

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

Date of decision: 1st July, 2010.

+ **W.P.(C) No.5355/2000**

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SHRI S.P. ARORA

..... Petitioner

Through: Mr. K.K. Sharma, Sr. Advocate with
Mr. Rajiv Bakshi, Advocate.

Versus

SYNDICATE BANK & ANR.

.... Respondents

Through: Ms. Sumati Anand & Ms. Ananya Datta
Majumdar, Advocates.

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 by this writ petition seeks quashing of the order dated 15th May, 1999 of the Disciplinary Authority of the respondent Bank imposing the penalty of compulsory retirement on the petitioner and the order dated 19th August, 1999 of the Appellate Authority dismissing the appeal thereagainst. The petitioner also seeks quashing of the order dated 1st June, 1998 initiating the departmental inquiry against him as well as of the report dated 21st January, 1999 of the Inquiring Authority.

2. The petitioner was charged with, while functioning as Sub Manager in the Asaf Ali Road Branch of the respondent Bank during the period 20th June, 1991 and 11th May, 1994, failing to ensure that the Savings Bank balances are extracted periodically and tallied up to date and failing to ensure that while transferring the accounts from manual system to Automatic Ledger Processing Machine (ALPM), the correct balance was carried over in respect of all Savings Bank Accounts fed to ALPM. It was the charge of the respondent Bank that as a result of the said negligence of the petitioner Rs.5,46,455/- was carried over instead of actual balance of Rs.5,464.55p in SB Account No.26109 of one Shri Vipin Kumar Khandelwal, resulting in excess credit of Rs.5,40,990.45p in the said account and which amount the account holder withdrew, causing financial loss to the respondent Bank.

3. It is not in dispute that the loss aforesaid of Rs.5,40,990.45p was caused to the respondent Bank. The petitioner also admitted the same in his cross examination before the Inquiring Authority. The senior counsel for the petitioner at the time of hearing also informed that a sum of Rs.2.5 lacs had already been recovered by the respondent Bank by filing a case against the said party.

4. The Disciplinary Authority of the respondent Bank found that not only had the petitioner failed to ensure the tallying of the balances but had

also authorized/signed the voucher transferring the Savings Bank Account from the manual system to the ALPM system without verifying the list containing the details of the accounts transferred to the ALPM and that though the excess credit was lying in the Savings Bank account untouched for more than four months, the petitioner failed to make any efforts to tally/cause to be tallied Savings Bank Account and to rectify the error. The contention of the petitioner that he had not authorized the entry was found to be against the facts on the record in as much as the debit slip was found to bear the initials of the petitioner; the same was held to be confirmation that the petitioner had seen, checked and verified its correctness. The contention of the petitioner that it was a feeding mistake was rejected because the petitioner was expected to ensure extraction and tallying before transferring to the ALPM and immediately after transferring the same as laid down in the ALPM Manual. The Disciplinary Authority held the petitioner to have shown laxity, indifference and negligence in the matter.

5. The scope of judicial review of disciplinary proceedings is limited. As far back as in *State of Andhra Pradesh Vs. Sree Rama Rao* AIR 1963 SC 1723 it was held that the High Court under Article 226 is not a Court of Appeal over the decision of the authorities holding a departmental inquiry; the Court is concerned only to determine whether the inquiry 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 inquiry 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 evidence and 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 enquiry is otherwise properly held, are the sole judges 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. The judgments below-mentioned relied upon by the senior counsel for the petitioner themselves lay down the Rule regarding the limited scope of judicial review in a departmental inquiry. The counsel for respondent Bank has in this regard also placed reliance on *Praveen Bhatia Vs. Union of India* (2009) 4 SCC 225.

6. Upon the same being put to the senior counsel for the petitioner, he contended that the documents asked for were declined. Attention in this regard is invited to Annexure-G to the writ petition being a letter dated 7th November, 1998 of the petitioner to the Inquiring Authority. It is contended that the inquiry was vitiated for the said reason.

7. The counsel for the respondent Bank contends that though the letter was written by the petitioner, but he did not make any grievance in this respect at any subsequent time. It is contended that all the documents were supplied and ultimately accepted during the inquiry proceedings and the non-supply immediately after the letter aforesaid of the petitioner has not caused any prejudice to the petitioner. It is also highlighted that even in the departmental appeal preferred by the petitioner, no grievance with respect thereto was made. The senior counsel for the petitioner has also not been able to show any prejudice suffered by the petitioner therefrom.

8. Though the senior counsel for the petitioner in this regard has relied on *State of T.N. Vs. Thiru K.V. Perumal* (1996) 5 SCC 474 and *State of U.P. Vs. Shatrughan Lal* (1998) 6 SCC 651 but the same turn on their own facts. In the present case no breach of Regulations qua inquiry or of principles of natural justice causing prejudice to the petitioner has been established. 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 enquiries 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 that, 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.

9. In the present case, the incident causing loss to the respondent Bank is not in dispute and the presence of the petitioner as Sub Manager in the concerned respondent Bank is also not controverted. The only question is of the role if any of the petitioner in the said incident. However, the findings of the Disciplinary Authority of the said role of the petitioner cannot be interfered with in these proceedings. All that this Court can enquire into is that, it is not a case of a finding based on no evidence. In this connection, the counsel for the respondent Bank draws attention to the cross examination of the petitioner,

where the petitioner has admitted his initials on the transfer vouchers. It was expressly put to the petitioner that as an experienced officer (with 27 years' service in the Bank) he was fully aware that the initials were intended to give effect to the transaction and in token of correctness thereof. The only answer which the petitioner could muster was that the same were at the instance of Electronic Data Processing personnel who were given the task of transferring the Saving Bank Account from the manual system to the ALPM. The said explanation of the petitioner has not been accepted by the Disciplinary Authority and the Appellate Authority and in my considered opinion rightly so. The same links the petitioner directly to the misconduct and thus the present cannot be said to be a case of the finding of guilt of the petitioner being based on no evidence or being perverse. A senior official of the Bank, as the petitioner was at the relevant time, cannot explain away his signatures / initials by contending the same to be at the instance of his junior. A senior officer is required to sign/verify a document only to ensure and sanction the action of the junior. If the senior official instead of satisfying himself of the correctness of the transaction relies on his juniors and/or acts on their representations then in the event of a loss to the Bank and of the public monies, the said senior official cannot shrug responsibility by blaming the juniors. If that were to be permitted, there would have been no need for verification and vesting the responsibility in such senior official.

10. The Supreme Court in *Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain* AIR 2005 SC 584 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. The counsel for respondent Bank has in this context also relied on *UCO Bank Vs. Hardev Singh* 2006 (11) SCALE 88 and *Nahar Singh Vs. Food Corporation of India* (2008) 5 SCC 209.

11. The senior counsel for the petitioner next contended that the duties of the petitioner as the Sub Manager did not include the responsibility qua tallying of the accounts. During the course of hearing, sheets from the Manual of the respondent Bank qua duties of various officials were handed over. In the absence of any pleadings to the said effect, no weightage can be given thereto. Moreover, it is inexplicable, if it was not a part of the duties of the petitioner, why the petitioner verified and signed the transfer vouchers.

12. The last contention of the senior counsel for the petitioner is that the punishment meted out to other officials also chargesheeted qua the same transaction was of withholding of three or two annual increments only and the

petitioner has been discriminated against. The counsel for the respondent Bank has rightly responded that in the absence of the documents qua the proceedings against the other officials, the said contention cannot be raised. Even if that were to be so, I find that a Division Bench of this Court in *Ved Prakash Malhotra Vs. State Bank of India* MANU/DE/0303/1973 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.

13. The Supreme Court in *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy* AIR 2005 SC 2769 held 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 force to the facts of the present case.

There is no merit in the writ petition; the same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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