IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.35578 of 2004

A.Raveendran ...Petitioner

Vs

1. The Management of Canara Bank
   Rep. By its Managing Director
   Head Office
   Bangalore 560 002

2. The Deputy General Manager
   Disciplinary Action Cell
   Circle Office
   Canara Bank
   Chennai-600 018

3. The General Manager
   Appellate Authority
   Canara Bank
   Personnel wing
   Head Office,
   Bangalore 560 002 ...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of Certioraified Mandamus calling for the records of respondents in connection with the order of the 2nd respondent Ref.No.CNC DAC 630 E-37 dated 30.06.2003 confirmed by the order of the 3rd respondent Ref.No.CNC DAC 1123 E-27 dated 10.09.2004 and quash the same and direct the respondents to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.V.Prakash, Senior counsel
for Mr.P.Chandrasekaran

For Respondents : Mr.P.R.Raman, Senior counsel
for Mr.C.Seethapathy,
counsel for R1 to R3.

ORDER

The petitioner submits that he had been working in the Sellamppampatti Branch of the respondent Bank from 10.02.1986. On 09.01.1997, he was suspended from the service of the bank on the ground that departmental proceedings are contemplated against him for certain alleged acts of misconduct.

2. The petitioner was issued with charge memo dated 15.05.1997 by the second respondent for the alleged misconduct within the meaning of Chapter XI Regulation 3 Clause (j) of the Canara Bank Service Code.

3. The allegation is that one K.Palanivel, a current account holder in the Sellamppampatti branch of the respondent bank had complained that three remittances made by him to his current account had not been accounted for in his account and that investigations reveal that the petitioner received the remittances and misappropriated the amounts.

4. A complaint had been lodged with the police by the respondent management and a case was registered in Crime No.518/97 by the Namakkal Police Station for offences under Sections 409 and 477(A) of IPC.

5. The petitioner made a representation to the Enquiry Officer stating that pending investigation in the case, enquiry should not be conducted parallely and proceeded with. In the said criminal case, charge sheet was laid and proceedings in C.C.No.179 of 1998 were commenced before the Judicial Magistrate I, Namakkal. Departmental enquiry was kept in abeyance during the period.

6. After trial, the learned Judicial Magistrate I, Namakkal, held that charges against the petitioner were not proved and acquitted him for the charges. On 10.04.1999, the petitioner submitted a representation to the Enquiry Officer bringing to his notice that departmental proceedings be dropped in view of acquittal in criminal case.

7. Thereafter, a second show cause notice letter dated 28.07.2000 was issued on completion of the enquiry proceedings with the findings of the enquiry officer. The petitioner filed W.P.No.14011 of 2000, questioning the validity of the decision to proceed with the disciplinary enquiry. The said writ petition

was dismissed. Thereafter, the Disciplinary Authority rejected the petitioner's explanation and imposed the punishment of dismissal under the order dated 30.06.2003 against which petitioner preferred an appeal on 20.08.2003 and it came to be rejected by letter dated 23.09.2004. The said impugned orders are challenged in this writ petition.

8. It is submitted by the learned Senior counsel for the petitioner that the impugned order has been passed in violation of principles of natural justice. It is submitted that benefit of doubt is accorded to accused when there are two views possible on an issue and the trial court proceeded to give benefit of doubt to the accused.

9. It is also submitted by the learned Senior counsel for the petitioner that complainant was examined as P.W.5 in the trial court but was not examined as witness in departmental enquiry. P.W.1 and P.W.2 were examined as witnesses in the departmental enquiry. Hand writing expert was examined in the criminal case and in the criminal case, the finding given is that Exhibits 2, 3 and 4 signature do not match the signature of the petitioner. The Hand writing expert was cross examined with the assistance of another hand writing expert. The said expert gave one more sample in Defence Exhibit 45, but the enquiry officer sustained the objection of the management representatives and did not permit the cross examination of M.W.5 on this aspect. The denial of reasonable opportunity to cross examine M.W.5 on defence exhibit 45 a relevant exhibit, is violation of principles of natural justice.

10. The learned Senior counsel further submitted that enquiry officer relied on documents improperly introduced as evidence without the authors of the documents being examined and thereby denying the opportunity for the petitioner to cross examine the authors of the documents with regard to the contents thereof. The findings of the enquiry officer that the petitioner has signed the counterfoil with regard to remittances in issue, is unsustainable for the reason that no reasonable person could have come to such conclusion based on the material. The enquiry officer erred in saying that M.W.2 was not cross examined with regard to the above signature. The enquiry officer also failed to see that MW-2 has deposed differently in criminal court whereas in domestic enquiry to implicate the petitioner the witness speaks differently. The enquiry officer does not deal with this contradiction. The learned Senior counsel argued that when discretion was left with the Disciplinary Authority to decide whether to continue to the Disciplinary enquiry in face

of the acquittal, the same has to be exercised objectively with due application of mind to the facts of the case and that the Disciplinary authority has failed to do so. The impugned order has to be set aside and prayed for allowing the writ petition.

11. Respondents filed a counter affidavit. It is submitted that though the amounts were received by the petitioner who had also initialled the counterfoils for having received the cash, he did not account for receipt of the cash amounts on the respective dates but instead misappropriated the same. The petitioner also made credit entries for the above amounts against the respective dates in the customer's passbook in order to make it appear to the customer that he had credited the aforesaid amounts in the account on the same dates. On 31.08.1996, the petitioner had received cash of Rs.1 lakh towards a remittance in the aforesaid account but he accounted for the same only on 02.09.1996. The account holder had lodged a complaint dated 02.01.1997 stating that the remittance made by him were given credit on different dates with delay. An investigation in the matter revealed that the petitioner had not accounted for the cash received by him from the customer on the same day but credited subsequently with delay. Entries in the pass book and counterfoils/other bank records were manipulated. Thus he misappropriated the funds remitted to a customer's account and falsified the Bank's records to conceal the same. As the investigation revealed a prima facie case against the petitioner, disciplinary action was initiated by issuing chargesheet dated 15.05.1997 and departmental enquiry was conducted into the chargesheet.

12. It is further submitted that upon enquiry, the petitioner was found guilty of the charges and the Disciplinary Authority after analyzing the findings of Enquiry Officer and connected records, agreed with the findings of the Enquiry Officer and imposed punishment of dismissal vide proceedings dated 30.06.2003. The disciplinary authority passed a speaking order dated 30.06.2003 giving reasons for accepting the findings of the Enquiry Officer vis-a-vis dealt with the various contentions raised by the petitioner. The petitioner being aggrieved by the punishment of dismissal, preferred an appeal dated 20.08.2003. The appellate authority after considering the grounds of appeal and the materials on record, dismissed the appeal vide order dated 10.09.2004. The order of appellate authority wherein the punishment of dismissal imposed by the disciplinary authority was confirmed, was duly recorded vide proceedings dated 23.09.2004 and was served on the petitioner along with orders of the appellate authority.

13. It is the submission of respondents in their counter affidavit that in the matter of disciplinary proceedings that was taken against him by the Bank for a serious misconduct of misappropriation of customer's funds, the writ petition filed by the petitioner is not maintainable as the writ court cannot reappreciate the evidence. The petitioner being a workmen, without exhausting the alternate remedy under the Industrial Disputes Act, filed this writ petition. The writ petitioner after his acquittal in the criminal proceedings, represented for dropping the disciplinary proceedings against him in view of acquittal by the Judicial Magistrate, Namakkal, in C.C.No.179 of 1998. However, the disciplinary authority, on examining the entire matter, observed that the petitioner had been acquitted in the criminal case on the ground of benefit of doubt and hence decided to proceed against the petitioner by continuing the disciplinary proceedings which were kept in abeyance. The decision of the Disciplinary Authority in this regard is as per the provisions of the Canara Bank Service Code/Bipartite Settlement. The Disciplinary authority had exercised the discretion objectively and judiciously and decided to proceed with the disciplinary proceedings against the petitioner. The petitioner has been afforded all reasonable opportunities and there is no violation of principles of natural justice. The standard of proof envisaged in the departmental proceedings is based on the principles of preponderance of probability whereas in a criminal prosecution, the degree of proof is of the higher level and the charges have to be proved beyond reasonable doubt. Strict rules of evidence and the civil/Criminal Procedure Code are not applicable to departmental proceedings.

14. As far as petitioner's contention regarding defence exhibit, the respondents would submit that defence exhibit 45 shown to M.W.05 and cross examination on the same were outside the purview of the handwriting expert's opinion and the same could not be permitted. Since the handwriting of the petitioner was proved on the disputed documents in question and the charge of misappropriation/falsification of branch records were duly proved based on the evidence taken on record during the enquiry, there is no denial of any reasonable opportunity to the petitioner.

15. Heard both sides and perused the records carefully.

16. It is the case of the petitioner that while he was working in the Sellamppampatti Branch of the respondent Bank, he was suspended from the service of the bank on the ground that departmental proceedings are contemplated against him for

certain alleged acts of misconduct. Thereafter, he was issued with charge memo dated 15.05.1997 by the second respondent for the alleged misconduct within the meaning of Chapter XI Regulation 3 Clause (j) of the Canara Bank Service Code. The allegation is that the petitioner received the remittances and misappropriated the amounts. In this regard, a complaint had been lodged with the police by the respondent management and a case was registered in Crime No.518/97 by the Namakkal Police Station for offences under Sections 409 and 477(A) of IPC. In the criminal case, in C.C.No.179 of 1998, the learned Judicial Magistrate I, Namakkal, held that charges against the petitioner were not proved and acquitted him for the charges. The petitioner submitted a representation to the Enquiry Officer bringing to his notice that departmental proceedings be dropped in view of acquittal in criminal case. Thereafter, a second show cause notice letter dated 28.07.2000 was issued on completion of the enquiry proceedings with the findings of the enquiry officer. The petitioner filed W.P.No.14011 of 2000, questioning the validity of the decision to proceed with the disciplinary enquiry. The said writ petition was dismissed. Thereafter, the Disciplinary Authority rejected the petitioner’s explanation and imposed the punishment of dismissal under the order dated 30.06.2003 against which petitioner preferred an appeal on 20.08.2003 and it came to be rejected by letter dated 23.09.2004. Challenging the said impugned orders, the petitioner filed the present writ petition.

17. Admittedly, the Bank had initiated disciplinary proceedings against the petitioner and the petitioner participated in the enquiry and he was found guilty of the charges. The disciplinary action taken against the petitioner is for serious misconduct involving misappropriation of customer's funds and falsification of bank records to conceal his fraudulent act. The departmental proceedings were conducted in terms of the Rules and Regulations of the Bank and there was no infirmity in the impugned order passed by the respondents. The petitioner has been afforded all reasonable opportunities and there is no violation of principles of natural justice.

18. The documents proved that the petitioner made credit entries for the amount he received through counterfoils against the respective dates in the customer's passbook. However, for the cash he received on 31.08.1996, he accounted the same only on 02.09.1996. Thereafter, the account holder lodged a complaint dated 02.01.1997 stating that there was a delay in remittance to his credit. The investigation also revealed that the petitioner had not accounted for the cash received by him on the same day but credited subsequently with delay. So the said fact of misappropriation is proved during the disciplinary proceedings.

19. The petitioner filed W.P.No.14011 of 2000, questioning the validity of the decision to proceed with the disciplinary enquiry despite his acquittal in a criminal case on the same allegation. However, the said writ petition was dismissed by this court holding that the petitioner's right to challenge the said decision of the second respondent that the criminal court verdict was not rendered by giving only benefit of doubt to the petitioner, but wholly on merit is still available which he could raise it while submitting his explanation to the second show cause notice, the rejection of the present writ petition from challenging the proceedings dated 22.03.1999 will not stand in the way of working out the petitioner's right before the disciplinary authority. So this court already taken the stand that purely on merits, the issue can be raised in his explanation. As such, the petitioner's explanation thereafter in the disciplinary proceedings was not accepted by the respondents.

20. It is settled proposition of law that the standard of proof required in a departmental inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has given clear rulings to that effect that a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial; the departmental authorities, if held the inquiry properly and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the constitution; the disciplinary authority is the sole judge of facts; the Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

21. In the facts and circumstances of the case, in my view, the order impugned in this writ petition warrants no interference. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

nvsri

To

1. The Managing Director
   Management of Canara Bank
   Head Office
   Bangalore 560 002

2. The Deputy General Manager
   Disciplinary Action Cell
   Circle Office
   Canara Bank
   Chennai-600 018

3. The General Manager
   Appellate Authority
   Canara Bank
   Personnel wing
   Head Office,
   Bangalore 560 002

W.P.No.35578 of 2004

JP-II[co]
NSK 26/10/2021