IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2024	Pronounced on : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.22852 of 2013
and
M.P.No.1 of 2013

P.Rajendran ... Petitioner

Vs.

1. The General Manager/ Appellate Authority,
Canara Bank, Personnel Management Section,
Personnel Wing, Head Office, 1/2, JC Road,
Bengaluru, Karnataka State.

2. The Deputy General Manager/ Disciplinary Authority,
Canara Bank, Disciplinary Action Cell,
Circle Office, Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned order dated 18.2.2000 passed by the 2nd respondent and the impugned order dated 27.6.2003 passed by the 1st respondent and quash the same, consequently direct the respondents to reinstate the petitioner into service within a reasonable time to be fixed by this Honourable Court, with continuity of service from the date of dismissal, with all attendant benefits.

For Petitioner : Mr.P.Rajavel for Mr.R.Neelakandan

For Respondents : Mr.C.Seethapathy

O R D E R

This writ petition has been filed challenging the order, dated 18.02.2000 passed by the Respondent No.2, dismissing the petitioner from service and the order dated 27.06.2003 passed by the Respondent No.1 on an appeal filed by the petitioner, confirming the punishment of dismissal from service in the year 2013 and seeking a consequential relief to reinstate the petitioner into service.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. The petitioner herein, while working as a 'Peon' in Rasipuram Branch of the respondent Bank, Salem Division, he was subjected to departmental proceedings by issuing a charge-sheet dated 21.06.1997 containing two charges. The said charges reads as under:-

*"**CHARGE I**:*

(a) An S.B. account bearing No.10651 was opened at the Rasipuram branch during the year 1991 by one Sri A. Natesan and the petitioner had introduced this new account holder for the purposes of opening the account. Sri A. Natesan had given an outstation cheque for Rs.50,000/- for collection on 10.06.1996. This instrument was realised and credited to his S.B. account on 21.06.1996. However, when Sri A.Natesan visited the branch on 24.06.1996 and enquired with the petitioner about the realisation of the cheque sent for collection, the petitioner failed to furnish the correct information to him. Instead, the petitioner obtained Sri A.Natesan's signature on a blank withdrawal order form and utilised the same to withdraw Rs.20,000/- from the S.B. account of Sri A.Natesan. The petitioner thus misappropriated a sum of Rs.20,000/- on 24.06.1996.

(b) Similarly the petitioner had obtained the signature of Sri A.Natesan on another withdrawal order form and utilised the same to withdraw a sum of Rs.16,000/- as against the intended sum of Rs. 10,000/- by the account holder. The petitioner had thus misappropriated a sum of Rs.6,000/- from the SB account of Sri A.Natesan by misusing his position in the bank.

(c) The tokens bearing Nos.T-52 and T-57 for the respective withdrawals were issued by the petitioner and the original pass book of the customer was also retained by the petitioner. In order to conceal his fraudulent acts, the petitioner subsequently issued a fresh pass book with false entries so as to show a higher balance than actual balance as reflected in the ledger sheet pertaining to the subject S.B. account No.10651 of Sri A. Natesan. The petitioner had thus tampered with and falsified the records of the bank to derive undue pecuniary benefits.

Charge-II:

(a) The petitioner, while working at the bank's Rasipuram branch had befriended the family members of one Sri M.Kandasamy Gounder of Selathar Thottam, Moolapallipatti P.O., Rasipuram Taluk and received funds from them for investing in term deposits at the branch. In this process, by taking advantage of the friendship and by misusing his position in the bank, the petitioner indulged in misappropriation of a major portion of the amounts received from the said customers. The details are as follows:

Name of the Depositor	***Receipt Number and date***	***Amount received by Petitioner (Rs.)***	***Amount Invested (Rs.)***	***Amount misappropriated by petitioner (Rs.)***

K.Palanivel	FDR 471/95 – 18.12.95	1,00,000/-	10,000/-	90,000/-
K.Palanivel	KDR 337/96 – 21.05.96	25,000/-	2,500/-	22,500/-
Sellammal	KDR 298/96 – 06.05.96	1,00,000/-	1,000/-	99,000/-

(b) After depositing lesser sums and obtaining the deposit receipts for the same, the petitioner altered the figures in the deposit receipt to a higher sum equivalent the actual amount received from the customers and also altered the interest and maturity value accordingly in order the amount misappropriated from the customers remitances before the deposit receipts reached the hands of the customers."

2.2. Thereafter, an enquiry was conducted into the matter and the Enquiry Officer came to the conclusion that both the charges are proved against the petitioner and thereafter, a copy of the report of the Enquiry Officer was furnished to the petitioner affording an opportunity to submit a representation. Accordingly, it was thereafter, on considering the representation and the said report of the Enquiry Officer, the Respondent No.1 passed the order, dated 18.02.2000, imposing the punishment of dismissal from service. Thereafter, the petitioner filed an appeal before the Respondent No.2, and the said appeal was rejected by an order dated 27.06.2003, confirming the punishment of dismissal from service passed by the Respondent No.1.

2.3. Thereafter, the petitioner has chosen not to question the order of dismissal from service and in any way, accepted the same and kept quiet for long time.

2.4. Simultaneously, while subjecting the petitioner to departmental proceedings, criminal proceedings were also initiated against the petitioner for the offences under Sections 420, 408 and 468 of IPC in C.C.No.262 of 2001 on the file of the Judicial Magistrate, Rasipuram and in the said case, the petitioner was convicted and aggrieved by the said judgement, dated 13.03.2006, the petitioner filed Criminal Appeal No.25 of 2006 on the file of the Additional District Sessions Judge, Fast Track Court, Namakkal. In the said criminal appeal, the petitioner was acquitted by the appellate court by an order, dated 14.10.2006.

2.5. It was thereafter, the petitioner claimed to have submitted a representation dated 26.02.2007 before the Respondent No.1, requesting to revoke the order of dismissal and to reinstate the petitioner into service. It was thereafter, complaining the inaction on the part of Respondent No.1, the petitioner filed W.P.No.29251 of 2008 before this Court and the said writ petition came to be dismissed by an order, dated 29.02.2012 on the ground that, in the absence of petitioner challenging the order of dismissal and the order of the appellate authority, the petitioner is not entitled for a direction to consider the representation dated 26.02.2007.

2.6. It was thereafter in the year 2013, the petitioner approached this Court by filing the present writ petition, questioning the orders that were passed in the years 2000 and 2003, contending that the petitioner is entitled for reinstatement into service, consequent upon his acquittal in the criminal proceedings on 14.10.2006. Besides the said ground, the learned counsel for the petitioner also pointed out certain defects alleged to have been committed by the Enquiry Officer in the process of conducting enquiry, including the violation of the principles of natural justice. He also further contended that the charges that are framed against the petitioner in the departmental proceedings as well as in the criminal proceedings are one and the same and the evidence relied upon in both the proceedings is also one and the same.

3. On the other hand, Mr.C.Seethapathy, learned counsel for the respondent Bank submitted that the impugned orders, dated 18.02.2000 and 27.06.2003 passed in the year 2000 and 2003 have attained finality for want of challenge to the said proceedings by the petitioner till the year 2013 and merely because the petitioner is acquitted in the criminal proceedings, the same would not result in automatically taking away the effect of the order of dismissal passed in the departmental proceedings. He also further contended that the standard of evidence that is required to prove the charges in the departmental proceedings is totally different from the standard of the evidence that is required to establish a criminal proceedings and

therefore, the impugned orders cannot be interfered with merely because the petitioner was acquitted in the criminal proceedings. He also placed reliance on the decisions of the Hon'ble Apex Court in the case of ***"State Bank of India and others -vs- P.Zadenga"*** reported in **2023 (10) SCC 675** and in the case of ***"Himmat Khan -vs- State of Haryana and others"*** reported **2024 SCC OnLine P&H 1969.**

4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. From the perusal of the two charges that are framed against the petitioner, it is evident that they are very serious in nature. The charge is that, the petitioner, while working as a 'Peon' in the respondent Bank, has withdrawn the amounts from the accounts of the customers without their knowledge. The said charges were held to have been proved by the Enquiry Officer as early as in the year 2000. For the reasons best known, the petitioner has not chosen to question the order of dismissal from service dated 18.02.2000 and the order passed by the

appellate authority dated 27.06.2003, till the year 2013 i.e., almost for a period of decade, the petitioner has chosen not to question the findings that were recorded by the Enquiry Officer as well as the disciplinary authority. But, it is only after the petitioner was acquitted in the criminal proceedings by a Judgement, dated 14.10.2006, the petitioner claimed to have submitted a representation dated 26.02.2007. Even the said claim of the petitioner of submitting of the said representation was also disputed by the respondents in the previous round of litigation. Inspite of the same, the petitioner has not chosen to produce any material in support of his contention nor a copy of such representation is placed before this court. Hence, this court has no option except to assume that there was no such representation submitted by the petitioner. No doubt, the petitioner approached this court by filing W.P.No.29251 of 2008 in the year 2008, however, the said writ petition came to be dismissed on 29.02.2012. It was thereafter, after a lapse of about 1½ years, the petitioner approached this court by filing the present writ petition.

6. Though several grounds were raised in the affidavit filed in

support of the writ petition pointing out certain defects in the procedure that was followed during the course of enquiry and also on the contents of the impugned orders, the same cannot be gone into at this length of time for the simple reason that, the petitioner has accepted all such findings and allowed them to remain for more than a decade and started raising his little finger only after he was acquitted in the criminal proceedings.

7. As already noted above, the petitioner was acquitted in the criminal proceedings on 14.12.2006, but the present writ petition came to be filed only in the year 2013 challenging the orders passed in the years 2000 and 2003. If the petitioner is really aggrieved by the procedure that was followed during the course of enquiry of the departmental proceedings or aggrieved by the findings that were recorded therein, the petitioner ought to have taken steps to question the said orders immediately thereafter. Hence, this court is not inclined to go into the defects that are pointed by the petitioner against the enquiry, the procedure that was followed during the course of enquiry and the

findings recorded by the disciplinary authority as well as the appellate authority.

8. Then, the only question that remains to be considered is, as to whether the petitioner is entitled for the relief of quashing the impugned orders only on the ground of acquittal in the criminal proceedings. The straight answer to the same is an 'Emphatic No'. It is only in case, if the charges that are framed in the departmental proceedings as well as criminal proceedings are one and the same and the evidence that was adduced or relied upon for establishing the charges in both the charges are also one and the same, then, the question of considering the claim of the petitioner to quash the impugned orders on the ground of his acquittal would arise. But, in the instant case, either in the entire affidavit filed in support of the writ petition or during the course of arguments before this Court, no such attempt was made to establish that the nature of charges in both the proceedings are identical and the evidence that was relied upon is also one and the same. It is settled law that the standard of evidence that is required for establishing

a criminal charge is much higher and should be beyond all reasonable doubt, unlike in the departmental proceedings, wherein the preponderance of probabilities would be sufficient.

9. The charges levelled against the petitioner in the criminal proceedings and the evidence adduced therein by the prosecution may not be sufficient for establishing the charges under Sections 408, 420 and 468 of IPC. But, in the departmental proceedings, the circumstantial evidence and preponderance of probabilities itself is sufficient to hold the charges as proved. That is what is done in the case on hand and as already noted above, the petitioner has accepted the said findings and chosen not to challenge the findings recorded in the departmental proceedings. It is only after the petitioner was acquitted in the criminal proceedings, he has chosen to challenge the impugned orders belatedly.

10. As rightly relied upon by the learned counsel appearing for the respondents, the Hon'ble Apex Court in the case of ***“State Bank of India and others -vs- P.Zadenga”*** reported in **2023 (10) SCC 675**, held

as under:-

"20. *Further, this Court in M. Paul Anthony v. Bharat Gold Mines Ltd. [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] elucidated the following principles in dealing with departmental and criminal proceedings simultaneously:*

(a) No bar exists on both proceedings continuing simultaneously, though in an appropriate, separate forum.

(b) If said proceedings are on identical/similar facts and if the charges levied against the delinquent employee are of a serious nature, then it would be desirable if the departmental proceedings are stayed till the conclusion of the other.

(c) The nature of the charge or the involvement of complex questions of law and fact depends on the facts and circumstances of each case i.e. the offence, nature of the case launched, evidence and material collected.

(d) Sole consideration of the abovementioned factors cannot be the reason to stay the departmental proceedings.

(e) It must be remembered that departmental proceedings cannot be unduly and unjustly delayed.

(f) If the criminal proceedings are delayed, the other, having been stayed on account thereof, may be resumed to conclude the same at the earliest. This may result in two possibilities : either the vindication of the position of the delinquent employee or he being found guilty, enabling the department concerned to show him out the door.

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25. *In Nelson Motis v. Union of India [Nelson Motis v. Union of India, (1992) 4 SCC 711 : 1993 SCC (L&S) 13] it was observed that the question whether departmental proceedings could have continued in the face of acquittal in criminal proceedings had no force as : (SCC p. 714, para 5)*

> *"5. … The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."*

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26. *In C. Nagaraju [Karnataka Power Transmission*

Corpn. Ltd. v. C. Nagaraju, (2019) 10 SCC 367 : (2020) 1 SCC (L&S) 92] it was observed : (SCC p. 371, para 9)

> *"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena,*

(1996) 6 SCC 417 : 1996 SCC (L&S) 1455]
"

….

41. *The nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings."*

11. Similarly, the High Court of Punjab and Haryana in the case of ***"Himmat Khan -vs- State of Haryana and others"*** reported in **2024 SCC OnLine P&H 1969** held as under:-

" 9. *It has been held time and again by the Apex Court that in departmental proceedings pertaining to the banks, scope for interference by way of judicial review is less as the level of responsibility is of a much higher degree and the confidence in the employee has to be complete. It is settled principle that on the departmental side, the principle of preponderance of probabilities is to be kept in mind whereas on the criminal side, the principles are that the prosecution has to prove his case beyond a shadow of doubt. This aspect has also been dilated time and again.*

10. *The nature and scope of criminal cases are very different from those of departmental proceedings and merely on account of an acquittal it cannot be held that departmental proceedings have also to be concluded in favour of the employee. In a criminal case, the prosecution has to prove his case beyond a shadow of doubt in the shape of evidence whereas in a departmental proceedings, on the basis of legally admissible evidence and on the preponderance of probabilities, the charge can be established and therefore, the two operate in different fields. Reliance can be placed upon the judgment of the Apex Court in Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay, 2022 (1) SCT 340 wherein while allowing the appeal, the Apex Court upheld the order of dismissal of the workman from service passed by the disciplinary authority. In the said case, the workman was working as Driver and plying a passenger bus and met with an accident with a jeep. He was also proceeded under Section 279 IPC and came to be acquitted and therefore, got reinstatement since the Industrial Tribunal came to the conclusion that drivers of both the vehicles were negligent. The said order had been upheld by the High Court and was then taken to the Supreme Court wherein the reasoning which prevailed* *with the Apex Court was that the Industrial Court was in error in laying stress on the acquittal of the workman by the Criminal Court. The fact that disciplinary proceedings had been initiated and it was on conclusion of an enquiry he had been dismissed by noting that the workman was driving the vehicle at a great speed and pushed the jeep by 25 feet. Resultantly, it was held that the workman was negligent and it could not be said that the dismissal was shocking and disproportionate or that it was unfair labour practice. The record of the case had also been seen that the workman was in service for 3 years and was punished 4 times during that period.*

11. *Similarly, in State Bank of India v. P. Zadenga, (2023) 10 SCC 675, it was held by the Apex Court that acquittal in criminal proceedings does not amount to automatic discharge of disciplinary proceedings and the standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are different. The aspect of responsibility of the bank officials was also kept in mind since the workman in that case was an employee of the State Bank of India and 3 different FIRs had been registered against him regarding non-deposit of the amounts received for which challan had been issued. Resultantly, while placing* *reliance upon United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364, it was held that a bank officer is required to exercise higher standards of honesty and integrity. Relevant portion of the said judgment which was quoted, reads as under:*

> *"14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the bank… The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct."*

In the light of the above settled legal position, this Court is of the considered view that the impugned orders cannot be interfered with on the ground that the petitioner is acquitted in the criminal proceedings in Criminal Appeal No.25 of 2006 and equally the petitioner is also not entitled for any relief on the ground of delay and latches.

MUMMINENI SUDHEER KUMAR, J.
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12. In the light of the above, this Court does not find any merit in the writ petition and the same is accordingly dismissed. No costs. Connected miscellaneous petitions, if any shall stand closed.

30.10.2024

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The General Manager/ Appellate Authority,

Canara Bank, Personnel Management Section,
Personnel Wing, Head Office, 1/2, JC Road,
Bengaluru, Karnataka State.

2. The Deputy General Manager/ Disciplinary Authority,
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Pre-Delivery Order made in
W.P.No.22852 of 2013