Bhola Nath Singh Vs Rae Bareli Kshetriya Gramin Bank and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: April 19, 1996

Acts Referred: Constitution of India, 1950 â€" Article 14, 226
Industrial Disputes Act, 1947 â€" Section 2(5)

Hon'ble Judges: A.P. Singh, J

Bench: Single Bench

Advocate: Virendra Misra, for the Appellant; A.N. Verma, for the Respondent

Final Decision: Allowed

Judgement

A.P. Singh, J.
Petitioner of this writ petition happens to be clerk-cum-cashler of Rae Bareli Kshetriya Gramin Bank which is sponsored by

the Bank of Baroda under the provisions of Regional Rural Banks Act, 1976. At the time, Petitioner was posted at Saton branch of the bank, he

was served with charge-sheet dated 18.7.85 by Respondent No. 2. In the chargesheet, it was alleged that Petitioner had dishonestly withdrawn

Rs. 7,500 and Rs. 5.000 on 26.3.1985 from the account of Sri Amar Pal, Rs. 8,500 and Rs. 7,500 on 3.5.1985 from the Joint account of Sri

Jagannath and Jagdish in all from both the accounts Rs. 28,500 on 26.3.1985 and 3.5.1985. Petitioner filed his reply on 26.7.85 and denied the

charges. Respondent No. 4 who was appointed to hold enquiry on the charges levelled on the Petitioner, conducted the enquiry and submitted his

report to the Disciplinary Authority, Respondent No. 2. On 20.3.1989. In the Enquiry Report Respondent No. 4 held Petitioner guilty of the

charges which were levelled on him in the charge-sheet. The enquiry was held ex parte against the Petitioner as he did not appear in the enquiry

proceedings on the ground of illness. Respondent No. 2 thereafter served a show-cause notice to the Petitioner on 17.4.1989 calling upon him to

show cause as to why he be not punished with an order of dismissal from service on the charges of mis-conduct which were found proved against

him as per the report of Respondent No. 4. Petitioner sent a letter of request to Respondent No. 2 in which he opposed the award of the

punishment which was proposed against him and requested the Respondent No. 2 to summon the Branch Manager who was working in the Saton

Branch of the Bank on 26.3.85 who according to the Petitioner, was responsible for the withdrawals in question. Petitioner"s request for

summoning, the Branch Manager was not accepted and opposite party No. 2 by his order dated 11.4.1990 dismissed the Petitioner from the

services of the Bank holding him guilty of the charges which were levelled on him with charge-sheet referred to above. Petitioner then filed appeal

before the Board of Directors of the Bank on 5.5.1990. In the appeal too. Petitioner maintained that the withdrawals in question were handiwork

of the Branch Manager of the Bank and not his. Petitioner"s appeal was however rejected by the Board on 29.6.1990 and its decision was

communicated to the Petitioner vide letter dated 7.8.1990 sent by the Chairman of the Board.

2. In this writ petition, Petitioner has challenged the legality of the dismissal order dated 11.4.1990 and Board"s order dismissing his appeal on

29.6.90 mainly on the following grounds:

(a) The charges of making withdrawal of the amounts by the Petitioner as mentioned in the charge-sheet, have not been proved;

(b) The Petitioner was made scapegoat so as to save the skin of the Branch Manager who was really the person responsible for the fraudulent

withdrawals which are attributed to the Petitioner in the charge-sheet;

(c) The Appellate Authority having failed to apply its mind to the points raised in the appeal while considering Petitioner"s appeal, has denied

opportunity of hearing to the Petitioner;

(d) Presence of opposite party No. 2 in his capacity as the Managing Director of the Board in the meeting of Board of Directors which rejected

Petitioner"s appeal against the order passed by Opposite Party No. 2 himself resulted in the breach of the principles of natural Justice; and

(e) The punishment awarded to the Petitioner is dis-proportionate to the guilt which has been held proved against him.

3. Opposite parties have opposed the contentions advanced on Petitioner"s behalf and contended that:

(a) Petitioner who has refused to appear in the enquiry proceedings has no face to complain breach of principles of natural justice.

(b) Charges have been fully established against the Petitioner both from documentary evidence as well as from oral testimony of bank staff and it

was fully proved that it was the Petitioner who had made the withdrawls which were attributed to him in the charge-sheet.

(c) The Appellate Authority (The Board of Directors) applied its mind and considered the points raised and rejected the appeal.

(d) The charges being serious having reflection on the credit of the Bank dismissal from service is the appropriate punishment, therefore, the

punishment of dismissal cannot be termed as dis-proportionate to the gravity of the charges.

(e) This Court has no power while exercising power of review under Article 226 of the Constitution to examine as to whether or not the charges

are proved and whether the finding of guilt recorded by the Enquiry Officer is based on sufficient evidence.

(f) Petitioner being a Workman within the provisions of Section 2(5) of Industrial Disputes Act, 1947 proper course open for him for challenging

the dismissal from service is to raise industrial dispute before the Labour Court u/s 10 of that Act. Petitioner, therefore, being possessed of

effective alternative statutory remedy cannot be allowed to invoke extra-ordinary constitutional remedy of this Court under Article 226 of the

Constitution.

4. Before entering the merits of the case, it is necessary to deal with the last point first as it Is of preliminary nature.

5. To be fair as matter of fact during the course of arguments in the Court, this point was not raised by the learned Counsel for the Bank. Hearing

of the writ petition was adjourned on various occasions for various reasons and since the hearing was punctuated by many adjournments, I

requested the learned Counsel for the parties to also give, if they so liked, their written submissions to which both readily agreed and have filed

their written submissions. It is in the written arguments of Respondents'' learned Counsel that this point was raised for the first time which has also

been raised in Para 23 (last paragraph) of the counter-affidavit which has been filed by Respondents.

6. It is no doubt true that where an applicant under Article 226 of the Constitution approaches this Court, it is the duty of this Court to first satisfy

itself before entering to examine the matter into merits as to whether the applicant has any effective and efficacious statutory remedy to get the relief

he has sought in the petition brought by him to the Court. Once this Court is satisfied that he can get the relief elsewhere, this Court shall refrain

from entertaining the matter. For this it is not that an objection in this regard must be raised on behalf of the Respondents to the petition. The

question, however, is as to what is the appropriate stage for closing the doors of the Court at the face of the Petitioner on the ground that doors of

some other court are open for him where he can get the requisite relief if he knocks its doors.

7. Petitioner knocked the doors of this Court by filing the writ petition in the Year 1990. This Court accepted his writ petition for hearing and did

not reject it at its inception. The writ petition was kept pending for about six years. During this period Petitioner was not told by the Court that he

should approach the Labour Court by raising an industrial dispute u/s 10 of the Industrial Disputes Act. During the course of hearing of the writ

petition too, no such question either by the Court or by the counsel for Respondents was raised for appropriate reply by the Petitioner''s counsel.

8. The writ petition was heard on merits. Now, in my opinion, it would be too harsh for the Petitioner if he was given marching orders to knock the

doors of some other court specially so when Petitioner was a poor employee of very low cadre. It was also relevant to point out that the dismissal

order was passed on 11.4.90. Earlier, he was under suspension. Disciplinary Enquiry against him had started in November, 1985 and continued

upto June, 1989. During all this period he was out of job. Therefore, it would be too harsh for the Court to tell the Petitioner to knock the doors of

Industrial/Labour Court u/s 10 of the Industrial Disputes Act, 1947 for challenging the dismissal order. Nothing would be left for the Petitioner at

this stage to carry the case from this Court to the Labour/Industrial Court. Looking to this apparent and stark reality, it would not be in the interest

of Justice to reject Petitioner''s writ petition at this stage on the ground of alternative remedy specially so when the case brought by him before the

High Court was not per se without merit. There are no dearth of cases where despite presence of alternative remedy this Court has in proper cases

exercised its discretionary power under Article 226 of the Constitution to itself examine as to whether the order challenged before It was illegally

passed. I, therefore, decline to accept the request of learned Counsel for Respondents to dismiss the writ petition on the ground of alternative

remedy.

9. Now coming to the merits it will be necessary to quote the charges which have been levelled on the Petitioner. A copy of the charge-sheet is

Annexure 1 to the writ petition. The charge reads:

While working and posted as Cashier at Sataon branch following acts have been reported to have been committed by you, which if proved shall

amount to mis-conduct under Rae Bareli Kshetriya Gramin Bank Staff Service Regulations, 1980.

Thereafter five allegations of misconduct have been reproduced.

Allegation No. 1 relates to fraudulent withdrawal of a sum of Rs. 7,500 by the Petitioner from the S. B. Account No. 1800 of Shri Amarpal on

26.3.85 by forging signatures of Amarpal on the withdrawal slip. Allegation No. 2 is also in respect of fraudulent withdrawal of Rs. 5,000 on

26.3.85 from S. B. Account No. 1246 of Shri Mahabir by forging his signatures on the withdrawal slip. Allegation No. 3 is regarding forged

withdrawal of Rs. 8,500 and 7,500 from S. B. Account Nos. 1821 and 2163 of Shri Jagannath and Shri Jagdish respectively by forging their

signature on the withdrawal slips and on the authority letters. After getting the said withdrawal passed and receiving the amount himself it was never

handed over to the account holder. Fourth allegation is that after making withdrawal of the aforementioned sums of money totalling Rs. 28,500 in

fraudulent manner Petitioner had cut down the entries of the said withdrawals from the S. B. Account Ledger and had also managed to take away

the withdrawal slips from the branch as mentioned in allegation No. 3 for avoiding detection of the fraud. Allegation No. 5 relates to absconding of

the Petitioner from the branch without getting written permission and sanctioned leave after withdrawal of the amounts. On the aforesaid allegation

the bank charged the Petitioner as follows:

1. For committing acts unbecoming of bank employee.

2 For fraudulently withdrawing cash from the S. B. Accounts and putting bank to financial losses.

3 For tampering with bank records to avoid detection of fraud committed by him.

10. Charged levelled on the Petitioner would appear to be connected with the withdrawals of the amounts totalling Rs. 28,500 and managing the

disappearance of the withdrawal slips and cutting out the entries in the ledger relating to those withdrawals as also disappearance of the Petitioner

from his duties in the bank after making the said withdrawals. It is to be noticed that in the charge relating to Petitioner"s absconding from duty the

dates between which Petitioner had absconded from his duty has not been mentioned.

11. The Inquiry Officer in his report assessed evidence on each of the allegations levelled on the Petitioner. Regarding allegation No. 1 which

related to withdrawal of Rs. 7,500 from S. B. Account No. 1800 on 26.3.85 his conclusion was as follows:

As per arguments of the Presenting Officer witnesses, documents and handwriting expert"s report of Shri S. P. Gupta, I am of the opinion that

allegation No. 1 is established.

While assessing the evidence on which the Inquiry Officer reached to the afore-mentioned finding it will appear that he found allegation No. 1

proved against the Petitioner principally on the statement of Shri Amarpal the account holder to the effect that he had not withdrawn the sum of Rs.

7,500 from his account on 26.3.85 and had filed a complaint on 22.5.85 and that the withdrawal slip which had been presented in the bank had

not been signed by him and that the handwriting expert had also verified that withdrawal slip had not been signed by Shri Amarpal but was in the

handwriting of the Petitioner. Shri Panna Lal Kushwaha, the Branch Manager had stated that he had tallied signature of Amarpal from S. B.

Account signature card and that the amount was paid by Shri B. N. Singh. He has also referred to other statements showing presence of Petitioner

in the bank on 26.3.85. It is noticeable feature in the cases that the Inquiry Officer did not examine the handwriting expert for ascertaining as to

whether the opinion about forgery was given by the person by whom it purported to be. He also took to notice of the statement of the Branch

Manager who had in his deposition stated that he had compared account holder''s signature on the withdrawal slip from his signature in the

methodox containing his specimen signatures. It the Branch Manager had already compared account holder''s signature on the withdrawal slip from

his signature in the Methodox before clearing the withdrawals I wonder how Petitioner still could be held guilty. If the opinion of the handwriting

expert is correct then statement given by Branch Manager is false and he too becomes an equal partner in the fraudulent withdrawal of the amount

from the account alongwith Petitioner; then why he was not charged and punished the Inquiry Officer and the Respondent bank are both silent on

that. If that the Branch Manager stated is correct then opinion of the handwriting expert is a got up document which should have been ignored as a

waste paper more for the reason that the same was not proved by the statement of its maker therefore no authenticity could be attached to the

opinion given in it. If the opinion of the handwriting expert is left out of consideration the charge is not at all made out and the finding of guilt of

Petitioner which has been recorded by the Inquiry Officer becomes vitiated.

12. In respect of the second charge too the finding of the Inquiry Officer that Petitioner made fraudulent withdrawals of the sum of Rs. 5,000 from

the S. B. Account of Shri Mahabir on 26.3.85 is also based on the same material. The Inquiry Officer had laid too much emphasis on the opinion

of the handwriting expert according to whom Petitioner had forged account holder''s signature on the withdrawal slip. The Inquiry Officer further

notes that though Mahabir did not write his name and had given his thumb impression as his specimen signature on the methodox and also in his

application for opening the account whereas on the withdrawal slip his name was written. Here too the Inquiry Officer committed to notice the

statement of Shri Panna Lal Kushwaha, the Branch Manager who had stated in his deposition that he had tallied the specimen signature of the

account holder on the withdrawal slip from the specimen signature of the account holder in the methodox before clearing the withdrawal. If

Mahabir had given his thumb impression as his specimen signature then how the withdrawal was cleared by the Branch Manager who admittedly

had compared the specimen signature and signatrue on the withdrawal slip before passing the withdrawal in question. Finding on this point too

suffers from same infirmity from which the finding on allegation No. 1 suffers. For these reasons and those already discussed relating to finding No.

1 this finding too could not be held proved against Petitioner.

13. Regarding allegation No. 3 the Inquiry Officer though had observed that the Presenting Officer was not in a position to produce any

documentary evidence (withdrawal slips) from which it could be ascertained that he had withdrawn the sums of Rs. 8,000 from the S. B. Account

of Jagannath and Rs. 7,500 from the S. B. Account of Jagdish still he held the charge proved against the Petitioner for the reason that the above

named account holders had denied having made the withdrawals. He also placed reliance on the statement of Shri Sanjay Kumar, the Acting

Branch Manager of the Branch who had stated that the withdrawals in question were made by Petitioner by presenting authority letter and

withdrawal slips and the duplicate pass-book. The Branch Manager further verified that vouchers by which the withdrawals had been made were

missing from the bank though he admits to have packed them himself. He has also stated that the Petitioner himself had taken the amount of the

two withdrawals from Shri H. B. Singh, Cashier in his presence and that the Petitioner had packed the said amount in a handkerchief which was

borrowed from Shri Ram Sewak, a Daily Wager in the bank.

14. Similarly, in relation to allegation No. 4 though it was observed by the Inquiry Officer that it was not proved on behalf of the bank by the

Presenting Officer from any eye-witness that Shri B. N. Singh had cut down the entries in the S. B. Ledger account still he found the charge

proved against the Petitioner on the basis of the handwriting expert''s opinion coupled with the impression that he must have done it only to save

himself from detection of the fraud in the withdrawals made by him.

15. In relation to allegation No. 5 the Inquiry Officer found the charge proved against the Petitioner although filing of leave application by the

Petitioner Justifying his absence from the headquarters of the branch was duly proved. The charge in the opinion of the Inquiry Officer was made

out against the Petitioner because the application of the Petitioner had not been allowed. Similarly, in respect of the last charge regarding

discharging of duties with integrity was also found proved against the Petitioner on the ground that he had dishonestly and fraudulently withdrawn

the amounts mentioned in allegation Nos. 1 to 3 whereby he had caused financial loss to the bank and was, therefore, to be found guilty of not

discharging his duties with utmost integrity and honesty.

16. The contention of learned Counsel for the Petitioner is that allegation Nos. 1 and 2 could not be held proved against the Petitioner in view of

the admission of the Branch Manager himself that before passing the payments he had already compared account holder''s signatures on the

withdrawal slips from his signature in the methodox. His argument further was that since Shri S. P. Gupta, the Handwriting Expert had not been

examined by the Inquiry Officer, no value could at all be attached to the opinion given by him that the Petitioner had himself written the names of

Shri Amarpal and Mahabir in the withdrawal slips for withdrawing the amounts of Rs. 7,500 and Rs. 8,000 respectively from their account.

17. On the other hand the counsel for Respondents argued that in the domestic enquiry strict proof as per rules of evidence of the allegations

levelled on the Petitioner cannot be insisted upon. According to him since the signatures on the withdrawal slips from the signatures of account

holders had been compared by Shri S. P. Gupta, handwriting expert who after comparing the signatures had opined that it was the Petitioner who

had signed the withdrawal slips and had fraudulently withdrawn the amount nothing remained to be proved as this by itself was sufficient to prove

that Petitioner and none else had fraudulently withdrawn the amounts from the S. B. Accounts of Shri Amarpal and Mahabir. According to counsel

the statement of the Branch Manager that he had compared the signatures of the account holders on the withdrawal slips before passing the said

withdrawals was, therefore, wholly irrelevant. He further contended that for the mere non-examination of Shri S. P. Gupta, the Handwriting Expert

by the Inquiry Officer for proving his own opinion on which reliance had been placed by the Inquiry Officer by itself would not render the expert

opinion a waste-paper inasmuch as the law of proof prescribed in the Evidence Act in this respect are not applicable to the departmental enquiry

proceedings.

18. After having fully considered the respective contentions of the learned Counsel for the parties on this point, I find sufficient force in the

contention of the learned Counsel for the Petitioner. It is admitted position that specimen signatures and photographs of illiterate account holders

are maintained in the bank whenever a request for withdrawal of amount from the account of the account holder is made by the account holder he

is required to present the withdrawal slip and his passbook containing his photographs, the withdrawal slip and the pass book is referred by the

clerk concerned to the Bank Manager who is required to compare the signature of the account holder on the withdrawal slip with his specimen

signature in the methodox, in case of an illiterate account holder who cannot make his signature his thumb impression is also compared coupled

with his personal identification from his photograph available in the bank and on the passbook. The responsibility for permitting the withdrawal

rests mainly with the Branch Manager who as senior most Officer of the bank is supposed to allow the withdrawal only after he is satisfied that the

requisition for the withdrawal has come from the account-holder and not from an imposter. It is not the case of the bank that the amounts in

question had illegally been withdrawn by the Petitioner without getting the approval of the Branch Manager. As per the statement of Shri Panna Lal

Kushwaha, the Branch Manager both the withdrawals mentioned in allegation Nos. 1 and 2 were obeyed by him after he had compared the

respective signatures of the account holders on the withdrawal slips with their signature in the methodox. With this statement of the Branch

Manager, there is no reason to believe that the withdrawals in question were fraudulently made by some one other than the account-holder unless

the Branch Manager himself was disbelieved and was charged with the same charges with which the Petitioner had been charged. This, however,

is not the case here. It is strange that the Inquiry Officer did not at all care to consider this most important aspect of the case before holding

Petitioner guilty of allegation Nos. 1 and 2. He also did not care to examine Shri S. P. Gupta, the Handwriting Expert who purportedly had given

his expert opinion report to the effect that the signatures of Amarpal and Mahabir on the respective withdrawal slips for the withdrawal of the

amounts of Rs. 7,500 and 8,000 were in the handwriting of the Petitioner. How the handwriting expert reached to this opinion could have been

explained by him had he been examined by the Inquiry Officer. Until Petitioner was required by the handwriting expert to write the name of

Amarpal and Mahabir in his presence it was not possible for him to have come to the conclusion that it was the Petitioner who had written the

names of the two account-holders on the two withdrawal slips. From the report of handwriting expert it appears that the conclusion was reached

by him only by comparing Petitioner''s alleged writing on a leave application which allegedly had been filed by the Petitioner. This was not a proper

course for the handwriting expert to adopt. Notwithstanding the fact that Petitioner did not appear in the enquiry proceedings and no request to

cross-examine the Inquiry Officer could be made by him still it was the duty of the Presenting Officer himself to have examined the expert to prove

his report without which the report could not be utilised by the Inquiry Officer for believing that Petitioner had himself signed the names of Amarpal

and Mahabir on the two withdrawal slips because it cannot be totally ruled out that the opinion on which reliance was placed itself was not the

opinion of a handwriting expert. In my opinion. Inquiry Officer committed material irregularity by recording finding of Petitioner''s guilt in respect of

charge Nos. 1 and 2 without applying his mind to these most important aspects of the question.

19. Similarly, the Inquiry Officer was wrong in holding Petitioner guilty of allegation Nos. 3 and 4 which related to the withdrawals of the sums of

Rs. 8,500 and 7,500 on 3.5.85 from S. B. Account Nos. 1821 and 2163 of Jagannath and Jagdish. As a matter of fact there was no material

whatsoever on which the Inquiry Officer could record finding of guilt against the Petitioner. These allegations could be proved only by production

of the withdrawal slips and the authority letters from which alone it could be authentically found out as to whether or not the said amounts had been

withdrawan by the account-holders themselves or by imposters by forging their signatures on the withdrawal slips. The charge of fraudulent

withdrawal by forging signatures of account holders on the withdrawal slips can be proved by direct evidence and not by circumstantial evidence.

Circumstantial evidence is permissible to be tendered where direct evidence cannot be available for resaons beyond reasonable control.

20. For proving the charge reliance on the statement of Branch Manager and the members of the staff of the bank by way of circumstantial

evidence coupled with the statement of the two account-holders was placed without fixing the responsibility of the loss of the two withdrawal slips

and authority letters from the bank records which admittedly was not in Petitioner''s custody. The charge of making fraudulent withdrawal could be

held proved against Petitioner on the testimony of the bank''s Branch Manager and the staff members who stated that Petitioner had himself taken

the amount and had kept it in the handkerchief which he had borrowed from another employee of the bank. The statement were not at all

admissible for proving the charge in the question. In the light of the denial by the Petitioner that he did not make the withdrawals in question it was

the duty of the bank to have produced documentary evidence for proving the charge. If the withdrawals in question were made by some person

other than the account-holder by forging signatures on the withdrawal slips the Branch Manager too was equally liable for the withdrawals. Why no

action was taken against the Branch Manager has not been explained by the Inquiry Officer. Loss of vouchers and the withdrawal slips etc. from

the records of the bank cast doubt on the role of the Branch Manager who is supposed to maintain these records of the bank in his own custody.

If the withdrawal slips and vouchers had been packed and kept by him then it was for him to have explained as to how those papers disappeared

from the bank; no explanation has been given in this respect in the enquiry report. The infirmity was tried to be covered by levelling charge of its

removal on the Petitioner regarding which there was no evidence whatsoever. In the circumstances, in my opinion, Inquiry Officer has committed

grave illegality in recording the finding of guilt against the Petitioner in respect of allegation Nos. 3 and 4 as well.

21. Similarly, allegation regarding scoring out the entries in the ledger too could not be found proved against the Petitioner inasmuch as according

to the Inquiry Officer himself no evidence was available to prove that the postings in the ledger concerning the withdrawals had been cut down by

the Petitioner himself. In the light of the aforesaid observations by the Inquiry Officer it was impermissible for him to record finding of guilt against

the Petitioner on this charge. Similarly, allegation No. 5 relating to the Petitioner having absconded from duty of the bank is also not make out

against the Petitioner. Admittedly, an application for leave had been filed by the Petitioner coupled with the request for permission to remain absent

from the headquarters. Petitioner having sent the leave application cannot be held guilty of the charge that he absconded from the duty of the bank.

His leave application could be rejected only when no leave was due to him. If leave was due to him there should be no reason for rejecting his

leave application in the normal course. No finding in this respect has been given. The Inquiry Officer has not said in his report that leave was not

due to the Petitioner therefore his application was rejected and he was intimated of the rejection of his leave application. It is thus clear that despite

filing of leave application before the appropriate authority of the bank Petitioner was held guilty of illegally absconding from the duty of the bank

simply because his leave application was not allowed. In the circumstances, it cannot be said that the Petitioner had absconded from his duty in the

bank. The last charge relating to the discharge of duty with utmost honesty is based on the findings relating to Petitioner"s guilt on allegation Nos. 1

to 4 which themselves are not proved, in my opinion, this charge too should automatically fall through.

22. It was contended by the learned Counsel for the Respondents that this Court while exercising power under Article 226 of the Constitution will

not interfere with the finding of guilt recorded by the Inquiry Officer simply because the findings are not based on sufficient evidence. According to

the learned Counsel it is within the domain of the appellate court or appellate authority which alone can examine the question as to whether the

finding of guilt on which punishment has been imposed is or is not based on sufficient evidence. This Court, according to the learned Counsel while

exercising power under Article 226 of the Constitution will interfere with an order of punishment only when it is satisfied that the punishment in

question has been awarded to the Petitioner in the breach of the principles of natural Justice and on no other ground. Learned Counsel further

contended that since in the present case Petitioner was given sufficient opportunity and had been called a number of times by the Inquiry Officer to

appear in the enquiry proceedings still Petitioner did not appear therefore, this Court would not interfere with the punishment awarded to the

Petitioner at his instance in view of the further fact that the Petitioner himself had declined to appear in the enquiry proceedings and for that reason

the enquiry proceeded against him ex parte.

23. Having given my anxious consideration to the arguments of the learned Counsel I do not find myself in a position to agree with him.

24. It is no doubt true that the High Court while exercising its power of Judicial review does not act as a court of appeal, i.e., the High Court will

not set aside the punishment awarded by an employer to its employee on the ground that the punishment is not based on the sufficient proof of the

guilt of misconduct inasmuch as sufficiency of evidence is within the domain of appellate authority. Present, however, is not a case where question

of sufficiency of evidence for the proof of the allegations of misconduct levelled on the Petitioner is involved. As seen above in the preceding part

of this judgment allegations relating to the charges of misconduct against Petitioner have been found proved in the case in utter disregard of the

basic rules of evidence. Manner in which the Inquiry Officer concluded that the charges stood proved against the Petitioner is unknown to our legal

system. Our society is governed by the rule of law and all the citizens including employees of the instrumentalities of the State are protected by the

constitutional guarantee enshrined in Article 14 of the Constitution which guarantees equality before law and equal protection of the laws. Article

14 provides protection to them against arbitrary and indiscriminate action of their employers. Supreme Court in LIC of India and Another Vs.

Consumer Education and Research center and Others, , observed as follows:

The actions of the State, its instrumentalities and public authority or person whose actions bear insignia of public law element or public character

are amenable to judicial review and validity of such an action would be tested on the anvil of Article 14.

25. In the light of this observation of our apex court in Life Insurance Corporation of India v. Consumer Education and Research Centre, (supra) it

will still be under legal obligation to establish the charges by producing only cogent and relevant evidence and not by inadmissible evidence.

26. In a society governed by the rule of law, any material produced for establishing a charge cannot be recognised and accepted as evidence.

What is evidence is known from the provisions of the Evidence Act though those provisions may not be strictly applicable in domestic enquiry

proceedings, still if evidence is required to be furnished for proving charges of misconduct which is levelled against a delinquent, that charge can be

proved in the enquiry proceedings only in the manner laid down in the Evidence Act or in the Service Rules. If the Service Rules do not provide the

manner in which a charge of misconduct is to be proved, in that case manner of proof laid down in the Evidence Act has to be complied with, of

course, bereft of its minor technicalities. It is, therefore, not open for Respondents to contend that the opinion of the handwriting expert who was

not produced before the Inquiry Officer as per the mandatory requirement of Evidence Act to prove his report by itself will be sufficient to

establish the charges of forgery in relation to allegation Nos. 1 and 2, therefore, the opinion of the handwriting expert on which reliance has been

placed by the Enquiry Officer for holding the charges of misconduct proved against Petitioner is no evidence. Therefore, it was most unfair on the

part of the Inquiry Officer to have arrived at the conclusion that Petitioner had forged the signatures of Amarpal and Mahabir on the withdrawal

slips for fraudulently withdrawing the sum of Rs. 7,500 and 8,000 from their respective accounts only on the basis of the opinion given allegedly by

someone posing to be a handwriting expert. Even if it is presumed that Shri S. P. Gupta on whose letterhead the opinion in question was produced

before the Inquiry Officer, still it cannot be ruled out that somebody other than Sri S. P. Gupta had given that opinion against the Petitioner on Shri

Gupta"s letter-head and further that Shri Gupta was not a handwriting expert as he possessed no training on the subject.

27. In my opinion the basic rules of evidence which ensure fairness in the actions of men of authority must be held applicable, of course, bereft of

its technicalities, even in domestic enquiry proceedings.

28. This Court cannot shut its eyes to the admission of the Branch Manager who stated that he had passed the payments against the withdrawal

slips after he had satisfied himself that the signatures on the withdrawal slips were of the account-holders. With this statement of the Branch

Manager, there was no occasion for the Inquiry Officer to reach the conclusion that the Petitioner had forged the signatures of the account holders

on the withdrawal slips for making the withdrawals in question. The Inquiry Officer thus committed manifest illegality in holding the Petitioner guilty

in respect of allegations 1 to 4.

29. Respondent No. 2 who passed the order of punishment as also the appellate authority, Respondent No. 1 closed their eyes on these glaring

infirmities in the report of Inquiry Officer"s report for awarding the punishment of dismissal against the Petitioner and dismissing his appeal. Both

disciplinary authority and the appellate authority failed to exercise their power in the manner in which, as public authorities, they were supposed to

exercise their power for awarding a major punishment against the Petitioner which was done in a most casual manner without applying their mind to

the aforesaid apparent infirmities from which the enquiry report suffered.

30. When power is conferred on an authority for awarding punishment and to hear appeal, the authority is duty bound to apply its mind and to

consider the points raised by the delinquent. If the points are Just noticed without any discussion on its tenability, it is a clear case of non-

applicability of mind. In the present case too I find that both the appointing authority and the appellate authority have utterly failed to apply their

mind to the points raised by the Petitioner and to the glaring infirmities in the report of the Inquiry Officer which was full of contradictions still

severe punishment of dismissal from service was imposed on the Petitioner only in the belief that Petitioner was responsible for the fraudulent

withdrawals of the sums of amounts mentioned in allegations 1 to 4 of the charge-sheet. Punishment in domestic enquiry too cannot be awarded on

impressions but on proof according to law.

31. Learned Counsel for the Petitioner also contended that Respondent No. 2 who had awarded the punishment in question was also present in

the hearing of the appeal as Chairman of the Board of Directors of Respondent No. 1 and, therefore, the appellate order becomes vitiated on the

ground of bias. This point was never raised before by Petitioner either in the writ petition or at the time of the hearing of the writ petition. It has

been raised for the first time in the written argument filed after conclusion of hearing. The point involving investigation into facts cannot be permitted

to be raised at this stage. The contention on the point is accordingly turned down.

32. In view of the detailed discussion held above, I am of the view that the punishment of dismissal of the Petitioner from the services of the Bank

has illegally been awarded in absence of cogent and material evidence for proving his guilt mentioned in the allegations of charges which were

levelled against him.

33. In the result, the writ petition succeeds and is accordingly allowed. The order of punishment dated 11.4.90 (Annexure-10) as also appellate

order dated 29.6.90 (Annexure-12) are quashed. Respondents are directed to reinstate the Petitioner in bank''s service with all consequential

benefits from the date of his dismissal. Petitioner will also get costs of the case from the Respondents.