

S.R. Kashyap Vs Canara Bank and Others

Court: Allahabad High Court

Date of Decision: Dec. 16, 2003

Acts Referred: Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 & Regulation 3(1), 34 Constitution of India, 1950 & Article 226, 32

Citation: (2004) 2 AWC 1692 : (2004) 3 LLJ 340 : (2004) 1 UPLBEC 581

Hon'ble Judges: Umeshwar Pandey, J; M. Katju, J

Bench: Division Bench

Advocate: A.D. Saunders, for the Appellant; P.C. Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

M. Katju, J.

This writ petition has been filed for a writ of certiorari against the impugned order dated 15.6.1995 passed by the Deputy

General Manager, Canara Bank, Lucknow, Annexure-30 to the writ petition by which the petitioner, had been dismissed from service and the

appellate order dated 17.7.1996 passed by the General Manager (Personnel Wing), Canara Bank, Bangalore which has dismissed the petitioner's

appeal against the dismissal order vide Annexure 32 to the writ petition. The petitioner has also prayed for quashing of the report dated

14.10.1994 Annexure-17 to the writ petition and has prayed for reinstatement in service with backwages.

2. Heard learned Counsel for the parties.

3. The facts of the case are that the petitioner was initially appointed in Laxmi Commercial Bank, Delhi which was taken over by Canara Bank on

29.8.1985 and hence he became an employee of the Canara Bank which is a Government of India undertaking having its head office at Bangalore.

While posted at Agra, the petitioner received a letter dated 18.5.1990 Annexure-1 to the writ petition suspending him on charges of misconduct.

Thereafter he received charge-sheet dated 19.5.1990, vide Annexure-2 to the writ petition. A perusal of the articles of charges contained in the

charge-sheet shows that there are allegations against the petitioner of having misappropriated the proceeds of a cheque by fraudulently encashing it.

It is also alleged that the petitioner tampered the record to conceal the encashment of the said cheque. It is also alleged therein that the petitioner

authorised the cash payment of the said cheque, although he had himself inspected and filled up the cheque on the very same day for transfer from

S.B. Account No. 41673 of S.B. Account No. 47344 and was aware that the cheque was not meant for cash payment. It was alleged that the

petitioner failed to perform his duty honestly and with integrity, devotion and diligence and thereby contravened Regulation 3(1) read with

Regulation 34 of the Canara Bank Officer Employees" (Discipline and Appeal) Regulations, 1976. The details are given in the charge-sheet. It is

alleged therein that an amount of Rs. 18710/- had been fraudulently withdrawn from the account of Sri N.K. Nayak on 25.11.1989 against the

cheque which was given for crediting the said amount to the account of Sri A.M. Kadam.

4. The petitioner denied the charges vide letter dated 10.7.1990, vide Annexure-3 to the writ petition. He also requested that in view of the

criminal case pending in the Bombay Court the departmental enquiry should not be concluded till the judgment is pronounced vide letter dated

11.9.1991 Annexure-4 to the writ petition. It is alleged that the petitioner was acquitted in the criminal case vide judgment dated criminal case vide

judgment dated 18.3.1993, Annexure-11 to the writ petition which became final.

5. On being acquitted in the criminal case the petitioner wrote a letter dated 19.5.1990 requesting for reinstatement vide Annexure-12 to the writ

petition. However, the enquiry proceeded. The petitioner also made a request that all the documents supplied to him were not certified copies and

hence certified copies should be given to him.

6. Annexure-13 is copy of the proceedings of the Enquiry Authority and it is mentioned therein that the photocopies of the document had already

been made available to the petitioner at the preliminary hearing on 12.12.1991. The Assistant General Manager vide letter dated 27.7.1993,

Annexure-14 to the writ petition rejected the petitioner's request for certified copies of the document. Aggrieved by the order dated 27.7.1993,

the petitioner filed a writ petition in this Court being Writ Petition No. 22597 of 1993, challenging the disciplinary proceedings. This petition was

disposed of by judgment dated 27.5.1993, Annexure-15 to the writ petition.

7. The Presenting Authority found the petitioner guilty of the charged levied against him and submitted a report dated 14.10.1994, Annexure-17 to

the writ petition. The petitioner filed an objection dated 7.12.1994 to the report of the Presenting Authority dated 14.10.1994. True copy of the

objection is Annexure-26 to the writ petition. However, the Enquiry Authority approved the report of the Presenting Officer and passed an order

dated 6.3.1995 holding the petitioner guilty of the charge. True copy of the order dated 6.3.1995 is Annexure-27 to the writ petition.

8. Thereafter the Deputy General Manager issued letter dated 10.4.1995 granting petitioner 15 days time to file objection to the report of the

Enquiry Authority vide letter dated 10.4.1995, Annexure-28 to the writ petition. The petitioner filed objection dated 17.5.1995 vide Annexure-29

to the writ petition. Ultimately by order dated 15.8.1995 the petitioner was dismissed from service vide Annexure-30 to the writ petition.

9. Aggrieved by the dismissal order the petitioner filed an appeal on 20.11.1995 vide Annexure-31 to the writ petition but the same was rejected

by the General Manager vide order dated 17.7.1996, Annexure-32 to the writ petition.

10. It is alleged at Paragraph 42 of the writ petition that the entire proceedings and enquiry are vitiated on the sole ground that the petitioner had

never been shown or permitted to inspect the original document, namely, the cheque which is alleged to have been encashed by the petitioner. The

enquiry proceeded on the basis of the photocopy of the cheque which was neither authenticated nor certified. It is alleged that the reliance on the

photostat copy was not permissible and it was not admissible.

11. In Paragraph 43 of the writ petition it is alleged that the enquiry was initiated on the basis of the complaints filed by Sri A.M. Kadam and Sri

Nagesh Nayak. copies of which are Annexures 23 and 24 to the writ petition. It is alleged that the report of the Investigating Officer shows that

both boys were illiterate though Nagesh Nayak states that he could write his name, in block letters in English. From a perusal of the cheque it is

alleged that Nagesh Nayak has signed his name in perfect English and in joining hand. It is alleged that this not only raises a doubt but is beyond

speculation that the complaint made by Nagesh Nayak written in Marathi script had been dictated and not signed by Nagesh Nayak. It is alleged

that the signature of Nagesh Nayak appended at the end of the complaint appears to be fabricated if compared with the signature on the cheque

which is alleged to have been encashed by the petitioner. It is alleged that the date on the complaint of Nagesh Nayak has been interpolated and is

not readable. Similarly the complaint of Sri A.M. Kadam is also in Marathi script and bears his signature at the end of the complaint. It is alleged

that the signature appended by Sri A.M. Kadam in the complaint differs immensely from the signature affixed at the back of the cheque which has

been alleged to have been encashed by the petitioner. It is alleged that the date of the complaint of Sri A.M. Kadam is 25.11.1989 but the same

has been received by the Bank on 25.2.1990.

12. It is alleged in Paragraph 45 of the writ petition that the crucial question involved in the writ petition was whether the petitioner had forged the

signature of Sri A.M. Kadam to encash the cheque which can only be proved by a handwriting expert. It is alleged that the handwriting expert Sri

J.K. Aher. Assistant State Examiner of Documents, CID, Bombay has given an opinion that the writing ""A.M. Kadam"" on the back of the cheque

was not of the petitioner. However, Sri Aher reserved any further opinion in the absence of the original documents. It is alleged that the original

cheque having been lost by the police would give benefit of doubt to the petitioner. It is alleged that though the Investigating Officer had proposed

to get the opinion of the handwriting expert yet neither the Presiding Officer nor the Disciplinary Authority nor the Appellate Authority found it

necessary to call for the opinion of a handwriting expert. It is alleged that had the opinion of a handwriting expert be taken it would have been

shown that the petitioner was innocent.

13. It is alleged that the entire proceeding smacks of victimisation and mala fide and violation of natural justice.

14. A counter-affidavit has been filed and we have perused the same. In Paragraph 7 of the same it is alleged that the petitioner was given

Photocopies of the original complaint letters given by Sri A.M. Kadam and Sri Nagesh Nayak. The petitioner was also asked to inspect the

documents. It is alleged that the Enquiry Officer rightly rejected the defence documents at Serial Nos. 1 to 9 by letter dated 15.2.1994 as they

were not at all relevant to the departmental proceedings and pertained to a case filed by the petitioner before the Metropolitan Magistrate,

Mazgaon, Bombay. It is further alleged that the Enquiry Officer has only given a suggestion to seek handwriting expert opinion. However, the

handwriting expert did not express any definite opinion and the Bank did not find it necessary to rely on it. It is alleged in Paragraph 8 of the

counter-affidavit that the Presenting Officers brief was complied after going through the entire record during the enquiry and was not based on any

particular statement.

15. In Paragraph 9 of the counter-affidavit it is stated that the original document which was subject-matter of the enquiry was lodged with the

Police by the respondent Bank. The Mazgaon Branch of the Bank made all efforts to procure the original document before commencement of the

enquiry. However, they were informed by the Police Authorities that the original was not available. Hence instead of original documents the Bank

made available to the petitioner photocopies of such documents. The Bank deputed an officer for getting the original documents from the Police

but inspite of its best efforts it could not obtain the original documents from the Police. Hence the Enquiry Officer commenced the enquiry after

satisfying himself that the necessary action/efforts have been taken by the Branch in accordance with the High Court judgment dated 27.5.1993,

Annexure-15 to the writ petition.

16. It is alleged by the respondent that during the enquiry Nagesh Nayak was produced as the management witness and he was made available for

cross-examination. If the signature of Sri Nayak appearing on the complaint was a fabricated one that could have been proved during the course of

examination. Though the date appearing on the complaint given by Sri Nayak is not readable but Sri Nayak has identified the complaint given by

him. Sri Kadam was also produced as a management witness and the petitioner could have cross-examined him about the matter of any difference

in the signature. The complaint letter dated 25.11.1989 was received by the respondent branch on 25.2.1990. In Paragraph 11 of the counter-

affidavit it is stated that Sri T.V. Bhakai during the enquiry confirmed that the cash of cheque of Rs. 18,710 was collected by the petitioner who

had directed him to note the nomination of cash payment/token of the two cheques, i.e., cheque of Rs. 300/- drawn by Sri Kashyap himself and

cheque of Rs. 18710/- separately even though only one token was given by Sri Kashyap for both the cheques. In Paragraph 12 it is stated that

Smt. Meena Parikh was produced as management witness and she gave evidence about her knowledge of the facts.

17. In Paragraph 13 of the counter-affidavit it is stated that the petitioner was given permission to inspect photocopies of the original documents

submitted by the management except certain document which was lost in the Police Custody. The management made its best efforts to get these

documents from the Police but could not succeed as they were lost in the Police Custody. The Enquiry Officer after satisfying himself that it was

not possible to get back the lost documents commenced the enquiry. It is alleged that the acquittal in the criminal trial does not vitiate the enquiry

because the standard of proof in the two proceedings are different.

18. In Paragraph 24 it is alleged that the enquiry proceedings were conducted in accordance with the due procedure and there was no mala fide or

illegality. The procedure was in accordance with the Canara Bank Officers and Employees (Disciplinary and Appeal) Regulation, 1975.

19. A rejoinder-affidavit has also been filed and we have perused the same.

20. In our opinion, there is no merit in this petition. It may be mentioned that in a writ petition this Court cannot go into findings of fact. It can only

interfere with the findings of the Enquiry Authority where there is an error of law apparent on the face of the record.

21. We have carefully perused the enquiry report dated 6.3.1995 Annexure-27 to the writ petition. In this enquiry report the Enquiry Officer has

considered the evidence and has found the petitioner guilty of the charges. The witnesses examined in the enquiry included the complainant Sri

N.K. Nayak and Sri A.M. Kadam, Cashier Sri T.V. Bakhai and Special Assistant Mrs. Meena Parekh. The enquiry report mentions a list of ten

documents presented on behalf of the management and states that the Bank furnished all the documents relied upon in the enquiry to the petitioner

and the petitioner was given inspection of most of the original documents except the cheque, paying slip and counter foil which were lost in Police

Custody. It also states that serious efforts were made by the management to procure the original documents, but as more than four years had

elapsed since the issue of charge-sheet the Enquiry Authority ruled that the enquiry should be conducted forthwith without any delay.

22. In our opinion, no exception could be taken to the procedure followed by the Enquiry Authority. It is well-settled that the rules of natural

justice are not a straight jacket formula but are flexible vide Union of India and Another Vs. Tulsiram Patel and Others, (Para 101); Hira Nath

Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, ; The Maharashtra State Financial Corporation Vs. M/s.

Suvarna Board Mills and another, State Bank of Patiala and others Vs. S.K. Sharma, etc.

23. It may also be mentioned that in a Departmental Enquiry the Enquiry Officer is not bound by the strict rule of evidence and procedure

contained in the Evidence Act or C.P.C. vide Union of India (UOI) Vs. T.R. Varma, (vide Para 10); Tannery Footwear Corporation v. State of

U.P. 1980 (40) FLR 138 ; State Bank of Bikaner and Jaipur Vs. Srinath Gupta and another, Yeshwant Redkor v. Hindustan Petroleum

Corporation 1997 LIC 3137 (Bom); Kuldip Singh v. State of Punjab 1997 LIC 147 (SC); etc. Hence we see no illegality in giving the petitioner

photocopies of the documents which were lost in Police Custody. What more could the respondent do ? We are of the opinion that the petitioner

did not suffer any prejudice on this account and hence he cannot have any complaint.

24. The Enquiry Authority has considered the evidence of all the witnesses in his report including the submissions made in this writ petition and has

dealt with all of them.

25. In the enquiry report the Enquiry Authority has also relied on the material collected and opinion of the Investigating Officer Sri H.P. Gala who

has mentioned that the handwriting on the paying slip, counter foil and the handwriting on the cheque and the signature on the cheque seems to be

of one person only. He has also mentioned that the counter foil was not initialled by the Concerned Officer. He has further stated that the cheque

accepted by transfer was drawn as bearer and subsequently passed by cash payment by the same officer who had accepted the cheque by

transfer. The entries in the pass book being hardly two or three, the officer should have got the same done immediately or requested the customer

to wait for 10-15 minutes as is the normal procedure in the branch but that was not done. Similarly the evidence of the other witnesses has also

been considered by the Enquiry Officer and he has found the petitioner guilty of misappropriating the proceeds of Cheque No. 888322 for Rs.

18710/- as charged.

26. These are findings of fact and we cannot interfere with the same in writ jurisdiction as this Court does not sit as Court of Appeal under Article

226 of the Constitution.

27. In our opinion, mere non-examination of a handwriting expert would not vitiate the enquiry. It all depends on the facts and circumstances of

each case. Shri H.P. Gala, the Investigating Officer has compared the signatures. Moreover, in the present case, the complainant Sri Kadam and

Sri Nayak have themselves appeared as witnesses in the enquiry and their version has been believed. In writ jurisdiction we cannot reassess or re-

appreciate the evidence. As long as there is some evidence in support of a finding of fact this Court cannot interfere on the ground that the

evidence was inadequate.

28. The petitioner was given permission to inspect photocopies of the original documents submitted by the management except the documents

which were lost from the Police Custody. The management had made its best efforts to obtain the originals from the Police Custody but could not

succeeds. We cannot understand what more the management could have done in this connection. As already stated above, the strict rules of

Evidence Act and C.P.C. are not applicable to departmental proceedings. Thus, in *Union of India v. T.R. Verma* (supra) the Supreme Court

observed ""If these rules (the rules of natural justice) are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in

the Evidence Act for taking evidence was not strictly followed."" Similarly, in *State Bank of Bikaner and Jaipur v. Srinath Gupta* 1996 (74) FLR

2739 (SC), the Supreme Court observed :--

It is now well-settled that strict rules of evidence are not applicable and are not required to be followed in a domestic enquiry.

29. Hence in absence of the original documents photocopies could be produced and they could be read as evidence, vide *State of Maharashtra*

and another *Vs. Madhukar Narayan Mardikar*, (Vide Para 6).

30. The petitioner was given photocopies of the original complaint letters given by Sri A.M. Kadam and Nagesh Nayak and these persons were

also produced in the enquiry. Copies of these complaints are Annexures-23 and 24 to the writ petition and the English translation are Annexures

23-A and 24-A (the original complaints appear to be in Marathi Script). The petitioner was also given opportunity to cross-examine these

witnesses.

31. In our opinion, every minor technical mistake will not vitiate a Departmental Enquiry, otherwise no Departmental Enquiry can ever be held to

be valid. In the present case, opportunity of hearing was given to the petitioner and he was found guilty of the charges. Hence in our opinion, he

has right been dismissed.

32. It has been held by the Supreme Court in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, that for misappropriation of

money the only punishment can be dismissal even if misappropriation is of a small amount. Hence the petitioner was rightly dismissed.

33. It may be mentioned that it has repeatedly been held by a series of decisions of the Supreme Court and of this Court that in a Bank the highest

standards of integrity and devotion to duty have to be maintained by employees because a Bank runs on public confidence vide Union Bank of

India Vs. Vishwa Mohan, Sudhir Singh v. District Co-operative Bank 2003 AU 1213; Ram Pratap Sonkar v. Allahabad Bank 2000 ALJ 2510;

K.K. Singh v. Gomti Gramin Bank 2002 ALJ 480; Prakash Chandra Bansal v. General Manager, Writ Petition No. 19658 of 2001, decided on

13.12.2001, etc. In fact greater integrity and devotion to duty is required from Bank employees as compared to the employees of other

organisations vide V.K. Bahadur v. State Bank of India 2000 (4) ESC 796 . Any leniency shown in such matters would be wholly uncalled for

vide Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik,

34. In fact in State Bank of India and others Vs. T.J. Paul, the Supreme Court held that in the case of Bank employees even if there was no actual

loss to the Bank, the employee could be punished for negligence. 35. Writ jurisdiction is discretionary jurisdiction and hence we are not bound to

interfere even if there is technical violation of the rules vide Chandra Singh Vs. State of Rajasthan and Another, , where it was observed (vide Para

43):

Issuance of a writ of certiorari is a discretionary remedy Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, . The

High Court and consequently this Court while exercising jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an

illegal order although it would be lawful to do so.

36. Similarly in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, (Vide Para 10), the Supreme Court observed :

The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a

legal point.

37. Hence even assuming that there was some technical violation of the rules relating to the procedure of the enquiry we are not inclined to exercise

our discretion under Article 226 of the Constitution as we are of the opinion that no serious prejudice has been caused to the petitioner. It may be

mentioned that to obtain a writ the petitioner has not only to show violation of law but he must also show that some prejudice was caused to him. If

there is mere violation of law but there is no serious prejudice against the petitioner this Court under Article 226 shall not interfere merely because

of that violation, as writ is a discretionary remedy, vide State Bank of Patiala and others Vs. S.K. Sharma,

38. In this case no serious prejudice was caused to the petitioner in the departmental enquiry and hence even assuming that there was any technical

violation of the procedural rules we are of the opinion that this is not a fit case for exercising our discretion under Article 226.

39. For the reasons given above we find no force in this writ petition and it is dismissed.