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WP.No.22620 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.22620 of 2004

G.Shanmugasundaram

....

Petitioner

Vs

The Zonal Manager,
Bank of India,
324, Oppanakara Street,
Coimbatore – 641 001.

....

Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of ID.No.77 of 2003 order dated 19.04.2004 pending before the Hon'ble Central Government Industrial Tribunal cum Labour Court, Chennai, quash the same.

For Petitioners	:	Mr.K.R.Arun Shabari
For R1	:	Court
For R2	:	Mr.S.Partrick

ORDER

This Writ Petition has been filed challenging the award dated 19.04.2004 passed in I.D.No.77 of 2003 by the Industrial Tribunal cum Labour Court, Chennai, thereby dismissing the claim of the petitioner.



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2. Heard the learned counsel appearing on either side and

perused the materials available on record.

3. The petitioner had joined the respondent Bank on 01.02.1963 as a Clerk and subsequently, he was promoted as a Special Assistant from the year 1982. While he was working at Coimbatore Main Branch as Special Assistant, he was suspended from service for the allegation that he had committed irregularities during the period from 1985 to 1986. He was running a group of firms in the name of his wife and others and aided and abetted the cashier N.Natarajan, incharge of Coimbatore Main Branch alleged to have committed misappropriation of bank's money to the tune of Rs.4.6 Crores and permanent misappropriation of bank's fund to the tune of Rs.21 Lakhs. In this regard, the CBI had registered a case in RC.No.8 of 1987 on the allegation of financial irregularities. Pursuant to the same, the petitioner was served with charge proceedings dated 30.03.1989 containing five charges, which are as follows :

“(i) he did not disclose the huge financial transactions of the said N.Natarajan had with group of firms in the name of his wife and daughters controlled by him and not disclosed such disproportionate dealings.



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(ii) he had misappropriated Rs.2.00 lakhs along with the said N.Natarajan for a day.

(iii) he along with the said N.Natarajan issued statement of accounts in Current A/c of Tamil Nadu Mercantile Bank, Coimbatore and aided, abetted the said N.Natarajan to suppress misappropriation of Bank's funds.

(iv) he engaged himself in trade/business outside the scope of his duties in the bank without permission of the bank by running financial companies / firms in the name of his wife / daughters etc., and

(v) he misused bank's facilities for running his private business.”

4. The petitioner was duly served with charge sheet and was given an opportunity to submit his explanation. Without being satisfied with the explanation submitted by the petitioner, a disciplinary enquiry was ordered and by an order dated 30.03.1989, an Enquiry Officer was appointed. The petitioner was served with an enquiry notice. The petitioner appeared before the Enquiry Officer and submitted a representation seeking copies of the relevant documents. After examining the Presenting Officer on behalf of the respondent, he was also furnished with copies of the documents. In the meanwhile, the petitioner



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approached this Court by way of writ petition in W.P.No.9965 of 1989 and the same was dismissed on 27.07.1989 with an observation that it would be sufficient if a direction is given to the respondent to grant copies of documents which they are going to rely upon during the enquiry sufficiently early so that the petitioner had examined the witnesses. It is needless to state that if the petitioner was not given the required copies of the documents, the enquiry is vitiated. As such, the respondent will see that all the documents required by the petitioner will be given and if copies cannot be given, the petitioner can be allowed to take copies from the documents so that the petitioner can have the satisfaction of a fair enquiry. However, the petitioner failed to appear before the Enquiry Officer and requested for adjournment on the ground that he had to leave to Bombay. It was considered and the enquiry was adjourned. Even from Bombay, the petitioner again sought time to participate in the enquiry. It was not considered by the Enquiry Officer on the ground that the petitioner was given so many adjournments. Therefore, the Enquiry Officer had conducted ex parte enquiry and submitted his report on 18.12.1990 holding the petitioner guilty of the charges.

5. On receipt of the enquiry report, the Disciplinary Authority



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issued show cause notice dated 27.12.1990 proposing punishment of dismissal. The personal hearing was held on 25.01.1991 and the punishment of dismissal was imposed by an order dated 05.02.1991. Aggrieved by the same, the petitioner filed an appeal before the Appellate Authority and the same was dismissed and the order of the dismissal was confirmed by an order dated 12.05.1991. Aggrieved by the same, the petitioner filed writ petition before this Court in W.P.No.13145 of 1991 and the same was dismissed and the petitioner is granted liberty to raise an industrial dispute. Aggrieved by the same, the petitioner also preferred a writ appeal in W.A.No.931 of 2000 before this Court and the same was also dismissed by an order dated 24.04.2002. Thereafter, the petitioner raised an industrial dispute.

6. During enquiry, the petitioner was given an opportunity to submit his explanation. The petitioner was also served with copy of list of documents and copy of list of witnesses. In the first day of enquiry, the petitioner had raised several issues and asked permission to engage a lawyer. Ultimately, the enquiry was postponed and again it commenced on 20.06.1989. Therefore, the petitioner had taken deliberate steps by making unreasonable and untenable reasons. In fact, no witnesses was



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examined and even before that the petitioner has stalled the enquiry proceedings. After examining the Presenting Officer on behalf of the respondent, the petitioner did not seek any document to cross examine the witnesses. Before that, the petitioner was served with documents. However, the petitioner refused to cross examine the Presenting Officer. Thereafter, the petitioner requested to seek permission to engage a lawyer to defend himself. In fact, as early as on 15.06.1989, the petitioner was permitted to engage a lawyer and the enquiry was adjourned to 20.06.1989. However, the petitioner failed to engage any counsel to assist him before the Enquiry Officer. Therefore, the tactics of the petitioner was only to stall the enquiry proceedings. He went to Bombay and as such, the enquiry was adjourned for several hearings. Only on 02.08.1989, the petitioner has expressed his willingness to accept the copies of documents and he informed that he was leaving for Bombay for personal work. Once again the enquiry was adjourned. Even from Bombay, he had sent a telegram asking further 20 days to attend the enquiry on showing health ground. Since, the petitioner failed to furnish his permanent address in Bombay, the Enquiry Officer was not able to serve the further notice on the petitioner. Therefore, it is clear that the petitioner was given enough opportunity to participate in the enquiry and



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even then the petitioner failed to appear before the Enquiry Officer.

Therefore, it cannot be stated that no opportunity was given to the petitioner during the enquiry and as such, this Court finds that there is no violation of principles of natural justice. Hence, the Labour Court rightly concluded that the petitioner had only wanted to stall the proceedings of enquiry and rejected the industrial dispute raised by the petitioner.

7. In view of the above, this Court finds no infirmity or illegality in the order dated 19.04.2004 passed in I.D.No.77 of 2003 by the Central Government Industrial Tribunal cum Labour Court, Chennai. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No
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