IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2023

PRONOUNCED ON : 30. 04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.20261 of 2013

R.Srinivasan ...Petitioner

versus

1.Canara Bank
Rep., by its General Manager/
Appellate Authority, Personnel Wing,
Head Office, No.112, J.C.Road,
Bangalore 560 001.

2. Deputy General Manager,
Disciplinary Authority,
Canara Bank, Circle Office,
No.166, TV Samy Road (West),
R.S.Puram, Coimbatore 641 001 ... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 09.05.2013 imposing the punishment of bringing down to a lower stage in scale of pay by two stages for a period of two years and consequently direct the respondents to restore the pay of the petitioner with all consequential benefits, pay arrears.

For Petitioner : Mr.Balan Haridass

For Respondents : Mr.Gautam S.Raman
for M/s.P.R.Raman

ORDER

This Writ Petition is filed seeking for issuance of certiorarified mandamus and to quash the proceedings dated 09.01.2013 of first respondent imposing the punishment of petitioner of bring down to a lower state in scale of pay by two stages for a period of two years and consequently, direct the respondents to restore the pay of the petitioner will all consequential benefits, pay arrears etc.

2. The petitioner has joined the services of the respondent Bank in the year 1998 as a Clerk. From June 2001 onwards, petitioner was working the Park Road Branch of the respondent Bank in Erode. When he was working in the Arikaranvasalu Branch of the respondent Bank, he was issued with a charge memo dated 22.11.2007, stating that a customer by name A Umashankar, remitted Rs.600/- in recurring deposit account, however the petitioner has given credit of only Rs.200/-, thereby misappropriated Rs.400/-. Petitioner has tried to cover up the said issue by contacting the Senior Manger and informed that the short fall has been made good and persuaded the customer not to prefer any complaint. The petitioner has submitted explanation on 30.01.2008 denying the

allegations. The respondent Bank has conducted domestic enquiry against the petitioner. The findings of the Enquiry Officer are furnished to the petitioner as per letter dated 16.12.2008. Enquiry Officer found the petitioner guilty that he has misappropriated Rs.400/- out of Rs.600/- deposited by A.Umashankar in his recurring deposit account. Aggrieved by the above said finding, the present Writ Petition is filed.

3. Learned counsel for the respondents has filed counter affidavit and contended that the customer A.Umashankar, had remitted Rs.600/- on 18.01.2005 in recurring deposit account bearing No.191, but the petitioner who was working as the Cashier on that day, accounted only Rs.200/- in the customer's account and did not report any excess cash of Rs.400/- to the Branch-in-Charge. The Branch-in-Charge was not aware of the short credit of Rs.400/- till the oral complaint was preferred by the customer on 16.06.2005.

4. Branch-in-Charge verified the denomination mentioned in the R.D.Challan, (Rs.500 x 1 and Rs.100 x1), and assured that he will take necessary steps regarding credit of Rs.400/- in the customer A/c. It is further submitted by the learned counsel for the respondent that since the petitioner had

settled the matter off the record by paying Rs.400/- to the customer directly/personally, the customer took a different stand during the course of enquiry, being sympathetic towards the fact that the petitioner would be punished by the Bank for having misappropriated Rs.400/- and for failing to account for the same in the books of accounts. Learned counsel further submitted that the petitioner has not mentioned the cut note issue in the explanation letter offered by him on 20.09.2005 and it only an afterthought story only to cover up the misconduct committed by the petitioner, hence the contentions of the petitioner are not sustainable, and prays to dismiss the Writ Petition.

5. Heard both sides and perused the records.

6. The petitioner has filed copy of the charge memo, explanation submitted by him, written brief submitted by the petitioner, order of punishment imposed by the second respondent/ impugned order, order in W.P.No.11596 of 2009 and order of the Appellate Authority and proceedings of the Assistant General Manager, refixing the Salary pursuant to the order of the 1st respondent.

7. It is submitted by the learned counsel for the petitioner that the punishment imposed against the petitioner is against the evidence recorded by the Enquiry Officer, thereby the findings are perverse, the punishment imposed is shockingly disproportionate.

8. The main contention of the petitioner is that Mr.A.Umashankar, the customer of the Bank who stated to have deposited Rs.600/- in his recurring deposit for the period of three months, has appeared before the domestic Enquiry Officer and deposed that he went to the branch, to remit Rs.600/- for the three months instalments in his recurring deposit. He has given 500 rupees note and 100 rupees note to the petitioner of which there was a cut in the 500 rupees note, thereby, the petitioner has returned the said 500 rupee note to the A.Umashankar. Since, A.Umashankar, had to leave urgently as his mother was not feeling well, he has taken 500 rupees note and gave 100 rupees note in addition and request the petitioner to adjust Rs.200/- towards one month recurring deposit. It is therefore submitted that when there is a clear evidence that the customer has paid only Rs.200/-, the allegation that petitioner has misappropriated Rs.400/- is baseless and erroneous.

9. The learned counsel for the respondent Bank has submitted that the petitioner personally met the customer and persuaded the customer not to prefer any complaint and this fact was confirmed by the Branch Manager who appeared as second witness for the management. After the Bank Manager has requested the customer to give a written complaint for non-accounting of Rs.400/- in his recurring deposit, but the customer has informed the Branch Manager that he has decided not to prefer any written complaint against the petitioner and settled the short credit of Rs.400/- personally with the petitioner.

10. It is further submitted by the learned counsel for the respondent that earlier occasion also the petitioner was issued charge sheet of similar type of misconduct and imposed the punishment of compulsory retirement and in the Appeal he was reinstated in service and compulsory retirement was modified as stoppage of three increments for the period of two years with cumulative effect.

11. Therefore on considering the rival submissions, it is clear that according to the respondent Bank the customer A.Umashankar has deposited Rs.600/- recurring deposit of which only Rs.200/- was given credit by the petitioner. After two days, the customer made a oral complaint to the Manager,

until then the petitioner who was working as a Cashier did not bring to the knowledge of his higher officer about shortage of Rs.400/-. The customer A.Umashankar earlier has made oral complaint to the Manager against the petitioner, thereby, charge memo was issued to the petitioner and disciplinary proceedings were initiated against him. However, the petitioner has settled with customer A.Umashankar, thereby he gave evidence in the enquiry stating that on that day he has deposited only Rs.200/- and he has taken Rs.500/- cut note along with him. If really the customer statement before the enquiry officer is to be accepted then he could not have made any complaint to the Branch Manager against the petitioner that he deposited Rs.600/-, the petitioner have given credit of only Rs.200/- and thus misappropriated Rs.400/-. There is no explanation as to why the customer A.Umashankar gave a false complaint against the petitioner.

12. Admittedly, the customer A.Umashankar has filled the deposit Challan and the acknowledgement the challan for Rs.600/-. The petitioner after collecting the amount has given the acknowledgement to the customer only for Rs.600/-. If at all, the petitioner has initially paid Rs.600/- and of which he has taken back Rs.500/- from petitioner on the ground that there is cut in the 500

rupees note and that subsequently if at all customer has paid Rs.100/- back to the petitioner and requested the petitioner to give credit to only Rs.200/- for one instalment, the challan and counterfoil should be for Rs.200/-. However, admittedly, the Challan and counterfoil reflect for Rs.600/, which clearly go to show that the customer has deposited Rs.600/- and the petitioner has given credit only for Rs.200/- and it also supports the contention of the respondent that petitioner has managed with the customer. If at all, the customer has deposited only Rs.200, how did he file the challan for Rs.600/-, thereby at the end of day, there should be shortage of Rs.400/-. But, the petitioner has not reported anything about the shortage of Rs.400/- to Manager or any other higher officers. It is only when the customer has made a oral complaint before the Manager, then the petitioner has reported about the shortage of Rs.400/- to the Bank Manager.

13. Therefore, it appears some mischief was committed by the petitioner in respect of deposit of Rs.200/-. But since the allegation is that the petitioner has misappropriated Rs.400/- and as the customer has deposed that he has deposited only Rs.200/-, then finding of the enquiry officer that the petitioner has misappropriated Rs.400/- cannot be appreciated as it is against the available

evidence. Though, there is no financial loss to the Bank, still the way the petitioner has acted by not correcting the Challans and not informing the higher officers about the issue on the very same day and informing them when the customer has preferred a oral complaint before the Manager, then this act of the petitioner amounts to misconduct.

14. After verification with the Bank incharge, on the Challan, it is mentioned that the customer has deposited Rs.500 x 1 and Rs.100 x 1. If at all, the customer has deposited Rs.100 only, it should have been 100 x 2. This also shows that customer has deposited Rs.600/ - and not Rs.200/-.

15. It is further submitted by the learned counsel for the respondent that even if the customer has deposited cut note, the petitioner is not expected to return the said cut note, back to the petitioner. Once cut note is received by the Bank, the petitioner as per RBI guidelines is expected to record the same in the cut note register by giving credit to the customer. Therefore, submitted that the contention of the petitioner that the cut note was returned to the petitioner appears to be created with the help of customer, in order to evade the charge levelled against the petitioner.

16. The other argument of the learned counsel for the petitioner is that the impugned orders are not speaking order and the enquiry officer and the disciplinary authority have not mentioned the reasons as to why and how the petitioner is found guilty.

17. Learned counsel for the petitioner has referred the decision of the Hon'ble Apex Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya, Gramin Bank vs Jagdish Sharan Varshney and others***, reported in (2009) 4 SCC 240, wherein it is observed as under in paragraph No.8:

> *"8.The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."*

18. Learned counsel for the petitioner also has referred the decision of the Hon'ble Apex Court in **State Bank of Bikaner & Jaipur and other vs. Prabhu Dayal Grover**, reported in (1995) 6 SCC 279, where is it observed as under in para No.14 and 15 as follows:

> *"14.That brings us to the order of the Appellate Authority. Under Regulation 70(2), the Appellate Authority is required to consider whether the findings recorded against the concerned officer are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the Appellate Authority to give any reasons for its order. Assuming, that by necessary implication this Regulation also requires the Appellate Authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the Appellate Authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal.*
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> *15. On the conclusions as above, we allow the appeal of the Bank and dismiss the Writ Petition filed by Grover in the High Court. Consequently, the appeal filed by Grover stands dismissed. However, there will be no order as to costs."*

19. The petitioner was imposed punishment of bringing down to lower

stage in the scale of pay by stages for a period of 2 years with cumulative effect. As discussed above, on prima facie it appears that though petitioner was charged that he has committed misappropriation of Rs.400/-, except the oral evidence of the customer A.Umashankar, rest of the material placed by the department is against the petitioner. Men may speak lies, but not the records. If the oral evidence of the customer is discarded, there is a clear evidence that petitioner has committed misconduct. In view of all the above, this Court is of the opinion that, in order to meet the ends of justice, though the petitioner cannot be fully exonerated, the punishment imposed can be altered by giving some relief to the petitioner.

20. Normally, the Courts will not resort to alter the punishment in either way, as it is prerogative of the disciplinary authority. Considering the fact that this Writ Petitioner is filed about 11 years ago and that the petitioner has already been retired from service, again directing the parties to go to the disciplinary authorities will create unnecessary delay in disposing the matter. Therefore, this Court ventures to alter the punishment imposed by the disciplinary authority.

21. On considering the totality of the circumstances existing in respect of the issue involved in this case and on hearing both sides, dictum laid down by the Hon'ble Supreme Court, the finding of the enquiry officer and disciplinary authority that the petitioner is found guilty of the misappropriation is hereby confirmed.

22. However, taking into consideration of the circumstances that the petitioner himself has given evidence that he has not deposited Rs.600/- and also considering the fact that all the documents of the Bank that there is a material to show that Rs.600/- was deposited and since it is alleged that petitioner has managed the customer prior to giving evidence before the enquiry officer, this Court is of the opinion that punishment imposed can be altered suitably. Accordingly, the punishment imposed of "bring down to the lower stage in the scale of pay by two stages for a period of two years with cumulative effect" is altered to bringing down to a lower stage in the scale of pay by two stage for a period of two years without cumulative effect.

23. In the result this Writ Petition is disposed of. The punishment imposed to the petitioner of "bringing down to the lower stage in the time scale

of pay by two stages for a period of two years with cumulative effect" is modified as "bringing down to the lower stage in the scale of pay by two stages for a period of two years without cumulative effect." No costs.

30.04.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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Dr.D.NAGARJUN, J.
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To
1.Canara Bank
Rep., by its General Manager/
Appellate Authority, Personnel Wing,
Head Office, No.112, J.C.Road,
Bangalore 560 001.

2. Deputy General Manager,
Disciplinary Authority,
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No.166, TV Samy Road (West),

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Pre-delivery Order
W.P.No.20261 of 2013

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