



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2498/2024

PETITIONER : Durgesh s/o Sajanpal Maske,
Aged about 55 years, Occ : Suspended
Employee, R/o Vidya Wad, Sadak Arjuni,
Tah. Sadak Arjuni, Dist. Gondia,
Mob No.7499032245

...VERSUS...

RESPONDENTS : 1. Gondia District Central Co-operative
Bank Ltd. through its General Manager,
having office at Main Branch, Durga Chowk,
Gondia, Tahsil and District Gondia.

2. The Chairman, Gondia District
Central Co-operative Bank Ltd.,
having office at Main Branch, Durga
Chowk, Gondia, Tahsil and District Gondia.

WITH

WRIT PETITION NO.2335/2024

PETITIONER : Devendra S/o Pandurang Deshmukh
Aged about 47 years, Occ : Suspended Employee,
R/o Wandra, Post Nilaj, Tah. Deori,
Dist. Gondia, Mob. No.9373347596

...VERSUS...

RESPONDENTS : 1. Gondia District Central Co-operative
Bank Ltd. through its General Manager,
having office at Main Branch, Durga Chowk,
Gondia, Tahsil and District Gondia.

2. The Chairman, Gondia District
Central Co-operative Bank Ltd.,
having office at Main Branch, Durga
Chowk, Gondia, Tahsil and District Gondia.

Mr. S.D. Chopde, Advocate for petitioners
Mr. A.M. Ghare, Advocate for respondent No.1

CORAM : SACHIN S. DESHMUKH, J.
DATE : 08/08/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.
2. Aggrieved by the order of the Disciplinary Authority deciding to undertake de novo enquiry the petitioners were before the Industrial Court. The petitioners who are facing charge of misappropriation of amount while working as a peon and clerk an Enquiry Officer was appointed by the Bank in relation to misappropriation of an amount of Rs.44,49,000/-. After a long enquiry, the Enquiry Officer submitted report wherein the petitioners are held to be negligent, therefore, the charge with which petitioners were charged is held to be partially proved as against the petitioners.
3. Based on the enquiry report holding the petitioners as negligent, a show-cause-notice was issued to the petitioners as to why the petitioners should not be dismissed from service. The same was responded by the petitioners. Preceded by the said show-cause-notice, subsequently again a show-cause-notice was served upon the petitioners reiterating as to why the petitioners should not be dismissed from the

service. In the peculiar backdrop due to serious financial defalcation of huge amount owing to petitioners' involvement in an act of misappropriation to the gross extent, the respondent-Bank passed a resolution to appoint an Enquiry Officer afresh so as to initiate departmental enquiry de novo. On the strength of the said resolution, the Enquiry Officer was appointed so as to conduct the departmental enquiry against the delinquent employees including the petitioners herein.

4. Being aggrieved by the initiation of de novo departmental enquiry the petitioners approached the Industrial Court by presenting the complaint. Before the Industrial Court, wherein a ground is raised that the petitioners cannot be penalized on successive occasions, as such, doctrine of double jeopardy was pressed into service. The Industrial Court, while rejecting the objection taking into account the extent of misappropriation of amount, has held that the report of the Enquiry Officer does not bind the disciplinary authority, as such, it is open for the Disciplinary Authority to render its own conclusions on the charges after the proposed enquiry. Resultantly, application was partly allowed, thereby awarding 100% subsistence allowance to the petitioners, however, the de novo enquiry as decided in the resolution was permitted to be proceeded with.

5. Raising challenge to the said order, it is submitted by the learned Counsel for the petitioners that initiation of said enquiry leads to breach of the principle of doctrine of double jeopardy. Nevertheless, it would be seriously prejudicial to the interest of the petitioners since the petitioners have already faced enquiry. The Enquiry Officer has already held the petitioners herein as negligent, as such it is not open for the respondent – Bank to initiate de novo enquiry and report of Enquiry Officer binds the Disciplinary Authority, therefore, it is not open to the Bank to undertake de novo enquiry. In support of his contention, learned Counsel for the petitioners has placed reliance on the following decisions :-

(I) Dwarkachand Vs. State, AIR 1958 Rajasthan 38

(II) K.R. Deb Vs. The Collector or Central Excise, Shillong, 1971 (2) SCC 102.

(III) The State of Assam and another Vs. J.N. Roy Biswas, AIR 1975 SC 2277.

(IV) Canara Bank and Ors. Vs. Swapan Kumar Pani and Anr., AIR 2006 SC 1297.

(V) State Bank of India, Bhopal Vs. S.S. Koshal, 1994 Supp (2) SCC 468.

(VI) Punjab National Bank and others Vs. Kunj Behari Misra, (1998) 7 SCC 84.

(VII) Chattu Jathan of Bombay Vs. The Bombay Dock Labour Board and others, 1996 (4) Bom. C.R. 658.

(VIII) Muzaffar Hussain Mansoori Vs. The Union of India and others (Writ Petition No.8523/2015 decided on 26/10/2018) and other connected petitions.

6. Per contra, Mr. Ghare, learned Counsel for the respondent-Bank has supported the order of the Industrial Court by submitting that since the Enquiry Officer has held the petitioners negligent and punishment is not awarded based on such finding, it is open for the Bank to disagree with the report presented by the Enquiry Officer. In support of the same, learned Counsel for the respondent-Bank has invited attention of this Court to the Regulations framed by the Bank dealing with the service conditions of an employee which permits the Disciplinary Authority to accept or disagree the report and in the process further enquiry can be undertaken. Taking recourse to the same, the Bank has passed resolution to undertake enquiry by appointing new Enquiry Officer. In support of the same, learned Counsel for the respondent – Bank has placed reliance on the judgment of the Supreme Court in the case of *Union of India and others Vs. P. Thyagarajan (1999) 1 SCC 733*.

7. Having heard the respective Counsel for the litigating sides, it is a matter of record that the petitioners herein are charged with an offence of misappropriation of amount to the colossal scale. The Enquiry

Officer in an unequivocal terms has held the petitioners herein responsible and also has rendered the finding that the charges involved against the petitioners are partially proved. Eventually report, with aforesaid finding, is submitted with Disciplinary Authority. Pertinently, the report has not culminated into punishment by the Disciplinary Authority.

8. Thus, upon receipt of the said report of the Enquiry Officer, the Disciplinary Authority, may award punishment or equally may differ with report so received and accordingly, direct de novo enquiry. As such a resolution to undertake the enquiry by appointing independent Enquiry Officer considering the enormity of the amount involved and the complicity of the petitioners herein as is apparent from the record so referred in the resolution, is available with the Disciplinary Authority. Undoubtedly, as has been held by the constitution Bench of the Supreme Court in *Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others, (1993) 4 SCC 727*, it is open for the Disciplinary Authority after receipt of the report and the evidence led against the delinquent employee “disciplinary authority may agree with the report or may differ”, either wholly or partially from the conclusions recorded in the report.

9. Apart from aforestated peculiar aspect, Regulation No.21 (f) which deals in detail with the service conditions of the employees

vests power with the Disciplinary Authority either to agree with the report or may record its difference. The expression “differ” essentially has to be construed in wider perspective, as such, it includes initiation of enquiry afresh. Once the Disciplinary Authority differs with the report of the Enquiry Officer, as has been laid down by the Constitution Bench of the Supreme Court in case of ***B. Karunakar*** (supra) it is open for the Disciplinary Authority to adopt or to take recourse to undertake de novo enquiry by appointing Enquiry Officer. Nevertheless, considering the amount involved and the charges levelled against the petitioners, this Court is of considered opinion that de novo enquiry would be in the fitness of thing, since respondent – Bank is custodian of money deposited by the depositors.

10. So far as reliance placed by the learned Counsel for the petitioners on the judgments, cited supra, are concerned, the employees therein were either exonerated or the punishment was awarded holding the concerned employees as guilty. As such, in the aforesaid backdrop, the doctrine of double jeopardy was pressed into service. Therefore, initiation of fresh enquiry at the subsequent juncture was held to be impermissible in the aforesaid judgment. Whereas, in the present case, the Enquiry Officer has submitted the report holding the petitioners as responsible with further finding that the charges levelled against the petitioners are partially proved. However, the fact remains that there

was enquiry report and the Disciplinary Authority did not accept the said report of the Enquiry Officer. Having disagreed with report of Enquiry Officer, it was resolved to undertake the enquiry de novo by appointing Enquiry Officer. As such, it cannot be regarded that the petitioners are already punished by Disciplinary Authority and again de novo enquiry is initiated. Resultantly, no case is made out to exercise extraordinary jurisdiction of this Court under Article 227 of the Constitution of India to interfere with the well reasoned order rendered by the Industrial Court. Resultantly, the writ petition deserves no consideration and the same is accordingly dismissed. Rule stands discharged. No order as to costs.

(SACHIN S. DESHMUKH, J.)