



W.P.No.27821 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	07.02.2023
PRONOUNCED ON	:	22.02.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.27821 of 2015

V.Devadass

... Petitioner

Vs.

1.The Assistant General Manager
& Disciplinary Authority,
Bank of India,
“Star House”, No.324, Oppanakara Street,
Coimbatore 641 001

2. The Deputy General Manager &
Appellate Authority,
Bank of India,
“Star House”, No.324, Oppanakara Street,
Coimbatore 641 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent i.e. the Appellate Authority's order dated 17.03.2015 confirming the first respondent i.e. the Disciplinary Authority's punishment order dated 15.11.2014 and quash the



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same and direct the respondents to place the petitioner under deemed reinstatement into his service as he had already attained the age of superannuation and consequently, direct the respondents to pay all the attendant benefits thereto.

For Petitioner : Mr.L.Chandrakumar
for Mr.P.Kamarasu

For RR 1 & 2 : Mr.K.Rajasekar

ORDER

Heard the learned counsel for the petitioner and respondents.

2. The petitioner was appointed as Clerk cum Cashier with Bank of India on 08.02.1978. While working at Killukottai branch during 1996 certain alleged irregularities in maintenance of accounts came to light. He was suspended on 16.08.1996 and later issued with a charge memo dated 15.12.1996 for the alleged misconduct followed by a departmental enquiry. The allegations against the petitioner are that during 1996, he had manipulated entries in respect of 5 petty transactions to enrich himself in deceit at the cost of the customers. Upon completion of the enquiry, the petitioner was dismissed from service on 05.08.1999.



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3. Against the order of dismissal, the petitioner preferred Writ Petition No 14684 of 2000 on the grounds of flagrant violation on the conduct of enquiry proceedings and of the principles of natural justice. The same was allowed by this Court, vide its order dated 07.07.2010. The order, set aside the dismissal order dated 05.08.1999 and directed fresh enquiry adhering to the Rules and the principles of natural justice. Aggrieved by the order, the Bank/Management filed Writ Appeal No 2003 of 2010 and the same came to be dismissed by the Division Bench of this Court vide its Order dated 28.10.2013.

4. Subsequent to the above order of the Division Bench of this Court, the petitioner was reinstated into service on 13.01.2014. Thereafter, on 07.02.2014, he was directed to appear before the Enquiry Officer for a fresh enquiry. And upon conclusion of the enquiry, the Disciplinary Authority imposed penalty of dismissal of service from 15.11.2014. Later, in appeal, the penalty was confirmed by the Appellate Authority vide order dated 17.03.2015.



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5. The learned counsel for the petitioner contends that the order of dismissal is passed arbitrarily without following the rules and in violation of the principles of natural justice despite conducting the proceedings on remand by this Court for the same reasons. He submits that the establishing of guilt by examination of the complainant, is a rudimentary requirement which is not followed in the proceedings. He adds that the denial of the opportunity to cross examine the complainants, is denial of natural justice. He points to the counter affidavit of the respondents admitting the above facts to support his arguments.

6. The learned counsel further submits that on the facts side, the amount alleged to be usurped by the petitioner from the customers is Rs.1,100/- and it is not a case of misappropriation from the bank and therefore, the punishment of dismissal from service, is disproportionate. It is the case of the petitioner that he was carrying out the burden of two independent posts that of a Clerk and Cashier and therefore out of fatigue, some mistakes crept into the records and he had taken it to the due knowledge of the Branch Manager S. Krishnamurthy. The Branch Manager



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had acknowledged the bona-fide nature of the lapses owing to heavy work burden of the petitioner and rectified the same. It was further submitted that the dismissal order was passed within 12 months preceding his superannuation. The sum and substance of his argument was that the order was predetermined.

7. Per contra, the learned counsel for the respondents argues that the Writ is not maintainable for availability of alternate remedy as the issue involved is a dispute under the Industrial Disputes Act. On the question of natural justice, it was argued that the complainant statements were recorded by the Enquiry Officer and therefore, he was competent to introduce the same in the proceedings and that the petitioner cannot raise the admissibility of the documents at this stage having not objected at the time of marking the same during enquiry. It was also pointed out that the Enquiry Officer had taken every step to examine the complainants and notices were issued for their attendance. It was emphasized that the counterfoil, pay in slips, bank account book and the investigation report proves the charges and they relied on the decision of the Hon'ble Supreme Court in the case of **State of Haryana &**



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Another vs Rattan Singh in Civil Appeal No 922 of 1976 dated

22.03.1977. It was submitted that trust and honesty are the rudimentary principles in banking and the petitioner had breached them.

8. Upon perusing the documents and hearing the arguments of the counsels in detail, it is observed that the de nova enquiry proceedings does not pass the test of fairness and therefore the punishment of dismissal is arbitrary. As pointed out by the counsel for the petitioner, the admitted failure of the enquiry officer to examine the complainants and the consequential denial of the opportunity to cross examine the complainants is a serious breach of the rules of evidence to establish guilt and also a breach of the principles of natural justice. It is violative of the reasonable opportunity contemplated under Article 311(2) of the Constitution of India. It is a settled preposition that the Principles of natural justice must be realistically and pragmatically applied. The respondents cannot be allowed to reverse the burden of proof. The respondent ought to have been diligent in following the rules of enquiry and the principles of natural justice, particularly after the earlier round of litigation before this Court and the subsequent directions.



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9. The contention of the learned counsel for the respondent to the effect that the examination of complainants is not necessary owing to the circumstances of the case is not tenable. It is a settled law that mere tendering of documents is not sufficient to prove the charges. Charges are proved only upon the prosecution witnesses being examined by the Presenting Officer and cross-examined by the delinquent official. In this context, the hon'ble Supreme Court in *L.I.C of India & Anr. vs. Ram Pal Singh Bisen 2011(1) SLJ 201* had opined that though provisions of the Civil Procedure Code and the Evidence Act are not strictly applicable in disciplinary proceedings, the principles behind those provisions cannot be altogether ignored.

10. On maintainability of the Writ Petition, this court will fail in its duty if it refuses to interfere in this case and remain a mute spectator to the hardship endured by the petitioner in the past two decades. This preposition gains support in the decision of the hon'ble Supreme Court in *State of Punjab Vs. V.K. Khanna and Others JT 2000 (Supp.3) SC 349*, wherein it is held that "law courts are otherwise justified in Interfering at the earliest stage



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so as to avoid the harassment and humiliation". It was held further that "it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion".

11. Needless to say, the punishment of dismissal from service is disproportionate to the alleged offences. No doubt, the discretion to decide as to what kind of punishment is to be imposed on the delinquent officer lies with the Disciplinary Authority. However, this discretion has to be exercised objectively keeping in mind the nature and gravity of charge, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty and so on. In the era of big bank frauds the justification of the enormity of punishment meted out to the petitioner and the ruthless pursuing of the litigations by the Bank Management in the instant case would be a travesty of justice.

12. The object of disciplinary proceedings is not to punish the delinquent for criminal conduct. It is to assess his suitability to continue in



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service. In the context, the hon'ble Supreme Court had in **Swaran Singh**

Chand Vs. Punjab State Electricity Board, AIR 2010 SC 15 held that

“where the delinquent was compulsorily retired from service before one year from the date of superannuation and the near about the same on the ground of lack of integrity and unfit to be retained in service, then the order of compulsory retirement is stigmatic.” More so, when the petitioner had already put in two decades of spotless service.

13. When the proceedings itself suffer from infirmities and the conduct of the enquiry proceedings is far from being fair, the order of dismissal that followed the enquiry is arbitrary. And therefore, Writ interference is warranted. The precedence cited by the respondent to put across the point that in a departmental enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and the findings of the disciplinary Authority should not be interfered with on that basis, should be well taken. But we shouldn't lose sight that the judgment cited by the respondent goes on to add that fair-play is the basis of departmental enquiries and if arbitrariness vitiates the conclusions reached, then the same cannot be



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held good even if passed by a domestic tribunal. Therefore, the dismissal Order dated 15.11.2014 and later affirmed in appellate order dated 17.03.2015 is not sustainable and liable to be set aside.

14. In the result,

- i) The order dated 17.03.2015 passed by the 2nd respondent confirming the Order dated 15.11.2014 of the Disciplinary Authority is quashed;
- ii) The respondents are directed to place him under deemed reinstatement with uninterrupted service as on the date of his superannuation; and
- iii) The respondents are directed to pay all monetary and other attendant benefits associated with his service.

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Index : Yes/No
Speaking Order : Yes/No

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J.NISHA BANU, J.,

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Order made in
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