IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1112 OF 2021

The Hasti Co-operative Bank Ltd. and another ... Petitioners

Versus

Bhatu Ramsing Thakur ... Respondent

....

Mr. Subodh P. Shah, Advocate for petitioners
Mr. Shrikant S. Patil, Advocate for Respondent-Sole.

...

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 23.01.2023
PRONOUNCED ON : 14.03.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith with consent of parties and taken up for final hearing. Learned Counsel Shri Shrikant S. Patil waives notice on behalf of the sole Respondent.

2. The petition takes an exception to the Part I Award dated 04.04.2019 passed by the Labour Court in Complaint (ULP) No.7/2018 and judgment and order passed in Revision Application (ULP) No.9 of 2019 partly allowing the revision application preferred by the Petitioner. By the judgment and order dated 12.03.2020, Part I Award of the Labour Court in Complaint (ULP) No.7 of 2018 came to be quashed, Preliminary Issue Nos.1 and 2 came to be answered in the affirmative and Labour Court was directed to afford the Petitioner an opportunity of adducing evidence on rest of the issues.

3. The facts of the case are as under:

. The Respondent - original complainant, at the relevant time, was serving as a Cashier at the head office of the petitioner - bank. On 02.08.2017, notice was issued calling upon him to show cause as to why disciplinary action should not be initiated against him for gross negligence and dereliction of duty while dealing with three cheques dated 04.03.2015, 09.03.2015 and 06.07.2015 of Rs.50,000/- each, drawn on the account of Smt. Vidya Shivaji More, an account holder of the bank.

. Vide reply dated 09.08.2017, the respondent denied any negligence or dereliction of duty and asserted that it was the responsibility and liability of the Clerk and Passing Officer to ensure the authenticity of the signature of the account holder, which, as alleged in the complaint of the account holder was not signed by her.

. Charge-sheet dated 01.09.2017 was issued imputing misconduct under Clause – 21, Item – (iv), (v), (xiii), (xiv), (xvi) and (xix) of Model Standing Orders for Banking industry. The charge sheet after setting out the charges called upon the Petitioner to submit his reply to the charge sheet within 48 hours and stated that as the allegations were serious in nature, for the purpose of departmental enquiry Shri R.S. Bhalekar was appointed as Enquiry Officer. The charge sheet further directed the Petitioner to attend the hearing fixed on 08.09.2017 at 1.00 pm at the Petitioner Banks headquarters at Dound.

. On 04.09.2017, written explanation was submitted to the charge-sheet subsequent to which the domestic enquiry was conducted resulting in the termination of the Respondent's services by order dated 04.01.2018.

4. The order of termination came to be challenged by way of complaint being Comp (ULP) No.5200007/2018 under Section 28 read with Item 1 (a)(b)(d)(f) and (g) of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short, 'Act of 1971'). Preliminary issues came to be framed as under:

> (1) Whether complainant proves that, departmental enquiry conducted by the respondents, is not fair, legal and proper and against the principles of natural justice?
>
> (2) Whether complainant proves that, findings recorded by the enquiry officer, are perverse?

5. Issue No.1 was answered in the negative, holding that the departmental enquiry was fair and proper and Issue No.2 in affirmative, holding the findings of the Enquiry officer as perverse. Being aggrieved by the Part I Award dated 12.04.2019, Revision (ULP) No.9 of 2019 was preferred by the Petitioner challenging the finding rendered on Issue No.2. In Revision, both the issues were answered in affirmative and the inquiry was held not to be fair and legal and in violation of principles of natural justice. The findings of the Enquiry officer were held to be perverse.

6. Heard Shri Subodh P. Shah, learned counsel for the Petitioner and Shri Shrikant S. Patil, learned counsel for Respondent. Perused the papers and proceedings with the assistance of learned counsel for the parties. Both Counsels have taken this Court minutely through the findings of the Labour Court and the Industrial Court on the preliminary issues.

7. Mr. Shah submits that the Labour Court had rightly answered the Issue No 1 and there was no reason for interference as regards Issue No.1. He has taken this Court through Part I Award of the Labour Court and the judgment in Revision in detail. As regards the findings of the Industrial Court that the charge sheet is prejudicial in as much as without waiting for reply to the charge sheet, the hearing of domestic enquiry was scheduled, he submits that no prejudice is shown caused to the Respondent. He would further urge that there is no such procedure contemplated in law. He would further submit that the show cause notice issued to the respondent contains details of substance of charge and the charge sheet cannot be termed as vague. He would submit that it is evident from the hearing during the departmental enquiry that the Respondent was fully aware of the charges. As regards the non supply of documents, he has invited the attention of this Court to the application dated 16.09.2017 filed by the Respondent with the Enquiry Officer seeking eight documents and the explanation dated 22.09.2017. He would submit that in the absence of prejudice being shown due to non

supply of documents, there is no violation of principles of natural justice.

8. As regards the perversity in findings, he submits that the Industrial Court erred in relying upon the admission of the representative of the bank that the role of cashier is to tally the token number with the token number written on the cheque and make the payment. He would submit that the evidence on record establishes the negligence of the Respondent and as such two of the charges are held as proved. He urges that the entire fact finding enquiry cannot be set aside on the basis of conclusion of the Enquiry Officer that the Respondent is guilty of misappropriation as well as negligence. He submits that the findings of the Enquiry Officer, at the most, can be termed to be erroneous and not perverse. He fairly concedes that only charges of negligence i.e. Item No. (xvii) and (xix) can be said to be proved during the Enquiry.

9. In support of his submissions, he relied upon the following decisions:

(i) **State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya**, reported in **(2011) 4 SCC 584**;

(ii) **Sanjay Kumar Singh vs. Union of India and others**, reported in **(2011) 14 SCC 692**;

(iii) **Standard Chartered Bank ..Appellant(s); vs. R.C. Srivastava ..respondent(s).** reported in **2021 SCC OnLine SC 830**;

(iv) **Griffon Laboratories Pvt. Ltd., Mumbai vs. Maharashtra Shramik Sena, Mumbai and others**, reported in **2002 (2) Mh.L.J. 381**;

10. Per contra, Shri Kulkarni, relies upon the decision of the Apex Court in the case of **The Cooper Engineering Limited vs. Shri P. P. Mundhe,** reported in **(1975) 2 SCC 661**, has struck a note of caution that there is no justification for any party to stall the final adjudication of the dispute by questioning its decision with regard to the preliminary issue when the matter can be agitated even after the final order. He would further submit that it is clear from the evidence of the bank witness that there is no evidence of negligence or misappropriation and the entire evidence of the Bank representative places the blame on the peon Rajendra Baliram Patil. He would further submit that the cross-examination of the representative of the bank shows that there is no standard procedure. He would further submit that during the enquiry, the complainant i.e. account holder - Vidya More was not examined. As regards the findings of the Enquiry Officer, he would contend that the findings are perverse as it holds all charges of misappropriation as well as negligence proved against the respondent. He would further submit that it is admitted position that the documents which were sought by the respondent in support of his defence were not supplied by the petitioner - Bank. He would further submit that the charge-sheet was vague inasmuch as it merely reproduced the relevant rules of the model standing orders and did not contain any substance of the charge and that illegality cannot be cured by reference to show cause notice. He has taken this Court to

the cheques which are the subject matter of the complaint and would urge that loose cheques were issued and it is admitted by the witness for the respondent bank that the account holder has to personally visit bank and request for the issuance of the loose cheque and subsequent to that an entry of such issuance is made in the register. He would further submit that it is admitted by the representative of the bank that no such register is available with the bank. He would further submit that it is clear from the evidence of the representative of the bank that whenever an account holder is unable to visit the bank for presentation of the loose cheque, the account holder is required to sign on the back side of the slip of cheque and in the present case, the presenter has signed overleaf of each cheque except one cheque. He would further submit that the enquiry was concluded in one day and the findings of the Enquiry Officer are perverse.

11. In rejoinder, the learned counsel for the petitioner submits that it is necessary for the respondent to show the prejudice which is caused to him. As regards vagueness in the charge-sheet, he would further submit that the purpose of the charge-sheet to make aware the delinquent employee the substance of the charge and the same has been set out in the show cause notice. He has taken this Court to the evidence of the respondent in cross-examination, where the Respondent was duly asked as regards the receipt of the show cause notice and the charge-sheet, which has been answered in the affirmative.

12. Considered the rival submissions of the parties.

13. In the present case, by Part I Award, the Labour Court held the departmental enquiry to be fair and proper, and the findings of the Enquiry Officer to be perverse. In Revision, the Industrial Court answered both the issues against the Petitioner. This Court is called upon to examine the issue of violation of principles of natural justice during the departmental enquiry and the issue of perversity in the findings of the Enquiry Officer.

14. Before proceeding further, I deem it fit to reproduce the misconduct imputed in the charge sheet, which reads thus:

> "२१ (iv) - बँक किंवा तिच्या ग्राहकांच्या व्यवसाय, मिळकत किंवा कारभार यांच्या बाबतीत अफरातफर किंवा अप्रामाणिकपणा करणे, त्याचा प्रयत्न करणे, त्याकडे दुर्लक्ष करणे किंवा त्यास साथ करणे.
>
> (v) - बँक किंवा तिच्या ग्राहकाची रोकड, जामीनपत्रे, करारपत्रे व दस्ताऐवज किंवा इतर मिळक्त यांचा हिशेब न देणे, हाती आली असता परत न करणे, दडवणे, तिचा दुरुपयोग करणे (हडप करणे किंवा तिचे रुपांतर करणे)
>
> (xiii) - बँकेच्या हिताला हानीकारक अशी कृती करणे.
>
> (xiv) - वर कलम ५, ६, ११, १२ व १३ मध्ये नमूद केलेल्या कोणत्याही गैरवर्तनास साहाय्य करणे, साथ देणे किंवा त्याकडे दुर्लक्ष करणे.
>
> (xvi) - बँकेच्या आवारात शिस्त किंवा सदवर्तनास हानिकारक कृती करणे.
>
> (xvii) - कामाची सतत हेळसांड किंवा पराकोटीचा हलगर्जीपणा किंवा

बँकेस नुकसानीत आणणारा किंवा आणु शकणारा हलगर्जीपणा.

(xix) - बँकेच्या किंवा तिच्या ग्राहकांच्या मिळकतीची हेतुपूर्वक नुकसानी करणे."

15. It is trite that the charge sheet must be specific and specific acts purported to have been committed is required to be mentioned with specific details and particulars. Perusal of the chargesheet in the present case indicates that there are seven charges levelled against the Respondent. Broadly summarizing, out of the seven charges, Item Nos. (iv), (v), and (xiv) pertain to misappropriation and Item Nos.(xiii), (xvii) and (xix) pertain to negligence/dereliction in work which would be detrimental to the interests of the Bank or cause loss of the property of the Bank or its customers and Item No.(xvi) pertains to the breach of discipline within the Bank premises.

16. The initiation of the departmental enquiry commences with the issuance of show cause notice. The show cause notice dated 02.08.2017 sets out the statement of facts which are alleged to constitute misconduct. As the enquiry is held to be vitiated by reason of vagueness of charge sheet, the learned counsel for Petitioner has relied upon the show cause notice to submit that the show cause notice can be construed as the statement of facts. Admittedly there is no statement of facts annexed to the charge sheet and reliance is sought to be placed on the show cause notice dated 02.08.2017. As such it will be necessary to examine the show cause notice to

ascertain whether it contains the statement of facts alleged to constitute misconduct as regards the seven charges levelled against the Respondent.

17. Perusal of the show cause notice indicates, that after setting out the procedure followed in the Bank for making payment by cashier, it is stated that complaint was received from Smt. Vidya More that on 04.03.2015, 19.03.2015 and 06.07.2015, three cheques of Rs.50,000/- each were encashed from her bank account and upon examining the cheques, the account holder has denied her signature. It is further stated that at the relevant time the Respondent was working as cashier and without the account holder being personally present and without verifying the identity of the person receiving the payment on behalf of the account holder, the payment has been made. The show cause notice proceeds to state that due to the negligence on part of the Respondent in discharging his duties, without verifying the identity of the person receiving the money, the payments as against the three cheques were made by the Respondent and as such explanation was sought.

18. The contents of show cause notice reveals that the disclosure of facts therein pertain to the alleged misconduct of negligence. The show cause notice do not spell out the manner in which the Respondent has committed the alleged misconduct of misappropriation and breach of discipline and good behaviour. As indicated above, the charges include charges of not only negligence

but misappropriation and breach of discipline and good behaviour. In order to constitute the statement of facts in support of the charge sheet, the show cause notice has to necessarily incorporate the substance of facts which is lacking in the show cause as regards misappropriation and good behaviour. As such the show cause notice cannot come to the rescue of the Petitioner to counter the submission of vagueness of chargesheet.

19. The purpose of issuance of charge sheet is to make the delinquent employee aware of the charges which he is required to defend. Absence of disclosure of facts constituting the charges amounts to denial of natural justice. In my opinion, it was incumbent on the Petitioner to present the charge sheet with full particulars as regards the misappropriation as well as negligence so as to enable the Respondent to defend himself adequately. It will be apposite to refer to the observation of this Court in the case of **Griffon Laboratories Pvt. Ltd., Mumbai (supra),** which reads thus:

> *"10. The first point to which it would be necessary to advert is the question as to whether the Part-I Award of the Labour Court by which the Court came to the conclusion that the chargesheet was vague suffers from any infirmity. The Learned Counsel appearing on behalf of the Union and the workmen submitted that the employer was now estopped from challenging the correctness of the finding of the Labour Court that the enquiry was not fair and proper since on the basis of that finding, the employer had sought and availed of the opportunity to adduce evidence before the Labour Court on the charge of misconduct. The submission was that since the employer had elected to lead evidence before the Labour Court without reserving to himself a right to challenging the Part-I Award, the employer now should not be permitted to*

invoke the jurisdiction of this Court under Article 226 of the Constitution to do so. There cannot be a hard and fast rule in such cases. Indeed, as the Supreme Court noted in Cooper Engineering Ltd. v. P.P. Mundhe, the Court should not normally encourage a challenge to a Part-I Award upon a finding that the enquiry was not fair and proper since it is open to the employer to seek an opportunity to lead evidence before the Labour Court upon which a challenge to the finding which has been arrived at can always be preferred. However, it would be appropriate in my view in the facts of the present case to consider and dispose of the challenge by the employer to the correctness of the award of the Labour Court insofar as it held that the enquiry was vitiated on account of a vagueness of the chargesheet. In the present case, the chargesheet which was issued by the employer, informed the workmen that it had "come to the knowledge of the management that on 9th June, 1982 the workmen along with other workmen had indulged in violence, bodily assault and threat with further dire consequences against the employee of the Company." The chargesheet cannot be described as anything but vague. The chargesheet does not contain the identity of the employee who was assaulted, any details of the nature of the assault and absolutely no reference to the time or place of the incident. Significantly, the chargesheet does not even purport to rely upon the alleged complaint dated 14th June, 1982, which was made to the management. The object of requiring the employer to present a chargesheet with a degree of precision, containing a disclosure of the circumstances of the case which are alleged to constitute misconduct, is to enable the chargesheeted workman to have a real opportunity of defending himself. To ask the workman to defend himself against a general allegation of misconduct without specification of particulars denies to him an effective right of defending himself. An employee who is called upon to defend himself must know what he has to defend himself against. What the employee is to defend himself against has to be discernible from the chargesheet which is issued to him. Chargesheets of the kind involved in the present case are replete with a great potential of mischief because if such chargesheets were allowed to stand, it would be open to the employer to lead any and every *kind of evidence during the course of the departmental enquiry on the basis of vague and undefined allegations of misconduct. This would be a travesty of fairness and reasonableness and would lead to a grave miscarriage of justice. The requirement that the chargesheet must be precise and must contain a statement of imputations constituting the foundation of misconduct is a basic principle of natural justice. Natural justice in a disciplinary enquiry must mean that the employee must have notice of the charges, first and foremost. This is a fundamental stipulation the non-compliance of which would vitiate the enquiry. Additionally, in matters relating to workmen to whom the Industrial Employment Standing Order Act, 1946 applies, the requirement of furnishing an appropriate chargesheet containing relevant particulars is a requirement of the statute itself. In this regard, reference may be made to Model Standing Orders 25(3) and 25(4) of the Model Standing Orders framed in pursuance of the provisions of the Act. These provisions are as follows :--*

> *"25(3) No order of dismissal under Sub-clause (d) of Clause (1) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in Clause (4).*
>
> *25(4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witnesses in his defence and cross-examine any witness on whose evidence the charge rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.*
>
> *All proceedings of the inquiry shall be conducted in*

> *English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.*
> *The inquiry shall be completed within a period of three months : Provided that the period of three months may, for reasons to be recorded in writing be extended to such further period as may be deemed necessary by the inquiry officer." (emphasis supplied).*

The importance putting the workmen whose conduct is to be enquired into in a departmental enquiry on notice of the allegation of misconduct in an appropriately prepared chargesheet has been laid down in a judgment of three Learned Judges of the Supreme Court in Surath Chandra v. State of West Bengal, AIR 1971 SC 752. The Supreme Court has held thus:

> *"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."*

This Judgment of the Supreme Court was followed subsequently by a bench of two Learned Judges consisting of Mr. Justice E. S. Venkataramiah and Mr. Justice Saybyasachi Mukharji (as the Learned Chief Justices then were) in Sawai Singh v. State of Rajasthan, 1986 Vol. II CLR 1. The deficiencies which vitiate a vague chargesheet cannot be allowed to be supplemented by recourse to evidence at a later stage. An employer cannot be heard to contend that he will issue a vague chargesheet but, will put the employee whose conduct is being enquired into on notice of the allegations *against him when evidence is adduced during the course of enquiry. Much prior to the evidence being adduced, the employee has to file a reply to the chargesheet setting out the nature of his defence and it is in the preparation of this defence that the employee is prejudiced if he has not been told precisely what is the charge which he is required to meet. I am in respectful agreement with the principle enunciated by my Learned Brother Mr. Justice B. N. Srikrishna, in Miraj Taluka Girni Kamgar Sangh v. The Manager, Shree Gajanan Weaving Mills, Sang and Ors., 1991 (2) CLR 714. The learned Judge has held thus :-*

> *"An employee faced with a vague charge that he is guilty of a described type of misconduct, would be extremely hard put to defend himself against the charge unless he is informed such particulars as would enable him to given an effective reply thereto and demonstrate that the charges are false or, otherwise not acceptable. Scanning the chargesheet given to the petitioner in the present case, I am of the view that it can be used as a model for what a chargesheet ought not to be. In my Judgment, therefore, the chargesheet itself ought to have been quashed and struck down by the two Courts below on this very count. The fact that voluminous evidence is led in enquiry is no substitute for a chargesheet clearly setting forth the allegations with sufficient precision and particulars so as to enable the employee to defend himself. That is the very purpose of a chargesheet. This is the barest requirement of a chargesheet consistent with principles of natural justice and any chargesheet which fails to comply with this requirement is no chargesheet at all. .If the chargesheet fails to stand up to this test, the rest of the domestic enquiry is useless and is merely an eyewash."*

20. The Apex Court in the case of **Surath Chandra Chakrabarty v. State of West Bengal,** reported in **AIR 1971 SC 752,** referred to by this Court in the case of **Griffon Laboratories Pvt. Ltd., Mumbai (supra),** held that the charge-sheet must be specific and

specific acts purported to have been mentioned with specific details so as to enable the delinquent to realize as to what he is charged with and what are the acts alleged to have been committed by him.

21. By Part I Award, after holding that the allegations are vague as perusal of charge sheet does not disclose clear details and particulars as to how, when and with collusion of whom, the offence of misappropriation of amount from the account of Smt. Vidya More was carried out, the Labour Court thereafter holds that the departmental enquiry conducted by the Respondents is legal and proper and as per principles of natural justice, which finding has been rightly reversed by the Industrial Court. The absence of clear particulars in charge sheet in support of the misconduct alleged is an aspect of violation of principles of natural justice in as much as natural justice means that employee must have notice of charges, first and foremost. As indicated above, the Respondent employee did not have notice of the statement of facts constituting the allegation of misappropriation and breach of discipline and as such was handicapped in defending himself as against the charges of misappropriation and breach of discipline.

22. Another aspect which weighed with the Industrial Court to term the charge sheet as prejudicial is that while issuing the charge sheet, the Respondent was called upon to file his reply to the charge sheet and the imputations therein but without waiting for receipt of the reply and without considering it, the Petitioner scheduled the

hearing of the domestic enquiry. The purpose of seeking an explanation to the chargesheet is to obtain a response from the concerned employee before deciding whether process of enquiry is necessary to go into the charges levelled against the employee. In the present case, by show cause notice the substance of charge was negligence in discharge of the duties, whereas in the charge sheet the added misconduct of misappropriation was levelled. While submitting his explanation to the show cause notice, the Respondent responded only to the charge of negligence and as such it was necessary to obtain an explanation to the added charge of misappropriation and thereafter to decide whether the process of enquiry was necessary to be gone into. The time given to the Respondent to respond to the chargesheet was a period of 48 hours, which was grossly inadequate. The charge sheet further appointed the enquiry officer and scheduled the hearing on 8.9.2017. It is evident that the Petitioner had pre-determined the issue and as such the seeking of explanation to the charge sheet was an empty formality. There was no intention on part of the Petitioner Bank to consider the explanation, which was likely to be put forth by the Respondent and then to consider whether enquiry was necessitated. These factors lead to the inevitable conclusion that the chargesheet was prejudicial to interest of Respondent.

23. Coming now to the issue of non-supply of the requisite documents to the delinquent employee. In response to the show cause notice, it is the specific defence of the Respondent that the concerned Clerk makes a note of cheques/withdrawal slips in the

register and after obtaining the signature of the concerned account holder on the back of the cheque issues him the token. Thereafter, the cheque is forwarded to the Passing Officer who verifies the specimen signatures and puts a tick mark on the cheque endorsing the same as ‘ok’ and after the signature of the Passing Officer, it is forwarded to the Cashier for the payment. By communication dated 08.09.2017 the respondent sought eight documents from the Petitioner Bank. In reply, the petitioner by letter dated 16.09.2017 stated that the documents which are asked for by the communication dated 08.09.2017 are not concerned with the charges and if required, an application can be made to the Enquiry Officer and after his permission, the documents will be made available for inspection. During the enquiry on 16.09.2017, the documents which were relied upon by the petitioner listed at Sr. Nos.1 to 15 were handed over to the respondent. Roznama of the hearing records that during the hearing a request was again made by the respondent to furnish the documents which were sought for by the respondent.

24. Vide explanation dated 22.09.2017 submitted by the Petitioner during the hearing of the departmental enquiry, it was stated that as regards the documents at Sr Nos.1 and 2, there are no such documents i.e. the duty list of the Cashier and the guidelines of the bank. In so far as the document at Sr. No. 3 i.e. the certified copy of the charge sheet served upon the clerk, Passing Officer and peon, the same was given along with the explanation. As regards the documents at Sr.No.4 to 8 i.e. the account statement of the account

holder, the extract of the register containing the noting as regards the three cheques and the token number, extract of register noting the issuance of loose cheques to the account holder, certified copy of the specimen signature of the account holder and the certified copy of the Cash book (sub dairy) as regards the payments made on 04.03.2015, 19.03.2015 and 06.03.2015 during banking hours is concerned, it was stated that after the first witness of the bank is examined, the same would be given for inspection.

25. The Respondent's reply to the show cause notice indicates the defence of the Respondent that the account holder was issued loose cheques and as such were required to be entered into a register and that the specimen signature has to be tallied with the signatures on the cheques by the Passing Officer which was the responsibility of the Passing Officer. Hence the account statements, the extract of the register showing the issuance of the cheque and the token number, register showing issuance of loose cheques, specimen signature of the account holder and extract of the cash book, were sought. In my opinion, in an enquiry, there are two sets of documents. Firstly are the documents on the basis of which the charges have been framed and reliance has been placed to prove the charges and the second set are the documents which are necessary for the delinquent employee to effectively defend himself in the inquiry and to cross-examine the witness on behalf of the Management. In the present case, the documents sought by the Respondent which were not furnished, consisted of second set of documents necessary for the

Respondent to defend himself effectively.

26. If the relevant documents are not made available to the Respondent, it is trite that the Respondent would be prejudiced in defending himself against the charge effectively. For the enquiry to be construed as fair and proper, it is necessary not only to make the delinquent employee aware of the specific charges which he faces but also to supply all necessary information and documents so as to enable the employee to defend himself effectively. In the present case, considering the non supply of the requisite documents, the Industrial Court has rightly stepped in and held that the enquiry is vitiated on the grounds of vagueness of charge sheet and non supply of documents. To support the submission of absence of prejudice, it is for the Petitioner to substantiate that the non supply of documents did not cause any prejudice to the Respondent, which the Petitioner has failed to prove in the present case.

27. As regards the submission that all the documents were supplied and the documents which were not supplied were to be supplied after the examination of the witnesses, the burden was upon the petitioner to show that no prejudice was sought due to non-supply of documents before the examination of the first witness, which burden has not been discharged by the petitioner. On the contrary, considering the defence taken by the respondent, the documents sought were of vital importance to cross examine the bank witness and to support his defence.

28. The next issue which this Court has been called upon to determine is the validity of the concurrent findings of the Labour Court and the Industrial Court as regards the perversity of the findings of the Enquiry Officer. For that purpose, it will be necessary to examine the evidence which was produced before the Enquiry officer.

29. The petitioner - bank has examined Shri. Anil Marathe, the Branch Manager as its witness. He has adopted his preliminary enquiry report as his affidavit of evidence in which he has deposed that Vidya S. More was the account holder of the bank and in the year 2017 she has submitted a complaint that her account was debited on three occasions with a sum of Rs.50,000/- on 04.03.2015, 19.03.2015 and 06.07.2015 and that these cheques were neither signed nor issued nor presented by her. He has deposed that she has complained that from perusal of the signatures on the cheques, which were furnished to her by the Bank, the signatures were not her signatures. He has further deposed that upon the preliminary enquiry conducted by him, he found that the conduct of peon Shri. Rajendra Baliram Patil suspicious.

30. The Bank witness was cross-examined at length. The negligence and misappropriation alleged is by reason of making payment to a third party without verifying the identity of the third party and as such the standard procedure followed in the bank as

regards making the payment is required to be scrutinized. On this aspect the witness has been cross examined and he has admitted that the three cheques which were encashed were loose cheques; that when the payment has to be made by loose cheques the account holder has to personally come to the bank; that the loose cheques are noted in the bank register. He has further admitted that he has not verified as to whether the loose cheques were issued on the said dates to the account holder; that the register noting of the issuance of three loose cheques is not available with the bank; that it is necessary for the account holder to personally present the loose cheque/slip to the bank for payment and if the account holder is unable to remain present personally, then the concerned clerk endorses the name and signature of the third party, who comes to collect the payment, on the back side of the cheque/slip. He has deposed that out of the subject three cheques, on the back side of one cheque there is name of Vijay More and his signature, on the second cheque there is signature but no name and on the third cheque the signature of Ganesh More is evident.

31. He has deposed that the procedure followed in the bank is that the person seeking payment firstly submits the cheque or slip to the token issuing clerk; that the token number written on the three subject cheques signifies that token clerk has issued the token after the required formalities is completed; that the token clerk after putting the token number forwards the cheques to the Passing Officer and at that time the noting about the amount of the cheque is made;

the Passing Officer verifies the signature on the cheque with the specimen signature. He has further admitted that the specimen signature of the account holder is not available with the cashier. He has admitted that the subject cheques were passed by the Passing Officer; that responsibility of verification of the signature of the account holder is that of the Passing Officer; that if the Passing Officer had verified the signatures as per the specimen signature then the cheques would not have been encashed; that upon presenting of token by a person, the cashier makes the payment after tallying the token presented with the token number mentioned on cheque/slip. He has further deposed that in event there is any suspicion about the signature of the concerned person or the identity, the Cashier is required to resubmit the cheque to the Passing Officer for verification. He has further admitted that the procedure which has been stated by him is not part of any written instructions or circulars.

32. The evidence of the Bank's representative indicates that as per the established procedure, the encashment of cheques passes through three layers of scrutiny firstly by the token issuing clerk, who verifies that the backside of the cheque contains the name and signature of the person who has come to collect the money, secondly by the Passing Officer who verifies the signature on the cheques with the specimen signature recorded with the Bank and thirdly by the cashier who verifies that the token number presented to him is the same as noted on the cheque. The witness has admitted that in the present case the subject cheques were loose cheques and the account

holder has to personally come to the bank for seeking loose cheque. The witness has not produced on record the register noting the issuance of loose cheques, which would have proved the identity of the person to whom the loose cheques were issued.

33. From the evidence, it appears that as per the established procedure, the duty of the cashier is to verify the token number presented and the token number on the cheque and only upon a suspicion about the concerned person that the cheque/slip is required to be resubmitted to the Passing Officer for reverification. Considering the above, it appears that the subject cheques passed through the token clerk and passing officer and there was no reason for the cashier to suspect the identity of the person who had come to collect the payment. It has been admitted that apart from the account holder, a third party can come to collect the payment provided the name and signature is noted on the back side of the cheque. In the present case two cheques contains the name and signature of the third person on the backside and one cheque contains the signature. The procedure which has been deposed by the Bank's witness indicates that it is for the token issuing clerk to verify the same and as regards the signature of the account holder, it is for the passing officer to verify the same with the specimen signature. In the face of such established procedure, the role of the cashier is limited to submitting the cheque for reverification in event of suspicion. The reason for suspicion as argued is that the cheques are issued in the name of the account holder i.e. Vidya More, however the person who

had come for payment was a male. As the witness has admitted that apart from the account holder, payment can be made to third person on behalf of account holder, provided the required formalities are completed, which is the responsibility of the token issuing clerk and the Passing Officer, in my opinion, it cannot be said that the Respondent was negligent in discharging his duties in as much as the Respondent failed to verify the identity of the third party.

34. The respondent has examined himself and has adopted the reply to the show cause notice as his affidavit of evidence. In the cross examination he has admitted that in case of self cheque, the payment cannot be made to any other person and if the cheque is in favour of a certain person, then apart from that person, the payment cannot be made by cashier to other person. He has further admitted that the cashier is required to ensure that the payment is made according to the token number to the person whose name appears on the cheque and that the payment in respect of the cheque bearing the name of Vidya Shivaji More was given to a male person. He has further admitted that at the time of making the payment of the first cheque, if this fact was brought to the notice of the superior, then the payment of the other two cheques were not made. He has further admitted that while making the payment of the three cheques, he has not verified the identity of the person receiving the payment.

35. In the present case, the subject cheques were not self cheques but issued in the name of the account holder and as

indicated earlier, the Bank's witness has admitted that apart from account holder the payment can be made to third person. As regards the verification of identity, there is no deposition as regards the procedure to be followed for verifying the identity of the person encashing the cheque.

36. It will be necessary now to consider the manner in which the Enquiry Officer has dealt with the evidence on record. The Enquiry Officer after considering the material produced on record has held that as delinquent employee has admitted that without verifying the identity of the person accepting the payment, the payment has been made, the conduct amounts to negligence on part of the delinquent employee and that the negligence has resulted in misappropriation of sum of Rs.1,50,000/- (Rs.One Lakh Fifty Thousand) from the account of the account holder and for that purpose, the concerned Passing Officer and Cashier are responsible. The Enquiry Officer has concluded that all the charges of misconducts alleged in the charge-sheet have been duly proved. The findings have been accepted by the Disciplinary Authority and order of dismissal is passed.

37. As stated above, the evidence on record does not prove the misconduct of negligence. There is no evidence on record to support the charge of misappropriation. The Enquiry Officer in the absence of any material produced on record to show misappropriation on behalf of the respondent has linked the

negligence to misappropriation. In my opinion, charge of negligence and misappropriation are separate and distinct charges. Misappropriation involves a deliberate act resulting in wrongful gain to a person. In the present case there is no material produced to prove that there was wrongful gain either to the delinquent employee or to a third party. Pertinently, the account holder who would have been a material witness has not been examined by the bank.

38. By Part I Award it has been held that although the allegations have been made about the offence of misappropriation of amount, the evidence does not reveal that there is any collusion of respondent with any other staff member or third party in disbursing the amount from the account of the account holder. It was held that from the allegations levelled in the charge-sheet it can be culled out that the respondent was negligent in performing his duties as Cashier but to that effect also there is no clear evidence brought on record.

39. In Revision, the Industrial Court has held that the domestic enquiry is vitiated and as such the findings of the Enquiry Officer and the Labour Court also have to be quashed and set aside. While doing so, the Industrial Court has quashed and set aside the judgment of the Labour Court and has disallowed the relief of challenge to the findings of the Labour Court on the preliminary issue no.2 i.e. perversity in the findings.

40. Learned Counsel for the Petitioner has not been able to demonstrate any perversity in the concurrent findings. I am mindful

of the fact that in exercise of power of judicial review, this Court does not act as a Court of Appeal but the power of judicial review is meant to be exercised to ensure that the conclusion reached does not suffer from perversity and for that reason I have gone in detail into the evidence produced in the departmental enquiry. From the entire evidence which has been produced on record, it is evident that the findings of the Enquiry Officer holding that all the charges against the respondent are proved which includes the charge of misappropriation are clearly perverse. Ordinarily, in the matters of departmental enquiry, this Court would be reluctant to interfere unless it is shown that the findings are extremely perverse. In the present case, from the above stated facts, it is evident that the conduct of the departmental enquiry is neither fair nor proper and there has been a violation of the principles of natural justice.

41. As regards the decisions relied upon by the learned counsel for the Petitioners, the Apex Court in the case of **State Bank of Bikaner and Jaipur (supra),** has held that the Courts will not act as an Appellate Court and reassess the evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record. The Apex Court has further held that if the enquiry has been fairly and properly held and findings are based on evidence, the question of adequacy of the evidence or the reliable nature of evidence will not be grounds for interfering with the findings of the departmental enquiry. In the present case, as this Court held that the enquiry was not fair and proper and that the

findings of the enquiry officer are clearly perverse, the decision does not assist the case of the Petitioner. To the same effect is the decision of **Sanjay Kumar Singh (supra),** wherein the Apex Court has held that the role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute to its own views or findings by replacing the findings arrived at by the authority, on detailed appreciation of the evidence on record. In my opinion, the Courts are bound to interfere if the principles of natural justice have been violated or if the order is found to be based on findings which are perverse. As such, this decision does not support the case of the Petitioners.

42. As far as the decision of the Apex Court in the case of **State Bank of Bikaner and Jaipur (supra),** is concerned, the Apex Court has held in the facts of that case that the Tribunal has converted itself into the Court of Appeal and while appreciating the findings recorded in the course of domestic enquiry had tested the findings on the broad principles of charge to be proved beyond reasonable doubt. It needs to be noted that the Apex Court has further added a caveat that unless the findings are *per se* unsustainable, it should not ordinarily be interfered by the Tribunal. In the present case, there are concurrent findings of the Labour Court and the Industrial Court that the findings during the enquiry are *per se* perverse and as such, this decision assists the case of the Respondent.

43. At this stage, it is also necessary to consider the decision of the Apex Court in the case of **The Cooper Engineering Limited (*supra*)**. The Apex Court held that there is no justification for any party to stall the final adjudication of the dispute and it will be legitimate for the High Court to refuse to intervene at this stage.

44. Although the matter could have been disposed of considering the decision of the Apex Court, as substantial arguments were raised on the merits of the case, this Court has perused the material on record to satisfy itself as regards the findings of the Enquiry Officer and as regards the fairness of the departmental enquiry and it is evident that the petition fails on both these counts.

45. For the reasons above, Petition is dismissed. Rule stands discharged. No order as to costs.

(SHARMILA U. DESHMUKH, J.)

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