THE HIGH COURT OF JUDICATURE AT MADRAS

| | |
|---|---|
| **Reserved on** | 28.03.2024 |
| **Pronounced on** | 05.06.2024 |

CORAM :
**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**Writ Petition No.21354 of 2012**

M.Ganesan ... Petitioner

Vs.

1.The State Bank of India,
Rep. by the Chief General Manager,
Local Head Office, "Circle Top House",
16, College Lane, Chennai – 6.

2.The Assistant General Manager,
State Bank of India,
Region-I, Zonal Office,
No.86, Rajaji Salai,
Chennai – 600 001.

3.The Appellate Authority,
The Deputy General Manager,
Zonal Office,
No.86, Rajaji Salai,
Chennai – 600 001. … Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to (i) the impugned suspension order of the second respondent in No.Dis/Con/090 dated 05.04.1993, (i) the impugned order of dismissal of the second respondent in DIS/CON No.551 dated 07.03.2005 and (iii) the impugned appellate order of the third respondent in DIS/CON/No.112 dated 14.06.2005 and quash the same and consequently direct the respondents to treat the period of suspension of the petitioner from 05.04.1993 to 07.03.2005 as one of duty for all purposes and grant the consequential monetary and pensionery benefits in the post of Special Assistant from 01.07.2009.

For Petitioner : Mr.Balan Haridas
for Mr.A.Ilaya Perumal

For Respondents : Mr.S.Ravindran,
Senior Counsel
for Mr.B.Raghavulu Naidu

**O R D E R**

**FACTS OF THE CASE:**

The relief sought by the petitioner in this writ petition is to call for the records relating to (i) the impugned suspension order of the second respondent in No.Dis/Con/090 dated 05.04.1993, (i) the impugned order of dismissal of the second respondent in DIS/CON No.551 dated 07.03.2005 and (iii) the impugned appellate order of the third respondent in DIS/CON/No.112 dated 14.06.2005 and quash the same and consequently direct the respondents to treat the period of suspension of the petitioner from 05.04.1993 to 07.03.2005 as one of duty for all purposes and grant the consequential monetary and pensionery benefits in the post of Special Assistant from 01.07.2009.

2. The case of the petitioner is that the petitioner was initially appointed as Messenger in State Bank of India on 11.06.1973 and subsequently promoted as Clerk in Treasury Branch. This being so, an order of suspension was issued by the second respondent in Dis/Con/090 dated 05.04.1993 stating that some serious misconducts have been committed by the petitioner. After a period of 1 ½ years, a charge memo was issued against the petitioner in proceedings No.Dis/Con/2015 dated 05.10.1994 containing 9 charges and on the same day i.e., on 05.10.1994, another charge memo by proceedings Dis/Con/217 was issued to the petitioner pertaining to the fraudulent encashment of cheques. In regard to the same, a criminal case was also registered against the petitioner in Crime No.Rc.No.13(A)/1993.

3. Thereafter, the petitioner has filed a writ petition before this Court in W.P.No.296 of 1995, seeking direction to the respondents therein not to proceed in any manner with the disciplinary proceedings pursuant to the charge memo dated 05.10.1994 till the disposal of the aforesaid criminal case and this Court by its order dated 19.04.1995 directed the respondents to

proceed with the enquiry since the aforesaid case was closed.

4. Thereafter, for the same set of fact viz., allegations pertaining to the fraudulent encashment of cheques, two other criminal cases were filed against the petitioner in C.C.No.7872 of 1996 and C.C.No.7873 of 1996. Therefore, the petitioner has filed another writ petition in W.P.No.21116 of 2001 to direct the respondents not to proceed with the disciplinary proceedings till the disposal of the aforesaid two criminal cases and this Court by its order dated 17.01.2006 disposed of the petition stating that the petitioner has been acquitted from the aforesaid criminal case in the year 2004 itself.

5. Since the petitioner has been acquitted from the criminal case, he has given representation to revoke the order of suspension dated 05.04.1993, but no order was passed. Hence, he filed a writ petition in W.P.No.24533 of 2004 challenging the suspension order and this Court by its order dated 05.10.2004 directed the respondents to dispose of the representation on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. However, his suspension was not revoked.

Instead he was issued with a proceedings in Dis/Con/298 dated 21.09.2004 with a copy of the enquiry report, wherein it was held that all the charges against the petitioner were proved. Challenging the said proceedings dated 21.09.2004, the petitioner has filed another writ petition in W.P.No.33023 of 2004 and the same was withdrawn by him at the stage of admission itself. Thereafter, he has submitted his detailed explanation dated 10.11.2004 to the enquiry report.

6. Without considering the aforesaid explanation dated 10.11.2004, the petitioner has issued second show cause notice in proceedings Dis/Con/380 dated 06.11.2004 stating that it was proposed to impose the punishment of dismissal without notice on the petitioner, against which, W.P.No.33711 of 2004 was filed by the petitioner and the same was dismissed by this Court on 20.11.2004 and on the same day i.e., on 20.11.2004, the petitioner has sent a detailed explanation to the second show cause notice dated 06.11.2004. However, the same was not considered. Aggrieved thereby, writ petition in W.P.No.36329 of 2004 was filed by the petitioner to direct the respondents to consider the explanation given by him on 20.11.2004 and the same was allowed on 03.03.2005.

7. Without considering the aforesaid explanation dated 20.11.2004, the second respondent has passed an order in Dis/Con.No.551 dated 07.03.2005 by imposing punishment of “Dismissal without notice”. challenging the same, the petitioner has preferred an appeal before the third respondent and the same was dismissed on 14.06.2005. Therefore, the petitioner has filed another writ petition in W.P.No.14304 of 2005, challenging the order of dismissal dated 07.03.2005 and the same was also dismissed by this Court on 24.01.20112 with a liberty to file a independent writ petition, since he has not challenged the appellate authority order dated 14.06.2005. Therefore, the petitioner has come forward with this writ petition challenging the (i) Order of suspension in Dis/Con/090 dated 05.04.1993 (ii) Punishment of dismissal from service without notice in Dis/Con/No.551 dated 07.03.2005 and (iii) Order of appellate authority in Dis/Con/No.112 dated 14.06.2005.

**SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:**

8. Learned counsel for the petitioner would submit that there was absolutely no material placed in the enquiry to establish the specific charges made against the petitioner. The Enquiry Officer in fact, gives a finding that

the charges are not proved in one part of the findings, but however, finds him guilty of a charge which was not the subject matter of the disciplinary proceedings.

9. Learned counsel for the petitioner further drew the attention of this Court to the findings of the Enquiry Officer in regard to the 9 charges against the petitioner and the same reads as follows:

**The Main Charge I** levelled against the petitioner is that the petitioner was negligent in allowing the payment of three chequest despite the three cheques not having the clearing stamp of the collecting bank.

The reply to the Main Charge I, the petitioner has submitted that he has no role in the handling of instruments.

The finding of the enquiry officer is that even though he Agrees with regard to the defense representatives brief regarding the role played by the petitioner, however comes to the following finding "Thus allowing the captioned instruments for further processing without ensuring that the instruments were branded with the collecting bank stamp clearly establishes the lapse on the part of the charge sheeted employee and I hold the charge as proved".

**The Main Charge II** levelled against the petitioner is that he was negligent in not affixing the "clearing paid stamp" on the cheques mentioned in Charge 1.

In reply to the Main Charge II, the petitioner has submitted that it is not a part of the work of a Clerk.

The enquiry officer agrees with the defense, but however, gives the following finding "though the work relating to affixing of clearing paid stamp is allotted to messenger, this could be construed as only a helping hand given for the counter clerk for executing a manual job which however, cannot absolve of the counter clerk's responsibility. Ensuring branding of the clearing inward stamp thus becomes imperative and the onus of the negligence therefore casts high....”

**The Main Charge III**, it is alleged that the petitioner has allowed a cheque for a sum of Rs. 1,72,043/- bearing No. 489083 for payment despite the material alteration.

With regard to Main Charge III, the petitioner has submitted that he has no role in allowing payment of the aforesaid amount which is in effect the charge.

The enquiry officer agrees with the defense but however, holds as follows "the instrument in question PX3 produced by the PO thus indicate certain corrections/alterations to a naked eye. Though the ultimate responsibility cannot be placed for the payment of the cheque on CSE, the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing this fact to the passing official through "cheques referred and returned register". Therefore the failure on the part of a CSE in not scrutinizing the cheque presented for payment diligently and his negligence in not bringing out the Irregular features appearing on the cheque to the concerned officials results in the charge having been proved."

**The Main Charge IV,** it is alleged that the petitioner has allowed a cheque for a sum of Rs.8,12,080/- bearing No.468677 for a second time payment.

For the aforesaid Charge IV, the Enquiry Officer has held that the petitioner was negligent and allowed payment of Cheque No.468677 dated 12.8.1992 for Rs.812080/-.

With regard to Main Charge IV, the petitioner in his submission has placed reliance on the findings of the Enquiry Officer, wherein, it is stated that though the ultimate responsibility for this Cheque too cannot be placed for the payment on CSE as rightly argued by DR, the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing the fact to the passing official through "Cheques referred and returned register". Therefore, the failure on the part of CSE in not scrutinizing the Cheques presented for payment diligently and his negligence in not bringing out the irregular features appearing on the cheque to the concerned official results in the charge as having been proved.

**The Main Charge V** is also similar as Charge III and IV to the effect that he has been negligent and allowed payment of Cheque No.501479 when there was material alteration.

For the aforesaid Charge V, the Enquiry Officer has held that the petitioner was negligent and allowed payment of Cheque No.501479 dated 16.12.1992 for Rs.2,60,575/-.

With regard to Main Charge V, the petitioner in his submission has placed reliance on the findings of the Enquiry Officer, wherein, it is stated that though the ultimate responsibility for this Cheque too cannot be placed for the payment on CSE as rightly argued by DR, the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing the fact to the passing official through "Cheques referred and returned register". Therefore, the failure on the part of CSE in not scrutinizing the Cheques presented for payment diligently and his negligence in not bringing out the irregular features appearing on the cheque to the concerned official results in the charge as having been proved.

**The Main Charge VI** is also as similar as Charge III, IV and V and the findings of the Enquiry Officer as well as the defence of the petitioner is also similar with Charge III, IV and V, which was discussed earlier.

**The Main Charges VII and VIII** are in essence one and the same, wherein the petitioner has opened a savings bank account in two different bank without the permission of the bank, where he is employed.

With regard to Main Charges VII and VIII, the petitioner has submitted that due to his ignorance regarding the existing bank rules, he has opened a bank account for his wife in order to facilitate bank operation.

For the said charges, the Enquiry Officer has held that justifying his ignorance for opening a bank account without the consent of the bank is not acceptable. Hence, the charges alleged against the petitioner was held to be proved.

**The Main Charge IX** is regarding transaction in the above accounts are disproportionate to the known sources of petitioner's income. With regard to this charge, the petitioner has submitted that no details has been given in the charge memo as to what is the disproportionate assets, what is the check period, therefore, it does not convey any meaning. However, some details regarding the credit of Rs.1,00,000/- was magnified by the bank and the petitioner has explained the source of the Income for the aforesaid transaction is the proceeds of the sale agreement of his house. Therefore, mere transaction of Rs.1,00,000/- done on 22.1.1993 cannot be construed as account disproportionate to the known sources of income.

The Enquiry Officer has held that the remittance of Rs.1,00,000/- on 22.01.1993 is from the same RD account cannot be sustained, as the CSE before the maturity of the RD account had raised loans renewed and enhanced existing loan to an extent of Rs.35,000/- and there is no evidence produced by the petitioner to the fact that they were closed before the maturity of the RD account. Thus to say the sum of Rs.1,00,000/- came from this source to the account at (PEX-11) on 22.01.1993 is not acceptable and sustainable. Therefore, the charge is held to be proved.

10. Learned counsel for the petitioner would further drew the attention of this Court to the second charge memo bearing No.DIS/CON/2017, dated

05.10.1994, alleging 5 charges against the petitioner and these charges are pertaining to the allegations that the petitioner had availed a housing loan from State Bank of India and during the pendency of the loan on 21.06.1988, the petitioner had entered into a sale agreement with one Mr.R.Madhavan for Rs.1,90,000/- by selling his house constructed with Bank finance to discharge the subsisting mortgage debt created in favour of SBI, to settle the balance amount to the contractor and to meet the domestic needs and that on the date of the said agreement the petitioner had received a sum of Rs.70,000/- and another sum of Rs.10,000/- after 4 months and that he had failed to remit any money towards the Bank's loan amount and that by raising loan of Rs.10,000/- on 21.12.1989 from the RD account, the petitioner had neglected the interests of the Bank and that the housing loan at Kottur Branch was closed only on 02.02.1993. The acts of not crediting the sale proceeds to the loan account then and there, are acts prejudicial to the interests of the Bank amounted to misconduct. Even prior to the framing of the said charges, the petitioner had settled the entire loan amount and closed the housing loan amount on 02.02.1993 itself. All dues were duly settled by way of EMI from the petitioner's salary and therefore, the question of causing prejudice to the interests of the Bank would not arise at all.

11. Learned counsel for the petitioner would further submit that the Enquiry Officer and the disciplinary authority has failed to appreciate that it was only with a view to settle all dues owed to the Bank that the petitioner has entered into the agreement for sale and belatedly the petitioner had fully settled the amounts owed to the Bank in respect of the housing loan. Thus, the charges that the petitioner had allegedly neglected the interests of the Bank and allegedly acted prejudicial to the interests of the Bank are totally untenable.

12. Learned counsel for the petitioner would further submit that the findings of the Enquiry Officer is one thing and the charge levelled against the petitioner is for another in respect of major charge being charge Nos.1 to 6 which has been explained above and which will vitiate the entire disciplinary proceedings, because, the petitioner is found guilty of a charge for which he was not subject to disciplinary proceedings which has resulted in violation of principles of natural justice.

13. Learned counsel for the petitioner would further submit that the

entire disciplinary proceedings have to be set aside because the passing of cheque in all these charges is not the duty of the petitioner. Even going by the findings of the Enquiry Officer, he has opined that ultimate responsibility for payment does not lie with the charge sheeted employee/petitioner. The petitioner is only a Clerk and there was a specific pleading taken that charge sheeting the petitioner for an offence which was not committed by him, but leaving out the others amounts to hostile discrimination. Even on this sole ground the entire proceedings have to be set aside.

14. Learned counsel for the petitioner has relied on the judgments passed by the Hon'ble Supreme Court of India and the same is reads as follows:

**CITATIONS:**

(i) In the case of ***M.Venkatachalam Vs., Tamil Nadu Cements Corporation*** reported in ***2003 SCC Online Mad 160 : (2003) 3 LLN 321.***

(ii) In the case of ***G.M.Tank Vs., State of Gujarat*** reported in ***(2006) 5 SCC 446 : 2006 SCC (L&S) 1121.***

(iii) In the case of ***Man Singh Vs., State of Haryana*** reported in ***(2008) 12 DVV 331 : (2009) 1 SCC (L&S) 170***.

(iv) In the case of ***Roop Singh Negi Vs., Punjab National Bank*** reported in ***(2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398 : 2008 SCC Online SC 1947.***

(iv) In the case of ***Rani Lakshmi Bai Kshetriya Gramin Bank Vs., Jagdish Sharan Varshney*** reported in ***(2009) 4 SCC 240 : (2009) 1 SCC (L&S) 806.***

(v) In the case of ***Ram Lal Vs., State of Rajasthan & Others***.

**SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS/BANK:**

15. Learned senior counsel appearing for the respondents would submit that the petitioner has participated in the enquiry proceedings and submitted his objections, after hearing both sides, the Enquiry Officer submitted his report on 17.09.2004 and a copy of the same was sent to the petitioner on 21.09.2004 for his submissions if any. The petitioner has not offered any submissions. The Disciplinary Authority, after considering the proceedings of

enquiry, the findings of the Enquiry Officer and the contents of various representations of the petitioner and Court orders has passed the preliminary order by his proceeding in Dis/Con/No.380 dated 06.11.2004 and proposed to inflict the punishment of “Dismissal without Notice” on the petitioner. The Preliminary order was sent to the petitioner and issued second show cause notice on 10.11.2004, asked the petitioner to appear before the Disciplinary Authority for personal hearing at 11.00 A.M. on 20.11.2004.

16. Learned senior counsel appearing for the respondents would further submit that the petitioner did not appear on 20.11.2004. Hence, he was asked to appear for personal hearing on 09.12.2004. On the said day he has appeared and submitted a letter dated 09.12.2004 and explanation dated 20.11.2004 to the second show cause notice dated 10.11.2004. Before passing the final order, the petitioner has filed writ petition in W.P.No.36329 of 2004 for direction to pass a separate order for his explanation dated 20.11.2004 and obtained interim injunction on 09.12.2004. The respondent bank has filed a petition to vacate the interim injunction stating that the Bank was ready to pass final order, considering the representation of the petitioner dated 20.11.2004 and therefore vacated the interim injunction. Hence, the

writ petition was allowed by this Court on 03.03.2005.

17. Learned senior counsel appearing for the respondents would further submit that since the petitioner had not brought any new points during the course of personal hearing, the charges were proved against him, which are grave in nature. Hence, the Disciplinary Authority confirmed the punishment of "Dismissal without Notice" by order dated 07.03.2005. Challenging the said order dated 07.03.2005 passed by the second respondent, the petitioner has filed an appeal before the Appellate Authority/the third respondent herein. Pending disposal of the appeal before the third respondent, the petitioner has filed writ petition in W.P.No.14304 of 2005, challenging the order dated 07.03.2005.

18. Learned senior counsel appearing for the respondents would further submit that after the filing of W.P.No.14304 of 2005, the petitioner has filed M.P.No.315 of 2011 for impleading the Appellate Authority as third respondent in that writ petition. The respondent bank did not object the same, therefore the application was allowed. Thereafter the petitioner has filed two applications i.e., M.P.No.376 of 2011 for amending the prayer to

include the order of the appellate authority and M.P.No.377 of 2011 to raise additional grounds in that writ petition. The respondent bank filed its counter stating that the petitioner has filed the aforesaid applications after the expiry of six years and it was hit by law of laches, therefore the petitioner cannot be permitted to amend the prayer at this juncture. Since there was no merit in the application, he withdrew the writ petition in W.P.No.14305 of 2005 as not pressed and this Court has also dismissed the same on 24.01.2012 with a liberty to the petitioner to file a fresh writ petition.

19. Learned senior counsel appearing for the respondents would further submit that the respondent bank has initiated departmental proceedings against the petitioner for gross misconduct committed by him, while he was working at Treasury Branch in Dis/Con/215 and Dis/Con/217 dated 05.10.1994. The present writ petition is the 8th writ petition filed by the petitioner against the same proceedings made in Dis/Con/215 on 05.10.1994 and the writ petitions are as follows:

(i) W.P.No.296 of 1995 filed for Mandamus, directing the respondent bank not to proceed with the disciplinary proceedings pending Criminal Case R.C.No.13 of 1993 and this Court has allowed the bank to continue the disciplinary proceedings and disposed the writ petition.

(ii) W.P.No.21116 of 2001 for the same relief and obtained interim stay. Subsequently the stay order was vacated on 17.08.2002 and the writ petition was dismissed as withdrawn on 19.03.2004.

(iii) W.P.No.45021 of 2002 seeking direction to permit the petitioner to be represented by a counsel of his choice and obtained interim stay on 16.12.2002. The stay order was vacated by order dated 08.10.2003. By filing the above three writ petitions, the petitioner has prevented the bank from proceeding the departmental enquiry. After vacating the stay order in W.P.No.45021 of 2002, the respondent bank started enquiry and the petitioner has also participated in the enquiry proceedings. The enquiry report was submitted by the Enquiry Officer and a copy was forwarded to the petitioner.

20. Learned senior counsel appearing for the respondents would further submit that the Additional Chief Metropolitan Magistrate, Egmore in C.C.No.7872 and 7873 of 1996, dated 14.06.2004 acquitted the petitioner on the basis of benefit of doubt only. The petitioner has filed W.P.No.24543 of

2004 to quash the suspension order dated 03.04.1993 made in Dis/Con/90 in view of the acquittal order dated 14.06.2004. This Court by its order dated 05.10.2004 directed the respondent bank to dispose the representation dated 28.06.2004 given by the petitioner, within a period of 12 weeks. The respondent bank after careful consideration of the petitioner's representation dated 28.06.2004 on merits and disposed the same on 16.10.2004 and it was communicated to the petitioner on 29.10.2004, the petitioner has also acknowledged the receipt of the same.

21. Learned senior counsel appearing for the respondents would further submit that the Petitioner again filed writ petition in W.P.No.33023 of 2004 for similar relief and for the best reasons known to him, he has withdrew the writ petition on 17.11.2004. Again, the Petitioner has filed W.P.No.33711 of 2004 for similar relief and the same was also dismissed by this Court on 22.11.2004. Instead of filing appeal against the said order dated 22.11.2004 made in W.P.No.33711 of 2004, the petitioner has filed another writ petition in Writ Petition No.36329 of 2004 seeking direction, to the Respondent Bank to consider and pass orders on his representation dated 20.11.2004 and prayed for interim injunction, restraining the Respondent Bank from passing

final order in the disciplinary proceedings. This Court by its order dated 09.12.2004 initially granted interim injunction for two weeks in W.P.M.P.No.43669 of 2004. When the said Miscellaneous Petition came up on 22.12.2004 for extension of interim order, the Respondent's Counsel was not able to appear before this Court, since his name was not properly printed in the cause list. Thus, this Court was pleased to extend the interim injunction until further order.

22. Learned senior counsel appearing for the respondents would further submit that the petitioner in all his representations dated 18.06.2004, 28.06.2004, 10.11.2004 and 20.11.2004 submitted the same thing, i.e., in view of the acquittal order dated 14.06.2004 made in C.C.No.7872 and 7873 of 1996 on the file of Additional Chief Metropolitan Magistrate, Egmore, he is not at all guilty of charges in the disciplinary proceedings, therefore the findings of the Enquiry Officer holding the charges are proved is unsustainable.

23. Learned senior counsel appearing for the respondents would further submit that the Respondent Bank has filed a petition to vacate the interim

injunction granted in W.P.M.P.No.43669 of 2004, inter-alia stated that the Respondent Bank was ready to pass final order by considering the representation of the Petitioner dated 20.11.2004 and prayed that the interim injunction may be vacated. This Court allowed the Writ Petition on 03.03.2005 by permitting the Bank to pass final order.

24. Learned senior counsel appearing for the respondents would further submit that the petitioner has appeared for personal hearing before the Disciplinary Authority on 09.12.2004 and also submitted his representation dated 20.11.2004. Since the petitioner had not brought out any new points to consider during the course of personal hearing and also in his representation dated 20.11.2009, charges were proved against him which are grave in nature. Thus, the Disciplinary Authority confirmed the punishment of "Dismissal without Notice" by its order dated 07.03.2005.

25. Learned senior counsel appearing for the respondents would further submit that challenging the order dated 07.03.2005, the Petitioner has filed an appeal before the Appellate Authority. After hearing the Petitioner in person and perusing the entire records, the Appellate Authority has dismissed the

appeal preferred by the Petitioner. The averments that the original order of suspension dated 05.04.1993 and the original order passed by the Appellate Authority/the 3rd Respondent dated 14.06.2005 are misplaced by the Petitioner and it could not be traceable is not the valid ground for dispensing the production of original orders. The Writ Petition filed without producing the original order is not maintainable and the same is liable to be dismissed.

26. Learned senior counsel appearing for the respondents would further submit that the negligence of the Petitioner is not merely an offence but has also resulted a loss to the Bank and the investigation indicated that the Respondent Bank has been put to a loss of Rs.12,45,078/- due to the gross negligence of the Petitioner. In Sastri Award it is clearly observed that: *"A workman may be guilty" of gross misconduct even without committing an offence punishable in a Court of law, moral turpitude is not of the essence of such misconduct in connection with Bank employees. There is no reason why the Bank should be under an obligation to retain in service persons who are guilty of gross misconduct even though they may not have committed an offence involving moral turpitude"*. Further, ***the Hon'ble***

***Apex Court*** in the case of ***Tata Oil Mills Company Limited Vs., Its workmen***, reported in ***AIR 1965 SC 155*** has held that interest of Administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquiry into promptly.

27. Learned senior counsel appearing for the respondents would further submit that the Petitioner has participated in the enquiry proceedings and submitted his objections. Then, a copy of the enquiry report was sent to the Petitioner on 21.09.2004. The Disciplinary Authority after considering the proceedings of enquiry, the findings of the Enquiry Officer and the contents of various representations of the Petitioner and Court order in detail had passed the preliminary order on 06.11.2004, which was also sent to the Petitioner. Subsequently, a Second Show Cause Notice was issued and the petitioner was asked to appear for personal hearing on 20.11.2004, however, he did not appear on 20.11.2004. Hence, the Petitioner was given one more opportunity to appear for personal hearing on 09.12.2004. After hearing the Petitioner and perusing the entire records, the Disciplinary Authority had passed a final order on 07.03.2005.

28. Learned senior counsel appearing for the respondents would further submit that the Appellate Authority has passed an order after considering all the records and hearing the Petitioner personally. Since the Petitioner did not raise any additional grounds in the appeal, the Appellate Authority dismissed the same on merits. Right from the beginning of the proceedings, sufficient opportunity was given to the Petitioner in all stages. Therefore, the allegation that the proceedings was held with a pre-determined attitude and with a fore-closed mind is false and hereby denied. Since the petitioner is a workman under Section 2(s) of the Industrial Disputes Act, the petitioner is entitled to challenge this dismissal order by raising an industrial dispute in its individual capacity by invoking Section 2A of the said Act. The petitioner is virtually attempting to canvas the merits of the charges on evidence before a writ Court, which is impermissible. Hence, he prayed this Court to dismiss the present writ petition.

29. Learned senior counsel appearing for the respondents further drew the attention of this Court to the judgments passed by the Hon'ble Supreme Court of India and the same is reads as follows:

(i) In the case of ***State Bank of India Vs., T.J.Paul,*** reported in ***1994 (4) SCC 759.***

(ii) In the case of ***Bharat Heavy Electricals Limited Vs., M.Chandrasekhar Reddy and Others.***

(iii) In the case of ***Deputy General Manager, Appellate Authority Vs., Ajay Kumar Srivatsava,*** reported in ***2021 (2) SCC 612.***

(iv) In the case of ***Regional Manager UPSRTC, ETAWAH Vs., Hotilal,*** reported in ***(2003) 3 SCC (605).***

30. Heard the learned counsel on either side and perused the materials available on record.

**DISCUSSION:**

31. It is pertinent to extract the findings of the Enquiry Officer in regard to the 9 charges against the petitioner and the same reads as follows:

**The Main Charge I** levelled against the petitioner is that the petitioner was negligent in allowing the payment of three chequest despite the three cheques not having the clearing stamp of the collecting bank.

The finding of the enquiry officer is that "Thus allowing the captioned instruments for further processing without ensuring that the instruments were branded with the collecting bank stamp clearly establishes the lapse on the part of the charge sheeted employee and I hold the charge as proved".

**The Main Charge II** levelled against the petitioner is that he was negligent in not affixing the "clearing paid stamp" on the cheques mentioned in Charge 1.

The findings of the enquiry is that "though the work relating to affixing of clearing paid stamp is allotted to messenger, this could be construed as only a helping hand given for the counter clerk for executing a manual job which however, cannot absolve of the counter clerk's responsibility. Ensuring branding of the clearing inward stamp thus becomes imperative and the onus of the negligence therefore casts high...."

**The Main Charge III**, it is alleged that the petitioner has allowed a cheque for a sum of Rs. 1,72,043/- bearing No. 489083 for payment despite the material alteration.

The enquiry officer findings is that though the ultimate responsibility cannot be placed for the payment of the cheque on CSE, the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing this fact to the passing official through "cheques referred and returned register". Therefore the failure on the part of a CSE in not scrutinizing the cheque presented for payment diligently and his negligence in not bringing out the Irregular features appearing on the cheque to the concerned officials results in the charge having been proved."

**The Main Charge IV,** it is alleged that the petitioner has allowed a cheque for a sum of Rs.8,12,080/- bearing No.468677 for a second time payment.

The findings of the enquiry officer is that the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing the fact to the passing official through "Cheques referred and returned register". Therefore, the failure on the part of CSE in not scrutinizing the Cheques presented for payment diligently and his negligence in not bringing out the irregular features appearing on the cheque to the concerned official results in the charge as having been proved.

**The Main Charge V** is also similar as Charge III and IV to the effect that he has been negligent and allowed payment of Cheque No.501479 when there was material alteration.

The findings of the enquiry officer is that the naked corrections appearing should have evoked curiosity and the CSE had failed in his responsibility of bringing the fact to the passing official through “Cheques referred and returned register”. Therefore, the failure on the part of CSE in not scrutinizing the Cheques presented for payment diligently and his negligence in not bringing out the irregular features appearing on the cheque to the concerned official results in the charge as having been proved.

**The Main Charge VI** is also as similar as Charge III, IV and V and the findings of the Enquiry Officer as well as the defence of the petitioner is also similar with Charge III, IV and V, which was discussed earlier.

**The Main Charges VII and VIII** are in essence one and the same, wherein the petitioner has opened a savings bank account in two different bank without the permission of the bank, where he is employed.

For the said charges, the Enquiry Officer has held that justifying his ignorance for opening a bank account without the consent of the bank is not acceptable. Hence, the charges alleged against the petitioner was held to be proved.

**The Main Charge IX** is regarding transaction in the above accounts are disproportionate to the known sources of petitioner's income.

The Enquiry Officer has held that the remittance of Rs.1,00,000/- on 22.01.1993 is from the same RD account cannot be sustained, as the CSE before the maturity of the RD account had raised loans renewed and enhanced existing loan to an extent of Rs.35,000/- and there is no evidence produced by the petitioner to the fact that they were closed before the maturity of the RD account. Thus to say the sum of Rs.1,00,000/- came from this source to the account at (PEX-11) on 22.01.1993 is not acceptable and sustainable. Therefore, the charge is held to be proved.

32. The second charge memo bearing No.DIS/CON/2017, dated 05.10.1994, alleging 5 charges against the petitioner and these charges are pertaining to the allegations that the petitioner had availed a housing loan from State Bank of India and during the pendency of the loan on 21.06.1988, the petitioner had entered into a sale agreement with one Mr.R.Madhavan for Rs.1,90,000/- by selling his house constructed with Bank finance to discharge the subsisting mortgage debt created in favour of SBI, to settle the balance amount to the contractor and to meet the domestic needs and that on the date of the said agreement the petitioner had received a sum of Rs.70,000/- and another sum of Rs.10,000/- after 4 months and that he had failed to remit any money towards the Bank's loan amount and that by raising loan of Rs.10,000/- on 21.12.1989 from the RD account, the petitioner had neglected

the interests of the Bank and that the housing loan at Kottur Branch was closed only on 02.02.1993. The acts of not crediting the sale proceeds to the loan account then and there, are acts prejudicial to the interests of the Bank amounted to misconduct as per the Rules and Regulations of the bank. The above 5 charges were also held to be proved by the respondent bank.

33. In the instant case, the respondent bank has initiated departmental proceedings against the petitioner for gross misconduct committed by him, while he was working as counter clerk in the Treasury Branch of the Bank in Dis/Con 215 and Dis/Con 217 dated 05.10.1994. The present writ petition is the 8$^{th}$ writ petition filed by the petitioner against the same proceedings made in Dis/Con/215 and Dis/Con 217 dated 05.10.1994.

34.(a) The Preliminary order was sent to the petitioner and issued show cause notice and he was asked to appear for personal hearing on 09.12.2004. The petitioner has also appeared for personal hearing before the Disciplinary Authority on 09.12.2004 and submitted his representation dated 20.11.2004. Since the petitioner had not brought out any new points to consider, the charges were proved against him and the second respondent has passed the final order of "Dismissal without notice" in Dis/Con.No.551 dated 07.03.2005.

35. The C.C.No.7872 of 1996 and C.C.No.7873 of 1996, the Additional Chief Metropolitan Magistrate, Egmore acquitted the petitioner on the basis of benefit of doubt.

36. The negligence on the part of the petitioner is not only offence but has resulted in the loss to the bank for a sum of Rs.12,45,078/-. In Sastri Award, it is clearly observed that " A workman may be guilty" of gross misconduct even without committing any offence punishable in a Court of law, moral turpitude is not of the essence of such misconduct in connection with Bank employees. There is no reason why the Bank should be under an obligation to retain in service persons who are guilty of gross misconduct even though they may not have committed an offence involving moral turpitude".

37. As rightly contended by the learned senior counsel appearing for the respondent/bank, the present writ petition is filed after an expiry of 7 years, which is barred by law of laches

38. As a counter clerk, the petitioner has miserably failed to verify the instruments/cheques. When the cheque was presented for the first time, the petitioner has failed to affix the stamp. Hence, the same cheque was presented for the second time, which resulted in double payment causing loss to the bank to a tune of Rs.12,45,078/-.

39. The charges 1 to 5 are related to loss of a sum of Rs.12,45,078/- to the bank in the year 1992 and the other charges are that the petitioner has opened an account without getting permission from the respondent bank and the source of income has also not furnished as requested by the bank. Thereafter, these charges were held to be proved in the departmental proceedings conducted by the respondent bank.

40. It is pertinent to note that the petitioner has repaid the amount after a delay of 4 years by selling his house. There is no specific plea in regard to the discrimination in the affidavit filed in support of the writ petition. The two criminal cases are in regard to the theft of the cheques and the charges framed under the charge memo is different. Hence no bearing on the

departmental enquiry conducted by the bank.

41. The Recruitment in Clerical Cadre and the Rules of Conduct of the bank was also submitted before this Court at the time of final hearing and the same reads as follows:

> *"No employee shall open or maintain an account with any bank or banker of any description other than the State Bank of India without the previous permission writing from the Bank".*

42. For better appreciation and understanding, the important findings of the Enquiry Officer's report is extracted hereunder:

> *"The PO relied on the exhibits 13, 14, 15 where in he argued that as per the attendance register that the CSE was present on these days and the CSE was in fact handling the PAO (East) seat work flow. The PAO (East) seat was managed by the CSE as per the PW-1 deposition based on the prosecution exhibits elicited above.*
>
> *Coming to the duties of the counter clerk handling all debits (cash, transfer & clearing) it is implied that he is responsible for the first stage verification of all the instruments passing through the various government accounts assigned to his seat and ensure that they are drawn on correctly, scrutinise all aspects inclusive of ensuring 'collecting banks clearing*

*stamp' arrange for affixing of clearing paid stamps before passing the instruments with the respective scrolls/ledgers to the authorized official for further process. This is also amply described by the PW-1. Though the DR in his brief shortly explained to the work relating to cash and transfer, he has not out rightly defended the role to be played as for as handling of clearing instruments based on the prosecution exhibits PEX-11 & 12. Thus allowing the captioned instruments for further processing without ensuring that the instruments were branded with the collecting bank stamp clearly establishes the lapse on the part of CSE and I hold the charges as proved".*

43. The relevant portion of the proceedings of the second respondent are extracted hereunder:

*"2. Your negligence results in causing double payment of cheques of Government Departments and the bank is likely to incur a huge loss to the tune of Rs.12,45,078/-. Your acts of pending the accounts at other banks without obtaining permission and also hiding details of the monetary transactions taken place between you and the vendor amply proves your criminal frame of mind and your lack of integrity.*

*3. For the acts of gross misconduct, as levelled against you in the charge sheets under reference and of which you have been fund guilty in the departmental enquiry, I propose to inflict on you the punishment of "Dismissal without Notice" in terms of paragraph 521-5(a) of the Sastry Award read with paragraph*

*18.28 of Desal Award. The period during which you were under suspension will be treated as one of suspension for all intents and purposes."*

44. The relevant portion of the order dated 14.06.2005 passed by the appellate authority/third respondent is extracted hereunder:

> *"3. I have listened to the submissions made by the appellant at the personal hearing. He has not brought out any fresh or additional views/points to substantiate his appeal to set aside the order of Disciplinary Authority. I am, therefore, of the view that the ends of justice was met by the decision taken by the Disciplinary Authority and it conformed to the gravity of the misconduct committed by Shri M.Ganesan and was in accordance with the provisions of the Sastry Award. In the circumstances. I am unable to interfere in the matter and dispose the appeal accordingly".*

45. Learned counsel for the petitioner has relied on the following judgments in support of his contentions and the same is not applicable to the present case on hand for the following reasons:

(i) In the case of ***M.Venkatachalam Vs., Tamil Nadu Cements Corporation*** reported in ***2003 SCC Online Mad 160 : (2003) 3 LLN 321.***

The above judgment is not applicable to the present case on hand for the reason that there, the enquiry officer finding is that the charges were not established. However, disciplinary authority disagreeing with enquiry officer imposed punishment of stoppage of two increments with cumulative effect without giving any opportunity and show cause notice issued to petitioner. **In the present case, opportunity was given to the petitioner and he was heard, then only the enquiry was concluded.**

(ii) In the case of ***G.M.Tank Vs., State of Gujarat*** reported in ***(2006) 5 SCC 446 : 2006 SCC (L&S) 1121.***

In the above case, the petitioner was honourbly acquitted in criminal case since there was no evidence against the petitioner to hold him guilty. **Whereas, in the present case on hand, the petitioner was acquitted only on the grounds of benefit of doubt. The departmental enquiry and the criminal proceedings were not based on the same set of charges, facts and witnesses. Hence, the above judgment is not applicable to the present case.**

(iii) In the case of ***Man Singh Vs., State of Haryana*** reported in

***(2008) 12 DVV 331 : (2009) 1 SCC (L&S) 170***.

The above judgment is not applicable to the present case on hand for the reason that the above judgment is in regard to the appellant complaining discriminatory treatment vis-a-vis his subordinate who had been let-off in departmental enquiry while appellant had been punished. **In the case on hand, there is no such averment was made in the affidavit filed in support of the writ petition. During the final hearing of the matter only the learned counsel for the petitioner has raised new grounds of discrimination, which is unsustainable/untenable in the eye of law.**

(iv) In the case of ***Roop Singh Negi Vs., Punjab National Bank*** reported in ***(2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398 : 2008 SCC Online SC 1947.***

The above judgment is in regard to the duty of the disciplinary authority and the appellate authority to record reason for passing the order and in the above case, the respondents have passed a non-speaking order. **In**

**the case on hand, the order passed by the disciplinary authority and the appellate authority is a speaking order. Hence, the above judgments is not applicable to the present case.**

(v) In the case of ***Rani Lakshmi Bai Kshetriya Gramin Bank Vs., Jagdish Sharan Varshney*** reported in ***(2009) 4 SCC 240 : (2009) 1 SCC (L&S) 806.***

In the above judgment since the appellate authority has not given any reasons for affirming the order of the lower authority it was held that the appellate authority too is required to give reasons, though briefly, and this requirement is a safeguard against non-application of mind, arbitrariness and to maintain confidence in judicial/quasi-judicial bodies. **In the case on hand, reasons were given by the appellate authority while affirming the order of the disciplinary authority, hence the above judgment is not applicable to the case on hand.**

46. To substantiate his contentions that learned senior counsel appearing for the respondents has relied on the following judgments and the

same reads as follows:

(i) In the case of ***State Bank of India Vs., T.J.Paul,*** reported in ***1994 (4) SCC 759.***

In the above judgment it was held by the Hon'ble Supreme Court of India that **"doing any act prejudicial to the interests of the Bank, or gross negligence involving or likely to involve the Bank in serious loss"** and proof of actual loss was not necessary to attract this clause likelihood of loss was enough to hold an employee guilty.

(ii) In the case of ***Bharat Heavy Electricals Limited Vs., M.Chandrasekhar Reddy and Others.***

The above judgment is squarely applicable to this case for the reason that the employee was working as Assistant Grade-I in the stores department of the appellants. R&D Division at Hyderabad. He borrowed house building advance by depositing title deeds of his properties as securities, creating an equitable mortgage in favour of the appellant (BHEL). **In the case on hand also the petitioner having borrowed money from the bank for purchasing the property and the title deeds were deposited with the bank ought not to have entered into an sale agreement dated 21.06.1988 for the said property. Hence, the employer lost confidence on the petitioner.**

(iii) In the case of ***Deputy General Manager, Appellate Authority Vs., Ajay Kumar Srivatsava,*** reported in ***2021 (2) SCC 612.***

The above judgment, it was held that the punishment ordered by the disciplinary authority is commensurate to the charges levelled against him and the contention of the appellant does not hold good since the charges are proved. In the above case, the employee has misappropriated the money of the bank. **In the present case on hand, the employee/petitioner has failed to put the stamp "Paid", which has resulted loss to the bank to a tune of Rs.12,45,078/- In the above judgment it was emphasized by the Hon'ble Supreme Court that in a bank business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired.**

(iv) In the case of ***Regional Manager UPSRTC, ETAWAH Vs., Hotilal,*** reported in ***(2003) 3 SCC (605).***

In regard to the punishment imposed whether it is commensurate to the misconduct committed. The scope for interference is very limited and restricted to exceptional cases. **In the case on hand, the misconduct committed by the petitioner resulted in monetary loss to the respondent/bank to a tune of Rs.12,45,078/-, hence the same is in commensurate to the misconduct committed by the petitioner.**

**For the aforesaid reasons, the above four judgments are squarely applicable to the present case on hand.**

**47. It is also pertinent to note that the impugned order and the order of the appellate authority is of the year 2005 and the present writ petition is filed only in the year 2012, which is after a delay/lapse of 7 years.**

48. Hence, this Court is of the considered view that the impugned order of suspension passed by the second respondent in Dis/Con/090 dated 05.04.1993 and Punishment of dismissal from service without notice passed by the second respondent in Dis/Con/No.551 dated 07.03.2005 and the order of the third respondent/appellate authority in Dis/Con/No.112 dated 14.06.2005 is liable to be confirmed on the following grounds:

(1) **The petitioner was negligent while discharging his duty as a counter clerk despite the fact that they were not branded with the collecting banks "Clearing Stamp" by not affixing "Clearing Paid Stamp" resulting in fraudulent encashment of these cheques.**

(2) **The above negligence on the part of the petitioner resulted in the monetary loss to the respondent bank to a tune of Rs.12,45,078/- (Rupees Twelve Lakhs Fourty Five thousand and Seventy Eight).**

(3) **The Disciplinary Proceedings were conducted in a fair and proper manner, as per the rules and there was no violation of principles of natural justice and all the charges were proved beyond doubt in the disciplinary proceeding conducted by the bank.**

(4) **The acquittal of the petitioner by the Criminal Court is only on the benefit of doubt.**

(5) **All the charges are held proved against the petitioner beyond doubt.**

(6) **No specific plea of discrimination in the affidavit filed by the petitioner.**

(7)**The petitioner entered into a sale agreement dated 21.06.1988.**

(8) **The impugned order and the order of appellate authority is of**

**the year 2005 and the present writ petition was filed in the year 2012, which is after a delay of 7 years.**

(9) **The petitioner opened account in Union Bank of India on 03.04.1992 & 19.11.1992 without the permission of the bank and as per clause (k) of the rules of conduct in the Recruitment In Clerical Cadre "*No employee shall open or maintain an account with any bank or banker of any description other than the State Bank of India without the previous permission writing from the Bank*".**

(10) **The appellate authority confirmed the order passed by the disciplinary authority/second respondent only after taking into consideration the submissions of the appellant (petitioner herein) in the personal hearing.**

**ORDER:**

49. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India, which was relied by the learned senior counsel appearing for the respondents, the order of suspension passed by the second respondent in No.Dis/Con/090 dated 05.04.1993 and the order

of dismissal without notice passed by the second respondent in DIS/CON No.551 dated 07.03.2005 and the order of the appellate authority/third respondent in DIS/CON/No.112 dated 14.06.2005 does not warrant any interference by this Court and the same is hereby confirmed.

50. In the result, this writ petition stands dismissed. No costs.

**05.06.2024**

vm
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

1.The Chief General Manager,
The State Bank of India,
Local Head Office, "Circle Top House",
16, College Lane, Chennai – 6.

2.The Assistant General Manager,
State Bank of India,
Region-I, Zonal Office,
No.86, Rajaji Salai,
Chennai – 600 001.

3.The Appellate Authority,
The Deputy General Manager,
Zonal Office,
No.86, Rajaji Salai,
Chennai – 600 001.

**<u>J.SATHYA NARAYANA PRASAD,J.</u>**

vm

**W.P.Nos.21354 of 2012**

**05.06.2024**