BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12499 of 2020
and
W.M.P(MD)No.10677 of 2020

G.Kumaresan ... Petitioner

Vs.

1.The General Manager,
Canara Bank,
Circle Office,
East Veli Street,
Madurai.

2.The Deputy General Manager,
Canara Bank,
Human Resources Management Section,
Circle Office,
East Veli Street,
Madurai – 625 001.

3.The Assistant General Manager /
Disciplinary Authority,
Canara Bank,
Human Resources Management Section,
Circle Office,
Madurai.

4.The Branch Manager,
Canara Bank,
Vikkiramangalam Branch,
Usilampatti Taluk,
Madurai District.

5.Kaliraj ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Enquiry Report of the fifth respondent in No.Nil, dated 08.04.2020 and the impugned orders passed by the third respondent in Ref. MDUC HRM 4600 2020, dated 21.05.2020 and another order in No.Nil, dated Nil titled as Orders of the Disciplinary Authority, quash the same and direct the third respondent to reinstate the petitioner into services with all consequential benefits such as continuity of service including the service benefits with full back wages and the period of suspension from 06.08.2018 till the date of issuing the impugned order by the third respondent dated 21.05.2020, as one spent on duty.

(Prayer amended vide order of this Court dated 02.02.2023 in W.M.P(MD)No.1930 of 2023)

For Petitioner : Mr.R.Murugan

For Respondents : Mr.N.Dilip Kumar
Standing Counsel for R.1 to R.4

ORDER

Heard the learned counsel on either side.

2.The petitioner joined Canara Bank as a Clerical staff in the year 1990. He was working as Cashier in the year 2018. He was issued with charge memo dated 31.07.2020. The allegation made against the petitioner was that he had embezzled a sum of Rs,2,00,000/- (Rupees Two Lakhs). The petitioner offered his explanation. The petitioner also filed quite a few writ petitions. Eventually, the enquiry came to be conducted and the Enquiry Officer submitted his report dated 06.01.2020 holding that the charge against the petitioner was proved. The petitioner was furnished with copy of the enquiry report and his further representation was obtained. Thereafter, order dated 21.05.2020 was passed dismissing the petitioner from service. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and he also filed written submissions. A catena of case-laws was relied upon. The learned counsel appearing for the petitioner contended that the impugned order has to be set aside and the writ petition allowed as prayed for.

4.The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The articles of charge are as follows:

"ARTICLES OF CHARGE

You are presently working as SWO-A at our Printing & Stationary Section, Madurai since 26.02.2019. Earlier while you were working as SWO-A at our Vikkiramangalam branch since 18.11.2015, you were placed under suspension from 07.08.2018 to 25.02.2019.

On 12.06.2018 you were the cashier of Vikkiramangalam branch. You have on that day left the branch at 4.50 PM without ensuring that the cash is verified and tallied by the supervisor. During the end of the day, the supervisor Sri Niranjan Kumar K observed a cash shortage of Rs.200500/-. The cash shortage comprised of 100 pieces in Rs.2000/- denomination and 10 pieces in Rs.50 denomination. An investigation was conducted into the matter and there are prima facie grounds to believe that as cashier you failed to follow the systems and procedures and following lapses are observed on your part:

1. You had embezzled an amount of Rs.2,00,000/- on 12.06.2018 and thereby defrauded the bank while working as cashier at Vikkiramangalam branch.

During investigation it is observed that Sri Niranjan Kumar (112351) Probationary Officer while verifying the cash on 11.06.2018 with an intention to load Rs.2 lacs (100 pieces of Rs. 2000/-) in the ATM, wrote the cash register for the next day (12.06.2018) with 69 pieces of Rs.2000/- on 11.06.2018 itself. Whereas on the next day (12.06.2018) Sri Niranjan Kumar along with Smt. Sridevi G D (111674) Probationary Officer without removing the 100 pieces of Rs.2000/- denomination intended for loading the ATM inadvertently handed over the entire 169 pieces of Rs.2000/- along with other denominations for that day's cash transaction to you on 12.06.2018 morning as the cashier of the branch.

You had tallied the cash in accordance with the entries available in the cash register on 12.06.2018 instead of reporting the excess cash which was inadvertently handed over to you at the start of the day.

Sri Niranjan Kumar while tallying the cash at the end of the day on 12.06.2018 observed a cash shortage of Rs.2,00,500/- (Rs.2000 x 100 pieces and Rs.50 x 10 pieces). The then manager, Sri S Sreekumar had contacted you over phone and enquired about the cash shortage being observed on that day for which you had replied to him that the cash was tallied as per the register. In order to tally the cash on that day, the cash shortage of Rs2,00,500/- observed was temporarily made good by the branch by obtaining a cheque bearing No.315408 dated 12.06.2018 for Rs.2,00,500/- from a customer, M/s P S Sivamurugan Ura Depot, holder of OD account No.1463285005116 and the cash was accordingly tallied for the *day.*

On the next day (13.06.2018), you had handed over an amount of Rs. 500/- informing to be the difference amount observed by you in Rs.50 denomination to the cashier, Sri Peter (114408) SWO A. Subsequently on careful analysis of the CCTV footage of 12.06.2018, it is observed that you had taken a section of Rs.2000 denomination from the cash placed on your table and kept the same in your hand bag at around 4 pm on that day. Thereby you had defrauded the bank by embezzling an amount of Rs.2,00,000/- out of the cash handed over to you at the beginning of the day.

2. You had left the branch on 12.06.2018 before the cash being verified by the supervisor, thereby violating the extant guidelines.

You had left the branch on 12.06.2018 before the cash was verified by the cash supervisor and you had also not informed about your leaving, to the cash supervisor. Thus you had intentionally left the branch before the cash was verified by the supervisor so as to embezzle the amount from the bank. Thereby you had violated the extant guidelines of the bank by leaving the branch before the cash being verified by the supervisor.

3. You had not reported the excess cash handed over to you inadvertently by Smt. Sridevi G D & Sri Niranjan Kumar*.*

Sri Niranjan Kumar (112351) Probationary Officer and Smt. Sridevi had inadvertently handed over an excess amount of Rs.2 lacs in Rs.2000 denomination during the start of the day on

12.06.2018. You had failed to verify the cash received from double lock and report the excess cash received to the concerned officers or to the branch in charge with a malafide intention to embezzle the money. Thereby you had acted in violation of the extant guidelines by not reporting the excess cash received from the double lock.

All your above acts touch upon your honesty and integrity and thereby committed a fraud on the bank to gain pecuniary benefit for yourself and you have committed gross misconduct within the meaning of Chapter XI Regulation 3 (j) of Canara Bank Service Code. You have acted in a manner prejudicial to the interest of the bank and thereby committed a gross misconduct within the meaning of Regulation 3 (m) of Chapter XI of Canara Bank Service Code."

In the enquiry, the charges were found to have been established and the disciplinary authority had also concurred with the same. The learned counsel for the petitioner would first contend that the entire disciplinary action is vitiated by malice. The petitioner is an union activist and a central committee member of Canara Bank Staff Federation. According to the petitioner, the strain in the relationship between himself and the Branch Manager had triggered the disciplinary action. The learned counsel for the petitioner relied on the decisions reported in ***(2009) 12 SCC 78 (Union of India and Others Vs Gyan Chand Chattar)*** and ***AIR 1964 SC 719 (M/s.Khardah and Co.Ltd., Vs The Workmen)*** in support of his contention that where it is shown that the disciplinary action is vitiated by malice, the entire proceedings are liable to be quashed.

6.I am not persuaded by the contentions advanced by the learned counsel for the petitioner. It is quite possible that the relationship between the delinquent and the Management was not cordial. But that cannot furnish a defence when the petitioner is charged with a specific act of embezzlement. The petitioner can only argue that he is innocent of the charge and that the Management has failed to prove the same in the enquiry. It is no defence to say that since he was an union activist, such charge has been laid against him. The question of motive will pale into insignificance if there is convincing material to drive home the guilt of the accused. The Management has endeavoured to prove its case by relying on the CCTV footage.

7.The learned counsel for the petitioner would point out that the petitioner also faced criminal prosecution on the same set of facts and it ended in acquittal. My attention was drawn to the judgment dated 11.01.2023 in C.C.No.80 of 2021 on the file of the learned Judicial Magistrate No. II, Usilampatti. The argument of the learned counsel for the petitioner is that the learned Trial Magistrate also viewed the very same CCTV footage and came to the conclusion that the petitioner is not guilty. The judgment of acquittal has not been put to challenge. His further contention is that before the enquiry officer, no witnesses having direct knowledge was examined. Only two officials who had allegedly conducted preliminary enquiry were examined. He relied on the decisions reported in ***(2009) 2 SCC 570 (Roop Singh Negi Vs Punjab National Bank & Others)*** and ***(2017) 2 SCC 308 (Allahabad Bank & Others Vs Krishna Narayan Tewari)*** in support of this contention that even in departmental enquiry there must be compliance with principles of natural justice and that witnesses who were connected with the occurrence must be examined. Since the Management failed to do so, the delinquent must be exonerated. He pointed out that there is a settled system and procedure that the Cashier is responsible for the money which he has received. On the occurrence date, the petitioner was given 69 notes of Rs.2000/- denomination each and the entry made in the relevant register also indicates so. This has been properly and duly accounted by the petitioner. Therefore, it is too much for the Management to now contend that there was some typographical error and that what was given to the petitioner were 169 notes and not 69 notes. The contention of the learned counsel for the petitioner is that the stand of the disciplinary authority is not in consonance with the provisions of cash manual governing them. According to him, the findings of the enquiry officer are thoroughly perverse and that the matter warrants interference at the hands of this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

8.The charge against the petitioner is that on 12.06.2018, Shri.Niranjan Kumar (Probation Officer) and Ms.Sri Devi handed over excess amount of Rs.2,00,000/- in Rs.2,000/- denomination but failed to make proper entry. Therefore, both these staff ought to have been examined as witnesses during enquiry. It appears that they had also been charged with negligence and breach of the cash manual provisions and action was initiated against them also. But on that ground, they would not become co-delinquents. They would have become co-delinquents only if they had also been party to the act of embezzlement. The failure on the part of the disciplinary authority to examine the aforesaid officials is really a lacuna. I only hope that appropriate instructions will be issued to the presenting officers as to how the enquiry should be conducted and as to how evidence let in. The persons who were examined as witnesses during enquiry were those who conducted preliminary investigation. They had no direct knowledge of the occurrence. It is like conducting a criminal case by examining the investigation officer alone. The moot question is whether on this ground one can come to the conclusion that the charge against the petitioner has not been made out.

Before the enquiry officer, CCTV footage was played. The enquiry officer after noticing the footage came to the following conclusion:

> "The CCTV footage on 12.06.2018 of Vikkiramangalam branch is marked as Exhibit MEX-6. The recording of CCTV is shown one hour delay, hence for actual time, one hour to be added. On going through the visuals thoroughly, the relevant events are as follows:

09.03.00 AM –	The second drawer of the table of cashier is clearly viewed as empty.
09.12.34 AM –	The cashier is opening the cash box.
09.14.39 AM –	The cashier is verifying the cash.
09.50.44 AM –	First section of note was kept in the second drawer
10.20.06 AM –	Second section of note was kept in second drawer
10.37.35 AM –	Third section of note was kept in second drawer
11.44.57 AM –	Fourth section of note was kept in second drawer
11.45.45 AM -	Fifth section of note was kept in second drawer
12.33.12 PM –	Sixth section of note was kept in second drawer
14.41.33 PM –	CSE is taking out the sections of notes which were kept in the second drawer as mentioned above and keeping it on the top of the table on left hand corner
14.50.24 PM –	CSE receives a section of note from a customer and keeping it above the sections kept on the top of the table on left hand corner.
15.01.32 PM –	CSE taking a brown cover from the drawer
15.01.52 PM –	CSE taking the letter from his bag and putting it in the brown cover and keeping it inside his bag

15.02.35 PM – CSE is taking a pink colour slip from the drawer of his table and taking a section of note from the sections kept on the top of left hand corner of the table and covering the section with the slip and keeping it in his black colour bag.

From the above it is evident that the CSE at 15.02.35 (time shown in the footage) has taken a section (100 pieces of currency notes) of notes from the top of the table and covered it with a pink colour slip and kept in his bag. Considering the facts of the case that Sri Niranjan Kumar had made wrong entry with respect to Rs.2000/- currency notes and the shortage of amount was Rs.2,00,500/-, it can be concluded that Sri G Kumaresan has pilfered a section of Rs.2000/- denomination.

The contention of DR that the CCTV footage evidence lacks logic and reasoning, because unless it was proved with documentary evidence that Rs.2 lac was given in excess as what was recorded in double lock register while taking out cash and also after verification in the cash register by the cashier duly authorized by an official in the sell vault is not sustainable since it is proved that Sri Niranjan Kumar has made the entry as 69 pieces of Rs.2000/- denomination instead of available 169 pieces and the cash was handed over to CSE inadvertently without removing the 100 pieces intended for loading it in the ATM on 12.06.2018 and also the CCTV footage revealed that the CSE has taken a bundle from the cash in the cash cabin and there was a shortage of Rs. 2,00,500/- in the cash at Vikkiramangalam branch on 12.06.2018."

To satisfy my consciences, I called upon the learned counsel appearing for the respondent Bank to play CCTV footage before me. I saw the CCTV footage twice. I am more than satisfied that the conclusion arrived at by the enquiry officer is sound and reasonable. In fact, the learned Judicial Magistrate also in his judgment had noted that he could note the accused taking something. But to the Judicial Magistrate's eyes, it was not clear whether it was cash. It appears that the prosecution had marked the CCTV footage pertaining to the act of taking alone. They failed to play the entire CCTV footage. If the entire CCTV footage is seen, one can come to the conclusion that what was taken and put in the bag was the excess cash of Rs.2 Lakhs.

9.The enquiry officer had not jumped to such conclusion after viewing the CCTV footage alone. He had taken into account the entire factual matrix. It is well settled that the technical rules of evidence of law are not applicable to departmental proceedings. Before the enquiry officer, two investigation reports as well as the cash registers and also annexures were marked. The enquiry officer had taken into account all the relevant aspects and then only concluded that the charge against the petitioner has been established.

10.The petitioner was given full opportunity to place his case. Before the disciplinary authority also, the petitioner gave his further representation. The order passed by the disciplinary authority is also a reasoned one. The Hon'ble Apex Court in the recent decision reported in ***(2021) 12 SCC 569 (The State of Rajasthan & Others Vs Heem Singh)*** had dealt with the approach to be adopted by the writ Court in the matter of disciplinary proceedings.

> *"37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying*

approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the *exercise of robust common sense without which the judges' craft is in vain."*

11.It is well settled that there are varying approaches to the question of proof. In criminal proceedings, the standard of proof is beyond reasonable doubt. In civil cases, it is preponderance of probabilities. In departmental enquiries, it is "proof based on some evidence". The case on hand is not anchored on some evidence. It is based on solid evidence in the form of CCTV footage. The recent decision of the Hon'ble Apex Court enables the writ Court interfere only when the findings are vitiated by perversity or it is based on no evidence. Such is not the case here. I decline to interfere.

12.This writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.06.2023

Index : Yes / No

Internet : Yes / No
NCC : Yes / No
MGA

To

1.The Director General,
Railway Protection Special Force,
Railway Board,
Rail Bhavan,
New Delhi.

2.The Inspector General cum Principal,
Chief Security Commissioner,
Railway Protection Special Force,
Railway Board,
Rail Bhawan,
New Delhi.

3.The Deputy Inspector General cum
Chief Security Commissioner,
Railway Protection Special Force,
Railway Board,
Rail Bhawan, New Delhi.

4.The Commanding Officer,
5th Battalion Railway Protection Special Force,
Kimber Garden,
Khajamalai,
Thiruchirapalli.

5.The Assistant Commissioner,
'D' Coy, 5th Battalion Railway Protection Special Force,
Kimber Garden,
Khajamalai,
Thiruchirapalli.

6.The Inspector,
5th Battalion Railway Protection Special Force,
Kimber Garden,
Khajamalai,
Thiruchirapalli.

G.R.SWAMINATHAN, J.

MGA

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