

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 5731/2002**

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**Date of decision: 1<sup>st</sup> July, 2010**

**ASHOK KUMAR MONGA**

..... Petitioner

Through: Mr. Sanjoy Ghose & Mr. Anuj Aggarwal, Advocates.

Versus

**UCO BANK & ORS.**

.... Respondents

Through: Mr. Rajesh Rattan, Advocate.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner seeks quashing of the report dated 22<sup>nd</sup> September, 2000 of the Inquiry Officer, order dated 29<sup>th</sup> November, 2000 of the Disciplinary Authority of the respondent Bank dismissing the petitioner from service and the order dated 2<sup>nd</sup> February, 2001 of the Appellate Authority of the respondent Bank dismissing / rejecting the appeal of the petitioner against the order of dismissal. The petitioner also claims a writ of mandamus commanding the respondent Bank to reinstate him with full salary, allowances and consequential benefits etc. The act of misconduct for which the petitioner has been dismissed from service otherwise relates back to 23<sup>rd</sup> March, 1981, discovered on 2<sup>nd</sup>/3<sup>rd</sup> March, 1982; the petitioner was suspended from service w.e.f. 7<sup>th</sup> April, 1982 and charge sheeted on 5<sup>th</sup> December, 1983. The petitioner was dismissed from service vide

order dated 30<sup>th</sup> May, 1985 of the Disciplinary Authority and the appeal then preferred by the petitioner dismissed on 23<sup>rd</sup> August, 1985. The petitioner then preferred W.P.(C) No.1982/1987 in this Court and which was allowed on 31<sup>st</sup> August, 1999 on technical grounds of the likely bias of the then Inquiry Officer and of the official who had then passed the order of the dismissal of the petitioner being not the Disciplinary Authority of the petitioner under the rules. A review petition was then filed by the respondent Bank; vide order dated 11<sup>th</sup> February, 2000 the respondent Bank was permitted to hold fresh inquiry against the petitioner as per the charge-sheet already served. Thereafter, a fresh inquiry proceeding was initiated against the petitioner and the inquiry report, order of Disciplinary Authority and order of Appellate Authority, impugned in the present petition, came to be made / passed.

2. The incident relates to the Chawri Bazar Branch of the respondent Bank described by the petitioner himself as a very small branch. The petitioner had a long stint in the said branch having been posted there from 1967 till 1976 and then again from 1977 till his suspension and termination as aforesaid. The fact that the incident occurred is also not in dispute. The incident was of issuance by the said branch of the Bank of three Fixed Deposit Receipts (FDRs) for a short period of 46 days of Rs.20,000/- each without receipt of any money and encashment thereof immediately after the expiry of the said 46 days. The person in whose name the FDRs were issued turned out to be a fictitious person. It is also not in dispute that there was a corresponding fudging of the accounts and the incident aforesaid came to light when holder of other FDRs issued by the said branch of the respondent Bank, presented the same for payment; however as per

the respondent Bank's record (and which was found to be fudged) the other FDRs had been shown as already paid prior to the date of their maturity. The amount of the FDRs of the said genuine holder had been shown in the records of the respondent Bank as the FDRs in favour of the fictitious person aforesaid. To the said extent, there is no dispute. The dispute raised by the petitioner is only of his role in the incident aforesaid.

3. With respect to the aforesaid role, it is also not in dispute that the FDRs were signed by the petitioner as Accountant and countersigned by the Manager of the respondent Bank. The specimen signatures of the fictitious person had also been obtained by the petitioner and verified by him. The petitioner claims to have done the same on the basis of the "Transfer Credit Voucher" received from the Deposits Department. The Inquiry Officer has also found that the entries in the books of the respondent Bank which were found to be fudged to have been so fudged by the petitioner.

4. The emphasis of the petitioner in the written synopsis dated 21<sup>st</sup> May, 2009 on record and even otherwise in the oral arguments is on the respondent Bank having not taken any action against Shri Mohan Jotwani, the then Manager who was the joint signatory of the FDRs and even against Shri Satish Kumar, the then Clerk who prepared the FDRs and Shri Santosh Mehrotra, the then Special Assistant in the branch who obtained and verified the signatures of the fictitious person and ultimately paid the money to him in encashment of the FDRs or even against Shri P.D. Ramchandani, the then Officer-in-Charge also involved in releasing payments under the FDRs. The counsel for the petitioner contends that

the said persons along with the petitioner were involved in the general handling of events ranging from preparation to encashment of the FDRs and the petitioner has been discriminated against. Strong reliance in this regard is placed on the recent Division Bench judgment of this Court in *M.L. Kalra Vs. UOI* 2009 I AD (Delhi) 798. However I find that an earlier Division Bench of this Court in *Ved Prakash Malhotra Vs. State Bank of India* MANU/DE/0303/1973 (and which was unfortunately not cited before the Division Bench in *M.L. Kalra* (supra)) held that “Even if it is assumed that all of them had been equally responsible, the action taken against the petitioner does not become discriminatory merely because similar action was not taken against the others. All that the petitioner could be allowed to urge is that action should be taken against the others. He cannot urge that action should not be taken against him for that reason.” The Supreme Court in *State of Madhya Pradesh Vs. Ramesh Chandra Bajpai* 2009 (13) SCC 635 has also held that one illegality cannot form the basis of another. In my view, it is no argument in law that because one thief has been let off or let off lightly, the other one also should be.

5. As far as *M.L. Kalra* is concerned, the finding of the Division Bench in para 26 of the judgment is of M.L. Kalra in that case having been made a scapegoat for the omissions and commissions of the members of the Board of Directors of the bank in that case, who had expressly granted sanction for the loan. Here, there is no case of the petitioner having been made a scapegoat for the sins of another. The petitioner was admittedly a part of the transaction causing loss to the respondent Bank.

6. The counsel for the petitioner has filed before this Court, the following other judgments on the aspect of victimization/parity in punishment:-

- (i) ***Sengara Singh Vs. State of Punjab*** (1983) 4 SCC 225.
- (ii) ***E.S. Reddi Vs. Chief Secretary, Government of Andhra Pradesh*** (1987) 3 SCC 258.
- (iii) ***Director General of Police Vs. G. Dasayan*** (1998) 2 SCC 407.
- (iv) ***Anand Regional Coop. Oil Seeds Grower's Union Ltd. Vs. Shaileshkumar Harshadbhai Shah*** (2006) 6 SCC 548.

However, the same also do not support the contention of the petitioner. In ***Sengara Singh*** (supra) the question of pick and choose for reinstatement after mass dismissal was in question. The action impugned was of discretion in reinstatement. In ***E.S. Reddi*** (supra) it was only held that if the Court is *prima-facie* satisfied, it is competent to advise to take similar adverse action against the other equally culpable officers also. In ***Director General of Police*** (supra), the Supreme Court varied the punishment of dismissal from service to that of compulsory retirement for the reason of the same having been meted out to a co-delinquent officer. No general principle was laid down. Again, in ***Anand Regional Coop. Oil Seeds Grower's Union Ltd.*** (supra), some of the co-accused were permitted to take the benefit of voluntary retirement scheme. In such circumstances it was directed that the other delinquent in that case should also be given the same benefit. Thus it would be seen that none of the aforesaid judgments support the contention of the counsel for the petitioner.

7. Else, the scope of judicial review of disciplinary proceedings is limited. Though the counsels for the parties along with their respective synopses of submissions have filed a number of judgments, I find that as far back as in *State of Andhra Pradesh Vs. Sree Rama Rao* AIR 1963 SC 1723 reiterated in *State of Andhra Pradesh Vs. Chitra Venkata Rao* AIR 1975 SC 2151 it was laid down that the High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry; the Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. It was further held that where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence; the High Court may interfere where the departmental authorities have held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the merits of the case or by allowing / letting themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion—the departmental authorities, if the inquiry is otherwise properly held, are the sole judge of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be

permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

8. In the present case, from the first plea of the petitioner hereinabove considered, it would be apparent that the involvement of the petitioner in the transaction causing loss to the respondent Bank is not disputed. The departmental authorities after giving opportunities to the petitioner have held the petitioner responsible for the same. The argument of the counsel for the petitioner also hereinabove dealt with was that the other parties to the transaction have not been proceeded against. Such findings of the disciplinary authority are incapable of interference.

9. The counsel for the petitioner, however fully aware of the legal position aforesaid, has chosen to pick holes in the proceedings of the disciplinary enquiry and has sought to contend that a fair opportunity was not given to the petitioner and/or the principles of natural justice were not followed. It is contended that:-

- (a) The FDRs in question were prepared on the basis of "Transfer Credit Vouchers" i.e. of transfer of funds from the existing Bank account of the fictitious person aforesaid into the fixed deposit; the said vouchers were not produced inspite of demand of the petitioner and were stated to have been misplaced.

There is, however no merit in the said contention. It was mentioned in the charge-sheet itself that the said vouchers were missing and not found. The then Manager, of course in his evidence deposed that he had signed the FDRs after perusing the vouchers.

The counsel for the petitioner contends that an inquiry ought to have been held as to how and when the vouchers went missing. The Inquiry Officer has held that though the Manager has deposed about the vouchers but there was no corresponding debit voucher to the said credit and when there was no corresponding debit voucher, the credit voucher had to be a fictitious one and the FDRs issued on the said vouchers were admittedly issued to a fictitious person. The inquiry report also deals with the contention of the petitioner of having signed the specimen signature card on the basis of the signatures on the credit voucher. It has been held that the signatures on the credit voucher are never verified signatures and only the signatures on a debit instrument are verified. The deposition of the petitioner in this regard has been held to be incapable of reliance in view of the practice and procedure of the respondent Bank.

- (b) It is contended that the documents regarding encashment of the FDRs in question were wrongly denied. It is contended that the same would have the signatures of the fictitious person.

I do not find any such error in the same also so as to invalidate the departmental proceedings. The charge against the petitioner was of making the FDRs without the receipt of consideration thereof and verifying the signatures on the specimen signatures card without establishing the identity of the person. Once the FDRs had been issued, they were bound to be encashed and were encashed in the normal course of business of the respondent

Bank. It is significant that the petitioner has not been able to set up any case of who else, if not him, was responsible and as to why or who was interested in framing him as alleged.

- (c) The counsel for the petitioner has next contended that even the documents which the Enquiry Officer had directed to be produced were not produced/given and contended the same to be definitely prejudicial and an error in the departmental proceedings so as to vitiate the same. It is contended that the credit vouchers aforesaid were directed to be furnished but neither furnished nor any enquiry conducted as to why and in what circumstances the same went missing.

In the entirety of the facts aforesaid and when the documents were informed to be missing at the time of charge sheet itself, the direction even if any of the Inquiry Officer for production of the said documents and non-compliance of the said direction would not vitiate the enquiry.

- (d) It has also been suggested that the relevant documents could not be denied to the defence merely for the reason that they are not mentioned in the charges sheet. It is urged that the report of Central Forensic Science Laboratory (CFSL) was not produced and in the absence thereof facts could not be appreciated.

The counsel for the petitioner at the time of hearing has handed over a copy of the said report. The CFSL was unable to

give opinion as to whether the cutting in the books of the respondent Bank regarding fudging of the accounts was in the handwriting of the petitioner or not. The Inquiry Officer however on the basis of other evidence led before him, has held the cutting to be in the hand of the petitioner and as aforesaid the said factual finding of the Inquiry Officer cannot be interfered with. It is not as if it is based on no evidence whatsoever.

- (e) In the memorandum of the writ petition a ground has also been taken of the Inquiry Officer having permitted the respondent Bank to produce documents on five occasions and not having disallowed any of the documents of the respondent Bank. It is also a ground that the examination and cross-examination of witnesses of the petitioner was started on the same day when the examination of the witnesses of the respondent Bank was completed; that only some of the documents have been considered; that the Inquiry Officer was biased for the reason of examining the Presenting Officer as a witness and for the reason of referring to the petitioner as an “ex-officer” and having not given opportunity to the petitioner to state his defence orally or in writing.

Though the said grounds were not urged in oral hearing but no merit is found therein.

10. The counsel for the respondent Bank during the course of hearing has also handed over the relevant extracts of the Manual of Instructions of the respondent

Bank to contend that the dealings of the petitioner were contrary to the instructions which he was required to follow.

11. The FDRs though required to be signed by the Manager of the branch are always prepared by another official who puts up the same for signature of the Manager. Merely because the Manager has also countersigned the FDRs, it would not follow that the official primarily charged/entrusted with the valid preparation of the FDRs is absolved of his responsibility. The counsel for the petitioner has repeatedly urged that the branch was a small branch. If that be so, nothing prevented the petitioner, even if the credit vouchers had been prepared and sent by his colleagues to find out as to whether the money had been received or not. The action of the petitioner of preparing the FDRs without consideration is definitely the stage which links the petitioner to the incident and the findings in the departmental proceedings of the petitioner being wholly responsible in the same is incapable of interference here. Admittedly, the signatures on the specimen card are of the petitioner only. There is no explanation as to on what basis the petitioner verified the signatures of the specimen card. All these constitute sufficient material proof for the conclusion, reached by the Inquiry Officer and the Disciplinary Authority, of the petitioner being definitely linked to the incident and the opinion formed by the departmental authorities is a possible opinion on the basis of the said material.

12. Even otherwise, the Supreme Court recently in *Union of India Vs. Alok Kumar* MANU/SC/0269/2010 after a review of the case law has held that “To frustrate the departmental inquiries on a hyper technical approach has not found

favour with the Courts in the recent times”. It was held that if upon admitted or indisputable facts, only one conclusion was possible then in such a case, non-observance of principles of natural justice was immaterial. It was held that every case has to be examined on its own merits and keeping in view the statutory rules applying to such departmental proceedings. It was held that there must have been some real prejudice to the complainant and there is no such thing as a mere technical infringement of natural justice; the requirements of natural justice must depend on the facts and circumstances of the case, the nature of inquiry and the subject matter to be dealt with etc. The principles of natural justice and the theory of reasonable opportunity were held to be neither incantations to be invoked nor rites to be performed on all occasions. In the present case also, I do not find that the arguments raised have any relevance to the inquiry conducted nor non-compliance if any of the principles of natural justice caused any prejudice to the petitioner. The Supreme Court in *Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain* AIR 2005 SC 584, relied on by the counsel for the respondent Bank, has held that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with 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. The very discipline of a Bank was held to be dependent upon each of its officers acting and operating within their allotted sphere. The conduct of the petitioner in the present case is found wanting.

13. The counsel for the petitioner has also contended that the petitioner has now attained the age of superannuation and there is no possibility of his reinstatement. He is stated to be suffering from cancer and on which ground the application for early hearing was allowed. It is stated that the petitioner should be permitted to die honorably and the stigma should be obliterated and the punishment imposed on him should be modified to that of compulsory retirement. It was however admitted that the same would result in the petitioner drawing pension from the respondent Bank and to the prejudice of the respondent Bank. The aforesaid approach cannot be permitted. To do so, would be detrimental to the discipline and security of the establishment and would send a signal of those even guilty of fudging the accounts and misappropriating the moneys of the Bank being let off lightly. The Supreme Court in *Kanhaiyalal Agrawal Vs. The Factory Manager* AIR 2001 SC 3645 included the same as one of the principles to be considered by the courts. Else also, the principle enshrined in *Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy* AIR 2005 SC 2769 is that when an employer loses confidence in his employee particularly in respect of a person who is discharging a function of trust and confidence there cannot be any justification for directing his reinstatement. The said judgment applies on all fours to the facts of the present case.

14. The counsel for the respondent Bank has also pointed out that the petitioner soon after the encashment of the FDRs had deposited the cash in a bank account in the name of his brother. However, there is no evidence to the same effect.

15. The non-supply of any of the documents directed by the Inquiry Officer or refusal of some of the documents production whereof was sought by the petitioner is not shown to have caused any prejudice to the petitioner or affected the outcome of the inquiry.

16. There is, therefore no merit in the writ petition, the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**1<sup>st</sup> July, 2010**  
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