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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.12 of 2011

Tamil Nadu Grama Bank,
No.6, Yercaud Road,
Hasthampatti, Salem-636 007.

... Appellant

-vs-

1. The Presiding Officer,
Central Government Industrial Tribunal-cum-
Labour Court, 1st Floor,
Haddows Road,
Shasthri Bhavan,
Madras-600 006.

2. Pandyan Grama Bank Employees
Association rep. by its General Secretary,
6, Pitchai Street,
Virudhunagar-626 001. ... Respondents
(Cause title amended vide Court dated 28/04/2021 passed in Memo
in W.A.No.12/2011)

Prayer: Writ appeal filed under Clause 15 of the Letters
Patent praying to allow the Writ Appeal by setting aside the
order of the learned Single Judge made in W.P.No.9814 of 2001
dated 18.08.2010.

Prayer in W.P.No.9814 of 2001:

Writ Petition filed under Article 226 of the Constitution of
India, for issuance of a Writ of Certiorari calling for the
records from the file of the 1st respondent Central Government
Industrial Tribunal-cum-Labour Court, Madras - 600 006 relating
to I.D.No.67 of 2000 and quash the order dated 13.02.2001 passed
therein.

For Appellant : Mr.K.Srinivasamurthy

For 2nd respondent: No appearance



JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

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This Writ Appeal has been brought up by the Tamil Nadu Grama Bank, No.6, Yercaud Road, Hasthampatti, Salem-636 007, challenging the correctness of the impugned order passed by the learned Single Judge in W.P.No.9814 of 2001 dated 18.08.2010, who had confirmed the order passed by the learned Central Government Industrial Tribunal-cum-Labour Court, Madras in I.D.No.67/2000, dated 13.02.2001.

2. Learned Counsel appearing for the appellant submitted that one Mr.V.Naganathan, while serving as a Clerk-cum-Cashier in the appellant Bank from 04.04.1994 was issued with a charge Memo on 12.12.1995 alleging that he had demanded and accepted 10% of loan amount as illegal gratification along with the Field Officer Sri N.Suruli Bommaiyan and the then Branch Manager Mr.O.Arumugam at the time of disbursing five small loans and seventeen charcoal loans to different borrowers during the period between December, 1993 and March, 1994. He was also the General Secretary of Pandyan Grama Bank Employees Association, Virudhunagar. On receipt of the said charge memo, he submitted his explanation dated 23.01.1996 denying all the charges. Finally, an enquiry was held. The Enquiry Officer submitted his report holding that the charge levelled against the said Naganathan was deemed proved. The Enquiry Officer allegedly and substantially relying upon the hearsay evidence of the Inspector Mr.K.Balachandran, came to the conclusion that the charge levelled against the said delinquent employee was deemed proved. Based on the deemed proved report of the Enquiry Officer, the Disciplinary Authority called for written representation by issuing second show cause notice dated 16.10.1997 for which the delinquent-employee submitted his reply on 01.11.1997 taking a ground therein that the findings of the Enquiry Officer were perverse as they were not supported by any legally admissible evidence and he was also denied an adequate opportunity to defend himself which is a gross-violation of the principles of natural justice that the Enquiry Officer failed to conduct the enquiry in a fair manner and while permitting the 2nd respondent to mark the statements of witnesses (M.E.4/1 to 4/9), the authors of the statements were not even examined. The Enquiry Officer also failed to appreciate that there was no complaint either from the suppliers or from the persons who availed the loans about any alleged payment of illegal gratification and that the Enquiry Officer largely relied upon the hearsay evidence of the Inspector Mr.K.Balachandran who came from the Head Office and as such, the findings of the Enquiry Officer was



unsustainable in law. The Disciplinary Authority rejected the explanation offered by the delinquent employee accepting the report of the Enquiry Officer stating that the alleged charge was deemed to be proved, imposed penalty of stoppage of three annual increments with cumulative effect by an order dated 19.05.1998.

3. Aggrieved thereby, an appeal was filed on 01.06.1998 that was also rejected by the Board of Directors by proceedings dated 20.04.1999 and thereupon, the 2nd respondent herein raised an industrial dispute before the Central Government Industrial-cum-Labour Court, Madras, the 1st respondent herein in I.D.No.67/2000. Since there was a reference by the Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 in respect of the dispute between the employee and the Management and on receipt of the said reference, the Central Government Industrial Tribunal took up the matter and finally, the learned Tribunal wrongly came to the conclusion that the appellant has mechanically relied upon the findings of the Enquiry Officer, has not independently assessed the evidence and even the representation given by the concerned workman to the show cause notice was also not even properly taken into account. Therefore, the penalty was imposed without giving adequate reasons and without even considering the past record of service of the concerned workman which is blemishless and therefore, the findings of the Enquiry Officer in his report are liable to be set aside. Accordingly, the penalty imposed by the Disciplinary Authority and confirmed by the Appellate Authority are also to be set aside.

4. Learned Counsel for the appellant further submitted that when one of the findings given by the Industrial Tribunal that the Enquiry Officer conducted the enquiry in a prejudicial manner in violation of the principles of natural justice is without any basis and the evidence of the Inspector K.Balachandran from Head Office was made available before the Enquiry Officer, it is not permissible or justifiable to say that the Enquiry Officer proceeded with the findings against the delinquent employee without any basis. However, being aggrieved by the order passed by the learned Central Government Industrial Tribunal, the appellant challenged the correctness of the same before the learned Single Judge of this Court. The learned Single Judge also agreeing with the reasons and conclusions given by the Industrial Tribunal dismissed the Writ Petition holding that the persons who gave statements before Mr.K.Balachandran, were not examined by the Enquiry Officer. Therefore, relying on the said statements of the lonees, the evidence of Mr.K.Balachandran, Inspector, ought not to have been relied upon by the Enquiry Officer.



5. Learned Counsel for the appellant also submitted that the yet another findings given by the learned Single Judge that when the appellant has proceeded with the enquiry against the delinquent employee on the basis of the complaints received against the Branch in which the delinquent employee was working, the report given by Mr.K.Balachandran, Investigating Officer can be safely relied upon by the Enquiry Officer. But disagreeing with the report submitted by the Enquiry Officer on the ground that none of the lonees were examined and no witness was produced before the Enquiry Officer to support the case of the appellant, the learned Single Judge accepting the approach adopted by the learned Industrial Tribunal that enquiry was not held fairly and properly because no fresh oral evidence was let in by either side dismissed the Writ Petition. Therefore, the present appeal has been filed.

6. Learned Counsel for the appellant further submitted that before the charge memo was issued against the said charge sheeted employee, the appellant has appointed Mr.K.Balachandran, an Investigating Officer to go into the allegations made against the Branch in which the delinquent employee was employed. The said K.Balachandran, while investigating into the complaints received against the Branch has met some of the persons who have sustained prejudice meted out by the delinquent employee. Based on the statements given by some of the lonees, the Enquiry Officer K.Balachandran submitted his report. Therefore, the said report need not be further supported by any evidence. This aspect has been overlooked by both the learned Industrial Tribunal and also by the learned Single Judge. Hence the impugned order passed by the learned Single Judge confirming the order passed by the learned Industrial Tribunal is liable to be interfered with by this Court, the learned Counsel pleaded. It is also pleaded that when every effort was made to produce the complainants before the Enquiry Officer, some of the complainants came before the Enquiry Officer, but for the reasons best known to them, they left the venue of the Enquiry that shows that the appellant has taken adequate efforts to produce the complainants since they were also taken back by some men at the behest of the charge sheeted employee, hence, the learned Single Judge came to the conclusion that it was a case of no evidence.

7. Considered the submissions made by the learned Counsel for the appellant and we have also carefully gone through the records.

8. We find it very difficult to accept the arguments advanced by the learned Counsel for the appellant. The reasons being that firstly, one Mr.V.Naganathan, while serving as a



Clerk-cum-Cashier in the appellant Bank was elected as General Secretary of Pandyan Grama Bank Employees Association, Virudhunagar. After he joined the appellant bank on 04.04.1994, a charge memo was issued on 12.12.1995 alleging that he has demanded and accepted 10% of loan amount as illegal gratification along with Field Officer Sri N.Suruli Bommaiyan and the then Branch Manager Mr.O.Arumugam while disbursing five small loans and seventeen charcoal loans to different borrowers during the period between December, 1993 and March, 1994. On receipt of the said charge memo, he was called upon to submit his explanation and accordingly, he gave his explanation on 23.01.1996 denying all the charges. Therefore, an enquiry was ordered by appointing an Enquiry Officer. The grievance of the delinquent employee was that when the charge memo was issued against him speaking about the demand and acceptance of the illegal gratification from the lonees, not even a single complaint was received from any particular lonee, but it is stated that only an oral complaint was received. On the basis of the oral complaint, a charge memo was issued without even mentioning the name of the complainant. Secondly, when the appellant proceeded against the delinquent employee, on the basis of certain allegations, atleast the oral complaint should have been marked and in support of the oral complaint, the complainant should have been examined either by the Investigating Officer, namely, Mr.K.Balachandran, while submitting his report or after the submission of the report by the Investigating Officer, the complainant, namely, lonee who said to have given the oral complaint before the Enquiry Officer which also has not been done, as a result, the delinquent employee was not even given any opportunity to cross-examine the lonees or the complainants. Even this argument also has no basis to stand.

9. The reason being that even the report submitted by the Investigating Officer Mr.K.Balachandran, Inspector of Branches, annexed at Page 1 clearly shows that while he was verifying the loans disbursed from December, 1993 to March, 1994 at Melakoodumalloor Branch he has learnt that the President of the Societies have collected Rs.700/- per animal as expenses (Insurance, Transport Cost and other expenses) from the loan amount and the borrowers were pushed into a position to purchase the animal within the balance amount after deduction. Based on the said report only, the charge memo was issued against the delinquent employee. Therefore, the report submitted by Mr.K.Balachandran also speaks clearly that there was no any complaint from any lonee or any person. Only on the report submitted by Mr.K.Balachandran that the President of the Societies said to have disbursed the loan amount after collecting Rs.700/- per animal towards Insurance, Transport Cost and other expenses from the loan amount entertaining the



involvement of the charge sheeted employee who was also working in the said branch at the relevant point of time, has issued the charge memo. On receipt of the charge memo, as indicated above, an explanation was offered on 23.01.1996 denying all the charges. But the Enquiry Officer without even marking any documentary evidence or holding enquiry with any one as rightly observed by the learned Industrial Tribunal in violation of the principles of natural justice submitted the report dated 14.06.1997 stating that the charge levelled against the charge sheeted employee was deemed proved.

10. We have also seen the findings recorded by the Enquiry Officer. It is relevant to extract the Conclusion Portion here under :

'CONCLUSION :

Taking into account of the arguments and evidences of both Presenting Officer and Defence Counsel, the deduction of 10% of the loan amount was made by the CSE at the branch while paying the pay orders or in SB A/cs. In view of preponderance of probability, the charge is deemed proved.'

It shows that the Enquiry Officer proceeded against the charge sheeted employee as though he is guilty.

11. It is well settled legal position that when an enquiry is to be held against any delinquent employee, first of all, the management has to issue a charge memo seeking for explanation and if the explanation offered by the charge sheeted employee is not satisfactory, then the said charges can be gone into by appointing an Enquiry Officer. While holding enquiry, firstly, the management has to produce the witnesses and after completion of the examination of the witnesses, the charge sheeted employee should be given an opportunity to cross-examine the management witnesses. Only thereafter, the witnesses, if any from the charge sheeted employee can be examined and then the same witnesses can be cross-examined by the Management Witnesses. Without resorting to the said well settled legal position, the Enquiry Officer in his report dated 14.06.1997 stated that if the charge sheeted employee has not committed any irregularity, what prevented him to produce the borrowers in the enquiry as his witness to refuse their deposition.

12. As a matter of fact, when the Investigating Officer Report clearly shows that on the basis of some irregularities which are said to have taken place in advancing the loans, an enquiry was initiated against the charge sheeted employee. While holding enquiry, neither oral evidence nor any documentary evidence had been produced. Secondly, the Enquiry Officer also had come to the conclusion that the charge was deemed proved.



We are unable to find any justification to accept that conclusion given by the Enquiry Officer. The reason being that in the domestic enquiry, the principles of preponderance of probability is the only crucial procedure to be followed. But in the present case, neither the Enquiry Officer nor the Disciplinary Authority has kept in mind that the preponderance of probability has been properly followed. Therefore, when the Disciplinary Authority has imposed the penalty of stoppage of three annual increments with cumulative effect by order dated 19.05.1998, the delinquent employee has raised an industrial dispute before the learned Central Government Industrial Tribunal-cum-Labour Court, Madras, which has come to the conclusion that the Enquiry Officer has not found that the charge was proved beyond doubt and has stated that in view of the preponderance of probability, the charge is deemed proved. The Disciplinary Authority accepting the deemed finding of proof has passed the final order, awarding punishment of stoppage of three annual increments with cumulative effect to Mr.V.Naganathan in terms of Regulation 13(1)(d) of Pandiyan Grama Bank (Staff) Service Regulations, 1989, on 19.05.1998.

13. The yet another findings given by the Labour Court that was confirmed by the learned Single Judge shows that at the time of enquiry, the Enquiry Officer also failed to consider the statements of lonees sought to be marked by the Management. Further, the argument advanced by the learned Counsel for the appellant that some of the persons who were produced before the Enquiry Officer by the Management to support the charge, after coming into the place of enquiry, they left the place, therefore, they were unable to bring home the charge was also disbelieved for the simple reason that there was no evidence before the Enquiry Officer that the loanees were threatened by anyone known to the charge sheeted employee. Inasmuch as no complaint whatsoever by anyone was brought to the notice of the appellant warranting initiation of any enquiry. Thirdly, when there was no oral and documentary evidence produced, the Enquiry Officer erroneously giving a finding that the charge is deemed to be proved cannot be accepted. As such, some of the judgments relied on by the learned Counsel for the appellant have no relevance for the present case since it is a case of no evidence.

14. In view of all the above, looking at the findings given by both the learned Central Government Industrial Tribunal-cum-Labour Court, Madras that was confirmed by the learned Single Judge of this Court, we are unable to find any error or illegality in the said order. Ultimately, as we held earlier, it is a case of no evidence. Therefore, the findings were recorded by the learned Central Government Tribunal that the enquiry proceeded against the delinquent employee was in utter violation



of the principles of natural justice, thereby denying fair opportunity to the delinquent employee and that findings has been accepted by the learned Single Judge which is impugned before us. Hence, we are unable to find any justification to interfere with the same.

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15. In the result, the Writ Appeal is dismissed thereby confirming the findings and conclusions reached by both the learned Central Government Administrative Tribunal-cum-Labour Court, Madras, as well as the learned Single Judge of this Court. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Central Government Industrial Tribunal-cum-
Labour Court, 1st Floor,
Haddows Road,
Shasthri Bhavan,
Madras-600 006.

+1cc to M/s.N.G.R. Prasad, Advocate Sr.32791

W.A.No.12/2011

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srg 03/01/2022