

THE HONOURABLE JUSTICE G. SRI DEVI

W.P. No. 16625 of 2009

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus declaring the Orders passed by the 2nd respondent vide RO1/GR1/DP/37 dated 06.04.2009 discharging the petitioner from the services of Bank with all benefits and treating the period of suspension as not spent on duty and the consequential order vide No.DGM(H)/DP/267 dated 18.06.2009 passed by the 3rd respondent confirming the orders passed by the 2nd respondent, as being illegal and contrary to the Bipartite Settlement.

Brief facts of the case are that the petitioner was appointed as Cashier-cum-Clerk in State Bank of Hyderabad on 22.06.1989 and thereafter he was posted as Single Window Operator at Saidabad Branch of the respondent bank. It is stated that the services of Cashiers-cum-Clerks/Single Window Operators are governed by various

Awards/Bipartite Settlements arrived at between the managements of various banks including the respondent bank and their Workmen represented by their associations. While the petitioner was working as Single Window Operator on 26.02.2007, one S.Visweswara Rao having Savings Bank Account bearing No.52012448908 in Saidabad branch had given a complaint stating that he deposited an amount of Rs.10,500/- on 16.01.2007 and that on the same day there was a cash withdrawal of Rs.20,000/- from his account which he had not withdrawn and as such he requested the Branch Manager to examine the matter and to credit the amount to his account. On the same day, the said Visweswara Rao had given another letter dated 26.02.2007 withdrawing the said complaint which he had given earlier. However, without taking into consideration the subsequent letter of withdrawal of the complaint given by the said account holder, the 2nd respondent vide his letter dated 26.02.2007, placed him under suspension pending further

investigation and disciplinary action. Thereafter, the 2nd respondent vide letter dated 07.03.2007 had called for explanation of the petitioner regarding the irregularities said to have been committed by him on 16.01.2007 and that the petitioner had submitted his explanation dated 14.03.2007 denying the allegation alleged against him. Thereafter, the 2nd respondent vide letter dated 18.06.2007 had served a charge sheet-cum-show cause notice stating that the explanation of the petitioner was not satisfactory and as such initiated disciplinary action for gross misconduct against the petitioner under provision 5 (j) of the Memorandum of Settlement dated 10.04.2002. Subsequently, the petitioner has submitted his written statement vide letter dated 05.07.2007 stating that the subject payment was genuine and backed by appropriate withdrawal letter from the account holder and that the said statement was not accepted by the 2nd respondent and as such he ordered enquiry. Thereafter, the 4th respondent-Enquiry Officer submitted his Enquiry

Report dated 10.01.2008 stating that the charges were not established against the petitioner. Thereafter, the 2nd respondent deferred from the findings of the Enquiry Officer and arrived at his own findings vide his orders dated 24.06.2008 and issued a show cause notice to the petitioner, to which he has submitted his explanation vide letter dated 11.08.2008. It is further stated that the account holder, who was examined as MW3, had clearly stated that the payment was genuine and has been supported by his withdrawal letter given to his friend and, therefore, the finding of the 2nd respondent regarding charges are perverse and without evidence. It is further stated that vide letter dated 25.03.2009, the 2nd respondent had issued a show cause notice to the petitioner asking him to show cause as to why the punishment for discharge should not be imposed on him. The petitioner vide his letter dated 31.03.2009 submitted his explanation stating that without proper appreciation of evidence on record and the Enquiry Report, issued the show

cause notice and that it is arbitrary and against all principles of natural justice. Thereafter, the 2nd respondent vide orders dated 06.04.2009 awarded the punishment of discharge from service in terms of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. Aggrieved by the orders of the 2nd respondent dated 06.04.2009, the petitioner has preferred an appeal dated 22.04.2009 before the 3rd respondent. Thereafter, the 3rd respondent, vide his letter dated 18.06.2009, confirmed the orders of the 2nd respondent. It is further stated that there is no evidence adduced by the Management to prove any of the charges and that there is failure of principles of natural justice in passing the impugned orders by the 2nd and 3rd respondents. It is further stated that there is no financial loss as such to the respondent bank and that the punishment of discharge awarded to him is shockingly disproportionate to the offences charged and as such the impugned orders of the 2nd respondent dated 28.06.2008 and 06.04.2009 as well as the

orders of the 3rd respondent dated 18.06.2009 are liable to be set aside and consequently the petitioner has to be reinstated with all benefits.

A detailed counter-affidavit has been filed by the respondents 1 to 3 stating that the petitioner is governed by the employees Service Regulations and that the disciplinary proceedings have been initiated in accordance with the Settlement dated 10.04.2002 regarding disciplinary action which was taken against the employees. The petitioner was appointed as a Cashier-cum-Clerk on 22.06.1989 on compassionate grounds and he worked at Chikkadapally and Chaitanyapuri branches and on 01.11.2006 he was transferred to Saidabad branch as Single Window Operator and that his services during that period were not satisfactory. The petitioner was also warned for shortage of cash of Rs.1.04 lakhs on 12.02.2004 while he was working at Chaitanyapuri branch and that the cash was later adjusted by his father. The petitioner has also offered his guarantee to

a third person for availment of loan at Indian Overseas Bank, Secunderabad, in his personal capacity without obtaining prior permission of the competent authority and thus, the petitioner had a doubtful integrity in discharging his duties in the bank. It is further stated that the withdrawal form of one Sista Visweswara Rao, Savings Bank Account holder was not traceable/missing from the branch records and from the voucher verification report also, it was evident that withdrawal was passed and paid under I.D. of the petitioner and that in view of the serious nature of irregularities, the Disciplinary Authority placed the petitioner under suspension on 26.02.2007, the date of complaint given by the Savings Bank Account Holder, pending further investigation. It is further stated that prima facie case is made out that the payment made by the petitioner was not in order and, therefore, the 2nd respondent held the charge that the petitioner has made the payment unauthorizedly and that he failed to discharge his duty with diligence and

grossly violated the procedure of the bank. It is further stated that while the petitioner was working as Single Window Operator at Saidabad branch, he made the payment of Rs.20,000/- by debit to the customer account on 16.01.2007. The evidence of MW-1 (Assistant Manager) clearly shows that the petitioner has made the said payment by using his identity number as per records and thus it was clearly established that the petitioner has raised a debit of Rs.20,000/- unauthorizedly in the Savings Bank Account of Sista Visweswara Rao and it was done with the petitioner I.D. It is further stated that the Disciplinary Authority, after going through the entire evidence on record as well as the findings of the Enquiry Officer, disagreed with the findings of the Enquiry Officer for the reasons mentioned in his order dated 24.06.2008. It is further stated that the past record of the petitioner indicates that vide proceedings dated 02.04.2004 he was warned for cash shortage of Rs.1.04 lakhs from his possession while he was working at Chaitanyapuri

branch, Hyderabad and that he was also issued with charge sheet dated 24.03.2009 for not obtaining prior permission from the competent authority for standing as guarantor for a loan sanctioned to one Dr.C.Krishna Murthy, by the Corporation Bank. It is further submitted that keeping in view the nature of duties performed by the petitioner and taking into consideration the relevant facts, he was imposed with penalty of discharge from the services of the bank in terms of Memorandum of Settlement of Disciplinary action Procedure for Workmen dated 10.04.2002 and as such there are no merits in the Writ Petition and the same is liable to be dismissed.

Heard learned Counsel for the petitioner and the learned Standing Counsel for the respondents and perused the entire material available on record as well as the case laws submitted by the learned Counsel for the parties.

Admittedly, the petitioner was appointed as Cashier-cum-Clerk in the 1st respondent-bank on 22.06.1989. While

he was working as Single Window Operator at Saidabad Branch, one S.Visweswara Rao, customer of that branch, lodged a complaint on 26.02.2007 alleging that he had not withdrawn cash of Rs.20,000/- from his Savings Bank Account No.52012448908 on 16.01.2007 and demanded to re-credit the said amount into his account. The said account holder on the same day, vide his letter dated 26.02.2007, which was received by the bank on 27.02.2007, informed that on recollection of his memory, he could state that on 16.01.2007 he had given a letter of withdrawal for Rs.20,000/- to his friend, who requested him for cash adjustment, which he had encashed and as such he had withdrawn the complaint which he had given earlier. However, the 2nd respondent, vide his letter, dated 26.02.2007 i.e., on the same day of the complaint, had placed the petitioner under suspension pending further investigation and disciplinary action. Thereafter, the 2nd respondent, vide letter dated 07.03.2007, had called for

explanation of the petitioner regarding the irregularities said to have been committed by him on 16.01.2007, to which the petitioner submitted his explanation on 14.03.2007 denying the allegations. Not satisfying with the explanation, 2nd respondent, vide letter dated 18.06.2007, issued a charge sheet-cum-show cause notice to initiate disciplinary action against the petitioner for his gross misconduct under the provision 5 (j) of the Memorandum of Settlement dated 10.04.2002. Thereafter, the written statement submitted by the petitioner was not accepted by the 2nd respondent and as such ordered an enquiry and that the 4th respondent/Enquiry Officer after conducting the enquiry submitted his Enquiry Report dated 10.01.2008 stating that the charges framed against the petitioner were not established. However, the 2nd respondent/Disciplinary Authority disagreed with the findings of the 4th respondent/Enquiry Officer and arrived at his own findings vide order dated 24.06.2008 and that he issued a show cause

notice to the petitioner, to which the petitioner has submitted his explanation vide letter dated 11.08.2008. The 2nd respondent/Disciplinary Authority not satisfied with the said explanation, issued proceedings dated 25.03.2009 to show cause with regard to the proposed punishment of discharge from service, to which the petitioner offered his submissions vide letter dated 31.03.2009. After considering the submissions and contentions of the petitioner, the 2nd respondent by his proceedings dated 06.04.2009 ordered for discharge of the petitioner from service with all benefits in terms of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. The appeal preferred by the petitioner against the punishment imposed by the 2nd respondent has been dismissed by the 3rd respondent/Appellate Authority by order dated 18.06.2009.

The contention of the learned Counsel for the petitioner is that in a case where the Disciplinary Authority appoints an Enquiry Officer to enquire into the matter, he

cannot vary the findings of the Enquiry Officer if the Enquiry Officer finds that the charges framed against the delinquent employee are not established. Further, in cases where any of the charges is established against the employee then only the Disciplinary Authority can proceed with further action in the matter. Therefore, the orders of the 2nd respondent/Disciplinary Authority differing from the findings of the 4th respondent/Enquiry Officer and awarding the punishment of discharge as well as the order of the 3rd respondent/Appellate Authority are against the provisions of the Terms of Settlement dated 10.04.2002 and as such they are liable to be set aside.

I do not find any merit in the aforesaid contention of the learned Counsel for the petitioner. It is well settled by a catena of decisions of the Supreme Court that the disciplinary authority can differ with the findings recorded by the Enquiring authority. It is settled law that the findings of the Enquiry Officer are not binding on the disciplinary

authority and the final decision rests with the disciplinary/punishing authority which can come to its own conclusions, bearing in mind the views expressed by the Enquiry Officer. It is also well settled that the disciplinary authority in order to differ with the findings recorded by the Enquiry Officer, it need not give reasons to contest the correctness of the findings recorded by the Enquiry Officer. What is necessary is that the findings recorded by the disciplinary authority should have the support of the materials and the evidence on record and so long the findings recorded by the disciplinary authority can be sustained on the basis of the evidence and materials on record and simply because it has not given separate reasons to contest the correctness of the findings recorded by the Enquiry Officer, the Court would not be justified in interfering with the findings recorded by the disciplinary authority. The disciplinary authority is the sole judge of facts and the findings recorded by it, if it can be supported by

some legal evidence, cannot be interfered with by the Court. The High Court cannot reappreciate the evidence on record and record a finding contrary to the findings recorded by the disciplinary authority though such findings are possible on the same set of facts and the evidence adduced in the departmental enquiry as if the High Court is an appellate authority over the decisions taken by the disciplinary authority either in recording the findings of misconduct against the delinquent employee or in awarding a particular punishment. With regard to the punishment, the High Court will interfere only if facts disclosed before the Court would warrant application of *Wednesbury Rule of arbitrariness and unreasonableness* and when the Court finds that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of misconduct established against the delinquent employee.

In *High Court of Judicature at Bombay through its Registrar vs. Shashikant S.Patil*¹, the Apex Court in Paragraph Nos.6 and 19 held as under:

“6. The Division Bench of the High Court has propounded a legal proposition as follows:

It is an established principle in disciplinary jurisprudence that when the disciplinary authority differs from the findings of the enquiry officer, it has to discuss the entire case threadbare and establish that each finding of the enquiry officer was totally improbable that in the light of the materials the only conclusion that can be arrived at by an ordinary prudent man, is the conclusion arrived at by the disciplinary authority”

“19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the enquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the enquiry officer’s report. It must be borne in mind that the enquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against

¹ (2000) 1 Supreme Court Cases 416

him and also to afford the punishing authority with the materials collected in such enquiry as well as the views expressed by the enquiry officer thereon. The findings of the enquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the enquiry officer. But, it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the enquiry officer". Otherwise, the position of the disciplinary authority would get relegated to a subordinate level."

A perusal of the orders of the Disciplinary Authority dated 24.06.2008 disagreeing with the findings of the Enquiry Officer would disclose that, as per the evidence of MW-1 (Assistant Manager), the petitioner has raised a debit of Rs.20,000/- unauthorizedly in the Savings Bank Account of one Sista Visweswara Rao by using his Identity Number 192805 without support of either cheque duly drawn by the account holder or any withdrawal slip authenticated by the

account holder. It is also evident from the voucher verification report that the withdrawal was passed and paid under petitioner's I.D. only. The case of the petitioner is that the subject payment was genuine and backed by appropriate withdrawal letter from the Account holder. The nature/number of the withdrawal and the name of the payee was neither recorded nor stated by the petitioner in Teller Receipt/Payment Cash Register (Ex.ME-3), which shows that the said letter of authority was not in existence. Thus, the withdrawal letter of the Account Holder is only an after thought to cover up the lapses on the part of the petitioner. Even as per the system and procedure, the petitioner is not empowered to pass the entry basing on the said withdrawal letter and it has to be sent to Supervising Official for passing after making an entry in the system as per circular instructions (Ex.ME 8). It is held by the 2nd respondent that the subsequent event of customer withdrawing the complaint has no significance as record does not support

that the payment was an authorized one at the relevant point of time. As per the evidence brought on record during the enquiry, the 2nd respondent rightly came to the conclusion that the petitioner has not sought authorization for payment from his Supervising Official and he chose to deal with the transaction from his end. The first complaint letter of the customer dated 26.02.2007 questions the said debit made by the petitioner and, therefore, no credibility can be given to the subsequent changed version of the customer. Since the evidence on record was not properly appreciated by the 4th respondent/Enquiry Officer, the 2nd respondent/Disciplinary Authority, after going through the entire evidence on record, both oral and documentary, rightly disagreed with the findings of the Enquiry Officer for the reasons mentioned in his detailed order dated 24.06.2008 and as such the order passed by the 2nd respondent, dated 06.04.2009, discharging the petitioner from the services of the bank, and the consequential confirmation order of the 3rd

respondent/Appellate Authority, are not disproportionate to the gravity of charges established against him. Therefore, I find no merit in the Writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

30-06-2022
Gsn