submits that the petitioner was appointed as a clerk with Respondent No. 2 on 17.04.1980 and had an unblemished career, which was marred only by issuance of a charge-sheet to the Petitioner on 05.09.2001. It is submitted that an explanation was filed to the same which was not considered, and the enquiry was commenced. It is contended by Mr Sohoni, learned counsel for the petitioner that the enquiry stood vitiated, as the inquiry officer himself acted as a prosecutor, for which reliance is placed upon the evidence of management witness (MW) No. 1 Prakash Udgirkar (Page 27), proprietor of Ajinkya Marketing, MW No. 2 Nitin Padegaonkar, employee of Hotel Surabhi

(Page 28) and MW No. 4 Sushil Khowal, employee of M/s Shakambhari Industries (page 34). He submits that the law does not permit the Enquiry Officer to act as a Prosecutor and the Enquiry Officer, having so acted, the entire enquiry stood vitiated, reliance for which is placed on **Union of India and others vs Ram Lakhan Sharma (2018) 7 SCC 670** and **State of Uttar Pradesh and others Vs. Saroj Kuman Sinha (2010) 2 SCC 772**.

5] The order dated 22.03.2012 passed by the Enquiry Officer, is challenged on the same ground as stated above, for which reliance is placed upon record page 84 of the order dated 22.03.2012, which holds that the inquiry was legal and proper and by following the principles of natural justice.

6] Learned counsel Mr. Sohoni further submits that not a single witness states that money was taken by the Petitioner, nor is there any material to demonstrate that the petitioner had indulged into any action detrimental to the interest of the bank, or not worthy of the conduct of an employee of the bank. He further submits that the sequence indicated in the statement of the charge itself (page16) does not demonstrate any misconduct on the part of the petitioner.

He further submits that the proprietor of Hotel Surabhi, namely Shri Dilipbhai, from whom the petitioner is claimed to have borrowed Rs. 50,000/- has not been examined and there was no role of the petitioner in preparing the cheque of Rs. 50,000/- in the name of M/s Shakambhari Industries. He therefore submits that no nexus of the petitioner has been established with the alleged transaction as indicated in the charge-sheet (page 16) and therefore the inquiry report; the action of Respondent No. 2 accepting the same; terminating the Petitioner and so also the award of the Respondent No. 1 in this regard cannot be sustained. It is further contended that the impugned award dated 05.09.2012 passed by the learned Respondent No. 1 is also totally silent on the aspect regarding borrowing of any money by the petitioner and his involvement in the transaction as alleged in the charge-sheet on account of which also the award dated 05.09.2012 by the respondent No.1 cannot be sustained. He submits that since the petitioner already has crossed the age of superannuation on 30.04.2018, the question of any reinstatement would not arise and therefore, the issue would be only restricted to the claim for back wages.

7] Mr. Purohit, learned counsel for respondent No.2 submits, that the conduct of the petitioner, has been found to be unbecoming of an employee of the bank, inasmuch as the inquiry report indicates that he has done transactions unauthorizedly in the accounts of third persons.

8] He contended that on 09.02.2001, one Mr. S.R. Khawal (M.W.4) of M/s Shakambhari Industries had sent a cheque for Rs. 50,000/- duly signed by him without mentioning therein the payees name at the instruction of the petitioner, which name at the instruction of the petitioner was later on filled in by the accountant of M/s Shakambhari Industries, by inserting the name of M/s Hotel Surabhi as the payee, inspite of the fact that there was no transaction between M/s Shakambhari Industries and Surabhi Hotel, this was done as the petitioner is alleged to have borrowed some money from Hotel Surabhi, and therefore, at his request, Mr. S.R.Khowal (M.W.4) had issued the said cheque so that the liability of the petitioner, with M/s Hotel Surabhi, could be squared off.

9] On 23.10.2001, the petitioner, who had earlier borrowed an amount of Rs. 50,000/- from Dilipbhai, Proprietor of Hotel Surabhi, is claimed to have approached M/s.Ajinkya Marketing (Proprietor Prakash Udgirkar), who is MW 1, and solicited cheque for Rs. 50,000/- for preparing a short term deposit receipt in favour of M/s. Ajinkya Marketing in pursuance to which Cheque. No. 35322 was given to the petitioner. It is claimed that out of this cheque, instead of preparing the short term deposit receipt in favour of M/s. Ajinkya Marketing, the petitioner prepared a pay-order in favour of M/s. Shakambhari Industries by using the said cheque, which in turn was made over to M/s. Shakambari Industries in view of the borrowing of the petitioner made earlier.

10] When M/s. Ajinkya Marketing is claimed to have demanded the short term deposit receipt after 10-12 days, the petitioner informed that the amount of Rs. 50,000/- would be deposited back in the account of M/s. Ajinkya Marketing. When the said amount was not paid by 25.04.2001, Mr. Nitin Padgaonkar (MW 2) working with M/s. Ajinkya Marketing made an oral complaint to the Branch Manager. It is claimed that thereafter the petitioner paid Rs. 20,000/- in cash to M/s. Ajinkya Marketing and

the balance was not paid at all, which according to the learned counsel for the respondent is reflected from the evidence of MW 2 in the enquiry (page 19). It is thus submitted that these activities on the part of the petitioner, led to the initiation of the department enquiry in view of the fact that the respondent had lost faith in the petitioner. The enquiry report dated 5.9.2001, (page 17) squarely indicted the petitioner for the above action. This action when challenged before the appellate Authority, the appellate Authority by an order dated 8.4.2002 (page 191) dismissed the appeal, concurring with the finding of the Enquiry Committee. It is thus submitted that the petitioner who was recommended punishment of dismissal without notice, came to be terminated by an order dated 11.2.2002 (page 24).

11] The matter thereafter went to the Central Government Industrial Tribunal (CGIT), which by an order dated 22.03.2012, held that the departmental enquiry was fair and proper. The matter was thereafter decided by the learned CGIT on merits by passing the award dated 05.09.2012, wherein the action of the management in awarding the punishment was held to be legal and justified. He further submits that the Award dated 05.09.2012 by the learned

CGIT has been challenged only in the year 2018 by the petitioner i.e. after a period of six years and therefore it is hit by delay and laches. It is further contended that the petitioner in the normal course would have superannuated by 30.04.2018 and therefore, the claim made by the petitioner seeking reinstatement is no more tenable. It is further contended that the petitioner has already received GPF and gratuity and is also getting pension, which has been accepted voluntarily by the petitioner and not without prejudice to his right and therefore, the question of reinstatement would not arise. It is further contended that the scope of judicial review in such matters is very narrow and considering the facts and circumstances of the present matter, there cannot be any reappreciation of the evidence of the position as found in the enquiry as well as by the learned CGIT. Mr. Purohit, learned counsel for respondent No.2 in support of his submission places reliance upon;

- (1) Judgment delivered **State of Karnataka and another vrs. N. Gangaraj** by the Hon'ble Apex Court on 14.02.2020 in Civil Appeal No. 8071/2014;
- (2) **B.M.Mittal vrs. Union of India**; 2019 (1) Mh.L.J. 878;
- (3) **John A. Fernandes and anr vrs. Secretary (Transport) Government of Goa and others**; 2018(5) Mh.L.J. 862.

- (4) **Gitabai Bhagwan Pardeshi vrs. Hirkanbai Aadhar Patil;** 2020 (6) Mh.L.J. 432
- (5) **Orbit Super Market Pvt. Ltd and ors vrs. Mukta Arvind Bobde and ors;** 2019 (6) Mh.L.J. 614
- (6) **Udyavara R. Acharya and anr vrs. Jugal Kishor Jaannath Sharda;** 2020 (5) Mh.L.J. 227.

12] Having heard the learned counsel for the parties, it would be material to note that the basic contentions on which the challenge is laid by the learned counsel for the petitioner is that the Presiding Officer acted as an Enquiry Officer in putting questions to the petitioner, for which reliance is placed upon pages 27 to 36 of the record. In **Ram Lakhan Sharma** (supra), it has been held that the role of the Enquiry Officer is that of an impartial third person, as he is acting in a quasi-judicial capacity and therefore, due care has to be taken that the matter is decided impartially. It has been held that when the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions, it would indicate that the Enquiry Officer himself had acted as a prosecutor and therefore, the enquiry would stand vitiated. In **Saroj Kumar Sinha** (supra) it has been held that an Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator and he is not

supposed to be a representative of the department/disciplinary authority/Government and his function is to examine the evidence presented by the department even in the absence of the delinquent official, to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the instant matter, the perusal of evidence placed on record from page 27 onwards, would indicate that the evidence has been led by the Presenting Officer and not by the Enquiry Officer. No doubt true that the Enquiry Officer has put certain questions to the witnesses as is indicated from the record of evidence, however, in my considered opinion, it would be permissible for him to do so, may be to a limited extent, in order to bring the factual position on record and to clarify any ambiguity. This is clearly spelt out from **Ram Lakhon Sharma** (supra), wherein in para 33 the principles in this regard have been summarized as under;

“33. The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect.

16. We may summarise the principles thus:

(i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every

inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

13] It is thus apparent that a certain leeway has been granted to the Enquiry Officer in the matter of putting questions to

the witnesses with a view to arrive at the truth or to obtain clarification. A perusal of the questions put by the Enquiry Officer to the witnesses would clearly indicate that he had not acted as a prosecutor, but the questions were only with a view to elicit the truth and seek clarifications, considering which, I do not find any substance in the contention of learned counsel Mr. Sohoni that the Enquiry Officer acted as a prosecutor and therefore the enquiry was vitiated.

14] In **N. Gangaraj** the scope of judicial review has been delineated in the following words;

“7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority”

14. .... We do not find that even on touchstone on that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An

appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the Courts are the Appellate Authority.

15] It is thus apparent that once the evidence has been appreciated by the Enquiry Officer and the finding is returned that the petitioner was guilty of misconduct, which in turn has been confirmed by the appellate Authority and so also by the learned CGIT and considering the limited scope of review available to this Court, it would not be permissible for this Court to interfere with the findings by reappreciating the evidence, as this Court does not function and act as an appellate Authority.

16] Considering the above position, I do not find any merit in the petition. The same is accordingly dismissed.

**JUDGE**

Rvjalit