

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.487 of 2022

In
Civil Writ Jurisdiction Case No.6694 of 2008

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The Canara Bank through the General Manager, Canara Bank, I.R. Section,
Head Office, Bengaluru.

... .. Appellant/s

Versus

Ajay Kumar Singh, Son of Sri Shaligram Prasad Singh, Resident of Block
Gate, Banka, P.S. and District - Banka.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajan Ghoshrave, Advocate
For the Respondent/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Sanjeet Kumar, Advocate
		Mr. Ujjwal Bhushan, Advocate
		Mr. Pranav Ranjan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-12-2024

The appellant is a nationalized bank, aggrieved with the judgment of the learned Single Judge, which interfered with the punishment awarded to an employee, in pursuance of a disciplinary inquiry conducted, wherein the Charge-sheeted Officer (CSO) was found guilty of the misconduct alleged. The respondent, the CSO, stood suspended pending inquiry; a charge-sheet having been issued to him dated 08.11.2005. The suspension period was also treated as period spent not on duty.

2. The facts leading to the misconduct alleged were that, the CSO, while he was employed as Manager at the



Regional Office, Muzaffarpur, he was arrested by the Central Bureau of Investigation (CBI) and detained in custody from 09.08.2005 in connection with a criminal charge/offence committed by him while working as Manager at Bokaro Steel City Branch, Bokaro. His suspension was as per Regulation 12(2)(a) of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for brevity 'Regulations' hereinafter), which mandated that if an employee is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, he shall be placed under suspension. The misconduct alleged against the CSO, which is seen from Annexure-4, was that while he was the custodian of one set of double lock keys of the branch at the Bokaro Steel City, the Central Board of Secondary Education (for short 'CBSE') had sent the question papers of All India CBSE Pre-Medical Test/Pre-Dental Test, 2003 in sealed packets to the said branch for safe custody; apart from other branches of the Bank. The sealed packets were received on 10.04.2003 and kept in safe custody under double lock of the branch; of which lock, one key was in the possession of the CSO and the examinations were to be held on 27.04.2003. It was alleged that the CSO had taken out one packet of question papers from the double lock on



19.04.2003, having connived with outsiders, and facilitated copying of the question papers, leading to its leakage and placed the original question papers, re-packed and sealed in the original condition under double lock, on 21.04.2003.

3. The statement of imputations alleged that on 19.04.2003, a Saturday, when cash was taken out, one packet of the question paper was taken out without the knowledge of Shri V.K. Srivastav, Officer who was the other key-holder, and the CSO, clandestinely carried the packet of question paper in an envelope outside the strong room and kept the packet in his table drawer for the whole day. On the next day, i.e. 20.04.2003, a Sunday, he opened the branch premises and took out the cover containing the question papers and reached Reliance Hotel at around 11:00 A.M. where he met Shri Rajeev Jha, Shri Shiv Nandan Singh and Shri Amrendra, who opened and copied the questions in the presence of the CSO, which was subsequently re-packed, sealed and handed over back to the CSO. The CSO kept back the packet of question paper inside the double lock on 21.04.2003, again clandestinely, when one Shri Vinod Kumar was holding the second set of keys.

4. The inquiry was conducted wherein three Management Witnesses (for short 'MWs') were examined as



MW-1, MW-2 and MW-3. The CSO was found guilty of the offences based on the evidence led at the inquiry, which resulted in the punishment of dismissal and the further order of the Disciplinary Authority that the period of suspension would be treated as one spent, not on duty for any purposes including for increment for the period, which would not be released. The dismissal was also stated to be a disqualification for future employment.

5. The CSO challenged the order before this Court in a writ petition, in which the learned Single Judge interfered with the punishment and observed that since the writ-petitioner had crossed the age of superannuation, there could be no resumption of the inquiry; also since the charge-memo was issued as early as in 2005. It was also observed that there was no question of commencing the inquiry from the defective stage, since the charge-memo itself was defective for reason of it being not supported by the complete documents which were relied on at the inquiry.

6. The learned Single Judge rejected the plea of the writ-petitioner that since criminal proceedings were pending on identical allegations, there could be no parallel disciplinary proceedings held. The contention was that the employer should



have conceded to the request of the CSO that the disciplinary proceedings be deferred till the criminal proceedings are concluded. The learned Single Judge did not find favour with the above contention; but however, found that the disciplinary inquiry commenced with a charge-sheet, which did not contain the entire documents that were relied on at the inquiry was in clear violation of the Regulations.

7. We heard Shri Rajan Ghoshrahe for the appellant Bank and learned Senior Counsel Shri Chitranjan Sinha for the respondent-CSO. We refer the parties from their status in the appeal.

8. At the outset, we have to reject the contention raised on behalf of the respondent, that there could not have been parallel proceedings, in the nature of a disciplinary inquiry, while the criminal proceedings were pending; as has been rightly rejected by the learned Single Judge also. Suffice it to notice that the standard of proof in a domestic inquiry and the criminal proceedings is quite distinct and different; while in a criminal proceeding there should be proof beyond reasonable doubt, in a disciplinary inquiry the standard is of preponderance of probability. The appellant Bank was perfectly within its authority to have initiated the inquiry and continued with it.



9. As far as validity of the inquiry and the sustainability of the evidence led in the inquiry, we have to first notice the charge-sheet, which is produced as Annexure-4 in the writ petition. Only three documents were produced along with the charge-sheet; namely, a copy of the Preliminary Investigation Report dated 09.06.2004, Explanation Letter called from the Staff Section (Officers), Circle Office, Patna dated 06.07.2004 and the CSO's reply dated 17.07.2004. There was also only one witness indicated in the charge-sheet; who was the officer who conducted the preliminary inquiry, one Shri M.K. Gupta. The recitals in the charge-sheet under the list of documents and list of witnesses also indicate "Any other documents required for the enquiry" and "Any other witnesses required for the enquiry", respectively.

10. The learned Single Judge specifically referred to Regulation 6 of the Regulations which has the nominal heading 'Procedure for Imposing Major Penalties'. Sub-clause (3) of Regulation 6 provides that when it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a Statement of the allegations (list of documents relied on along with copy



of such documents and list of witnesses along with copy of Statement of witnesses, if any) on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

11. Admittedly, there is a clear violation of the Regulations insofar as altogether 34 documents were relied on by the Inquiry Officer in the Inquiry Report, produced as Annexure-8 along with the supplementary affidavit dated 18.11.2008, in the writ petition. We also find that, in the 'Gist of Proceedings', as recorded by the Inquiry Officer, there was again a preliminary inquiry conducted on 23.04.2007, where the Presenting Officer (PO) had handed over a list of 30 documents and submitted copies of the same to the CSO as also gave the name of Management Witnesses. It is also recorded that the Inquiry Officer asked the CSO to verify the documents and confirm. However, no such confirmation has been obtained or recorded nor is the 'Gist of Proceedings' signed by the CSO. There is violation of Regulation 6(3), since it mandates handing over of the list of documents along with copies and the list of



witnesses along with the charge-sheet and there is no explanation offered insofar as why the documents were not relied on and enclosed along with the charge-sheet.

12. Now, we refer to the deposition of witnesses, as recorded in the Inquiry Report.

13. MW-1 was one Arun Kumar Singh, who deposed that the CSO had accepted, in the office of the DIG, CBI that he had taken out one bundle of question papers pertaining to CBSE, AIPMT Exam and replaced it inside the double lock. Statement of MW-1 was that he had been present along with one Mr. V.K. Srivastav, Officer when the CSO was questioned by the CBI officials. However, there is nothing to indicate as to the presence of MW-1 and the other officer, who was examined as MW-2 before the CBI officials. The DIG of the CBI, who is said to have questioned the CSO, was also not examined.

14. It is pertinent that the charge-sheet specifically referred to Shri V.K.Srivastav, MW-2, having custody of the second key of the double lock on 19.04.2003; when the CSO is said to have taken out one packet of question papers from safe custody and one Shri Vinod Kumar was asserted to have possession of the second set of keys on 21.04.2003 when the packet of question papers was put back. Vinod Kumar obviously



was not examined at the inquiry. V.K.Srivastav was examined as MW-2, who did not even depose about the possibility of the CSO putting back the question paper packet, clandestinely without being detected by MW-2 or the Peon and the Armed Guard, who were also present; as per the deposition of MW-2 itself, at the time the double lock was opened. It is also pertinent that there was nothing produced by the Bank to show that MW-2 had possession of the second key on the date of allegation, of the CSO having put back the question papers.

15. It was on 18.05.2007 when MW-2 was examined, the PO handed over a list of 17 defence exhibits along with the copies of documents. Again, though it was recorded in the report that the PO was asked to verify the documents and confirm; there was no signature obtained from the CSO in the gist of proceedings, as confirmation.

16. MW-3 was the person who conducted the preliminary inquiry, whose name was included in the charge-sheet. MW-3 marked his Investigation Report and also marked 31 documents as MEX- 1 to 30 and 32, which were copies of documents collected and the statement recorded during investigation. This could not have been relied upon by the Inquiry Officer and it was incumbent upon the appellant Bank to



have examined the persons from whom such statements were recorded; which otherwise, as disclosed from the statement of the Management Witnesses who conducted the inquiry, will be reduced to a mere hearsay. In cross-examination, it was brought out that but for the investigation having disclosed one Rajeev Jha having stayed in a hotel in Bokaro during the relevant period, there was nothing to connect the CSO with Rajeev Jha. The CSO though did not examine any witnesses, marked 16 documents as DEX-1 to 16; which were not even referred to by the Inquiry Officer, in the report submitted. The investigation carried out by MW-3 was behind the back of the CSO and mere examination of MW-3 would not substantiate the findings by MW-3; in such investigation carried out.

17. The Inquiry Officer has made a cursory reference to the deposition of the witnesses and relied heavily on the confession of the CSO, marked as MEX-31; the 164 Cr.P.C. statement obtained during the course of investigation from the CSO. It was recorded that all the three MWs admitted that they did not know how the question paper was taken out by the CSO; which, however, was rubbished by the Inquiry Officer on the reasoning that it is not expected that any other person, even the second key-holder, would know about the act; a clear conjecture



of the Inquiry Officer without any substantiation.

18. As we noticed, the person who had possession of the second key on the day on which it was alleged that the CSO took out one packet of question papers from safe custody, was not examined. MW-2 who was said to have possession of the key on the day on which it was replaced was not questioned as to whether the CSO could have clandestinely put back the packet of question paper without the three persons present being aware of the same. The Peon and the Armed Guard, who were asserted to be present when the double lock was opened, were also not examined.

19. More pertinently, none were examined from the CBSE or the Police or the CBI to establish that there was in fact a leak of question paper which had led to the arrest of the CSO. The arrest was also not proved at the inquiry nor was the F.I.R. produced to indicate a criminal case pending against the CSO.

20. We are of the opinion that the inquiry was not conducted in a proper manner. The documents though recorded as having been handed over in the course of the inquiry, there is no acknowledgment of the same. In fact, the Regulation prescribes that the documents to be relied on, at the inquiry, along with the witnesses to be examined, should be indicated in



the charge-sheet itself. We are not, for a moment, finding that a document which was not handed over along with the charge-sheet, could not have been relied at the inquiry. However, the Presenting Officer, if intending to produce documents, should have produced it before the Inquiry Officer with a list of documents and the list of witnesses to be examined, to prove such documents, along with an explanation as to why there was a delay occasioned. More pertinently, the receipt of the documents and the time given to the CSO to cross-examine the witnesses also should be indicated. In the present case, there is no acknowledgment of the documents nor is any list of documents or witnesses produced in the course of the inquiry.

21. We find absolutely no reason to sustain the inquiry, which is bereft of any sustainable evidence. The clandestine removal of the question paper packet from safe custody; which was also under double lock, two keys being held by two different persons and the double lock being opened only in the presence of a Peon and an Armed Guard, was not established by any evidence; but for possible surmises and conjectures which does not lead to the standard of proof required. None of the persons who were present when the removal is alleged to have been made on a Saturday, was



examined. Even the replacement of the question paper packet, clandestinely removed earlier, was not established to bring in a preponderance of probability. There is nothing brought out in the inquiry to establish a leak of question paper, as alleged in the report. We find absolutely no reason to interfere with the judgment of the learned Single Judge.

22. Insofar as resumption of inquiry from the stage at which the defect occurred; we are of the opinion that the entire disciplinary proceedings were flawed and defective for reason of the Management having not conducted it in accordance with the Regulations and in accordance with the principles regulating disciplinary proceedings as also that of natural justice.

23. A Division Bench of this Court has already held so in *LPA No. 446 of 2024; The State of Bihar & Ors. v. Vikash Kumar @ Vikas Kumar*, from which we extract Paragraph Nos. 8 to 13 as under:-

“8. The decisions in *Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588* and *ECIL v. B. Karunakar, (1993) 4 SCC 727*; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the



penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.

9. The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

10. *ECIL (supra)* by a larger Bench, on a reference made, reaffirmed the dictum in *Mohd. Ramzan Khan (supra)*. These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent employee.

11. The learned Single Judge has relied on *Union of India v. P. Gunasekaran*;



(2015) 2 SCC 610 from which we extract Paragraph 12 and 13:

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such



conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

*(i) **the finding of fact is based on no evidence.***

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

*(**underlining & bold font supplied, for emphasis**)*

12. From the above extract it is very clear that the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence. If in every case where no valid evidence is led at the enquiry proceedings, there is a remand made, it would be offering a premium to the negligence of the Management/ Disciplinary Authority and condoning the levity



with which the departmental enquiry was conducted. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings without any valid evidence.”

24. An inquiry can be resumed from the stage at which a defect has occurred only when it causes a prejudice to the employee. Insofar as the instant case is concerned, as was the facts in the cited case, the Management had conducted a defective inquiry and this inures to the benefit of the CSO, the delinquent officer. The prejudice caused is to the Management, which was by its own fault, especially since the Management had the resources and had also appointed an Enquiry Officer and a Presenting Officer; both employees of the Bank itself, to conduct the inquiry.

25. We find absolutely no reason to interfere with the judgment of the learned Single Judge. Necessarily, the



respondent would have to be restored in service from the date of his suspension; paid up the entire dues of salary and allowances eligible to him till his retirement, minus the subsistence allowance, if any paid during the period of his suspension. The respondent/CSO shall also be entitled to the entire retirement benefits due to him.

26. The Appeal stands dismissed.

27. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
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