Indian Overseas Bank vs Om Prakash Lal Srivsatava on 19 January, 2022

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Bench: M.M. Sundresh, Sanjay Kishan Kaul

REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.267 OF 2022

INDIAN OVERSEAS BANK & ORS. … Appell

Versus

OM PRAKASH LAL SRIVASTAVA …Respondent

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The appellant-Bank, a nationalised one, took the ultimate step against the respondent as an employee in pursuance of departmental proceedings having found him guilty on various counts inter alia including breach of duty as a custodian of public money and dishonesty, fraud or manipulation of documents. The Industrial Tribunal ultimately upheld the decision of the appellant-Bank but in terms of the impugned judgment of the Allahabad High Court, five of the charges were found not proved while qua two of the charges the matter was remitted back to the Industrial Tribunal with a limited mandate.

2. The said decision was, however, stayed by this Court on 5.3.2019. The facts:

3. The respondent was employed with the appellant-Bank as a clerk- cum-cashier w.e.f. 14.9.1981. The appellant-Bank received a complaint dated 8.10.1994 from the sister-in-law of the respondent, Smt. Meera Srivastava, that the respondent had opened and operated a savings account No. 7882 in the joint name of the respondent and his sister-in- law by forging her signatures, and encashed a demand draft of Rs. 20,000/- which was issued to her by way of interim relief by Kalyan Nigam Limited in which her husband was employed as a Junior Engineer, who had unfortunately passed away in a road accident on 15.4.1994. The respondent was placed under suspension on 5.11.1994 by

the Bank for committing acts of grave misconduct at the Gorakhpur Branch and he was issued a chargesheet dated 22.3.1995. The charges are as under:

> "Charge No.1: On 28.9.94 you went to the clearing house without collecting the outward clearing cheques from Mr. T.K. Sridhar officer in violation of the specific instructions of the Branch Manager Mr. R.N. Saxena and thus you committed an act of wilful insubordination which is a gross misconduct under para 19.5(e) of the Bipartite Settlement dated 19.10.66.
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> Charge No.2: You refused to include the outward clearing cheques for Rs.2,21,161.47 for the day's clearing on 28.9.94 when Mr. A.K. Chakraborthy and Mr. S.N. Pandey officer handed over the said cheques at the clearing house before 10.30 a.m., despite the specific instructions given by them, which is an act of wilful insubordination and is a gross misconduct under para 19.5(e) of the Bipartite Settlement dated 19.10.66.
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> Charge No.3: By refusing to include the outward clearing cheques for Rs.2,21,161.47 for the day's clearing on 28.9.94, you caused inconvenience and hardship to the Bank's customers concerned and thus acted in a manner prejudicial to the interests of the Bank, which is a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66.
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> Charge No.4: You fraudulently and dishonestly opened savings bank account No.7882 in the joint names of yourself and your sister-in-law Mrs. Meera Srivastava by forging the signature of the latter which is an act prejudicial to the interests of the Bank and a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66.
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> Charge No.5: You fraudulently and dishonestly withdrew from the joint account No.7882 a sum of Rs.20,000/- (being the proceedings of the demand draft issued in favour of Mrs. Meera Srivastava and credited into the account) in two instalments of Rs.7,000/- and Rs.13,000/- on 20.5.94 and 13.6.94 respectively by forging the signature of Mrs. Meera Srivastava in the withdrawal slip which is an act prejudicial to the interests of the Bank and a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66.
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> Charge No.6: By Gheraoing the Branch Manager Mr. R.N. Saxena along with a few outsiders and staff members, by threatening and abusing the Branch Manager I unparliamentary language and by forcibly taking the copy of the suspension order after searching the Branch Manager's brief case, table drawer and his pocket on 9.11.94, you behaved in a riotous, disorderly and indecent manner which is a gross misconduct under para 19.5(c) of the Bipartite Settlement dated 19.10.66.
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> Charge No.7: By erasing i) your own acknowledgement contained in the duplicate copy of the suspension order dated 5.11.94, ii) the narration made against your name

in the attendance register through application of white fluid, you tampered with the records of the branch and thus acted in a manner prejudicial to the interest of the Bank which is a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66."

4. The respondent denied the allegations in response to the chargesheet. An inquiry officer was appointed to adjudicate upon the charges. It is the appellant's case that all principles of natural justice were followed and the respondent was supplied with all documents/material relied upon by the appellant-Bank. The inquiry officer concluded the inquiry and submitted the report dated 6.12.1995 opining that all charges stood proved against the respondent.

Consequently, the respondent was served with a show cause notice dated 28.2.1996 by the Disciplinary Authority proposing the punishment of dismissal from service. The respondent submitted a reply but the Disciplinary Authority after considering the reply proceeded to uphold the finding and impose the penalty of dismissal from service vide order dated 11.5.1996.

5. The respondent filed an appeal before the appellate authority but the appellate authority rejected the appeal vide order dated 10.9.1996.

6. The respondent sought to raise an industrial dispute and the Central Government referred the dispute vide G.O. dated 30.10.2003 to the Presiding Officer, Central Government Tribunal-cum-Labour Court, Kanpur on the issue whether the action of the Management imposing the penalty of dismissal was justified and legal.

7. The proceedings were contested before the Tribunal and the Tribunal framed a preliminary issue on the question of fairness of the domestic inquiry. The Tribunal vide order dated 15.11.2011 decided the preliminary issue against the appellant as the appellant- Management/Bank had failed to produce original documents and most photocopies of the relevant pages were not readable. It was, thus, concluded that there was violation of the principles of natural justice. However, the Tribunal granted an opportunity to the appellant-Bank to prove the charges against respondent by adducing evidence. The Bank led its evidence by producing five witnesses while the respondent examined himself. The Tribunal vide award dated 21.2.2013 answered the reference against the respondent opining that the appellant- Bank/Management had been successful in establishing all the charges against the respondent. On the issue of quantum of punishment also it was held that the same was commensurate to the charges levelled and proved against the respondent.

8. The appellant sought to assail this order of the Tribunal by filing writ petition, being WP(C) No. 53458/2013, before the High Court of Judicature at Allahabad. In terms of the impugned judgment dated 31.5.2018, the said writ petition has been allowed while remitting matter back in respect of charges 4 & 5. The impugned judgment held that when the earlier departmental proceedings were found to be violative of the principles of natural justice then no findings vis-a-vis charges 1, 2, 3, 6 & 7 should have been arrived at, based on the plea that the Bank led evidence only in respect of charges 4 & 5. In respect of charges 4 & 5 it was opined that on the request of the respondent the

signatures of Mrs. Meera Srivastava should have been got compared with her admitted signatures by an expert and then only a correct conclusion could have been arrived at whether the signatures on the account opening form or the withdrawal form have been forged by the respondent or not and the Tribunal should have refrained from acting like an expert. This was so as fraud was alleged and a degree of investigation should have been a standard which is resorted to by a criminal court.

9. We may notice at this stage that the inquiry officer had opined that while observing the admitted signatures in comparison with the signatures in question from a banker's eye it could be said that there is absence of similarity. Mrs. Meera Srivastava's claim was that even the account was opened fraudulently without her ever visiting the bank. The position was the same with respect to two withdrawal slips of Rs.7,000/- and Rs.13,000/-. Mrs. Meera Srivastava had corroborated this aspect in her deposition. In the deposition she accepted that both her and the respondent were members of a joint family but the drafts were given to the respondent for safe-keeping and when after one and a half month she asked the respondent to return her draft he refused to do so on one pretext or the other. Thus, two or three months later she complained to the bank on learning that the drafts had been encashed at the Branch. On making the complaint she got her money from the Bank. In her cross- examination it was never put to her that she had gone to the Bank to open the account and the account opening form bears her signatures nor was it put to her that she had gone to the Bank to withdraw the amounts of Rs.7,000/- and Rs.13,000/-. Her statement was opined to have been trustworthy by both the inquiry officer and the Industrial Tribunal. Submissions of the Appellant:

10. It was the submission of the learned counsel for the appellant that the High Court fell into an error in applying the standards of proof of criminal proceedings to disciplinary proceedings as the misconduct by an employee in disciplinary proceedings is to be evaluated on the basis of probabilities and preponderance of evidence. There was sufficient evidence to show that the respondent committed fraud and forgery by manipulating the signatures of the complainant Mrs. Meera Srivastava, opening an account, operating the account and appropriating the sum of Rs.20,000/- received through a demand draft as compensation on the demise of her husband. The respondent took advantage of the complainant being his sister-in-law. The complainant has given clear and unequivocal testimony on oath before the Tribunal and nothing had come out to the contrary in her cross-examination. In fact, regarding this aspect, it was submitted that there was no material cross-examination and there is no reason to doubt her testimony.

11. Insofar as the remaining charges are concerned, the documents led to an irresistible conclusion that even those charges relating to insubordination, disobeying the orders of the higher authorities, forging the suspension letters were proved and even by themselves were sufficient to award the punishment of dismissal from service. Submissions of the Respondent:

12. Learned counsel for the respondent on the other hand pleaded that in terms of the impugned judgment charges other than charges 4 & 5 were in any case not proved as no evidence had been led in that behalf and reliance could not be placed only on documents.

13. It was further submitted that charges 4 & 5 were also not proved and sought to refer to the judgment of this Court in Lalit Popli v. Canara Bank1 more specifically para 13, which reads as

under:

> "13. It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the (2003) 3 SCC 583 basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter.

[See Murari Lal vs. State of Madhya Pradesh (1980) 1 SCC 704]" Conclusion:

14. On having considered the rival submissions of the learned counsel for the parties, we are of the view that the High Court has fallen into an error in coming to the conclusion in the impugned judgment and directing, once again, the matter to be remitted to the Industrial Tribunal to now seek opinion of a hand writing expert.

15. We would like to emphasise at the threshold that there are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India. We may refer to the judgment of this Court in GE Power India Ltd. (Formerly Known as M/s. Alstom Projects Ltd.) v. A. Aziz2. If there is no jurisdictional error or violation of natural justice or error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court. That too, on the aspect of an opinion formed in respect of two sets of signatures where the inquiry was held by an officer of the bank who came to an opinion on a bare comparison of the signatures that there is a difference in the same. It has been looked at from the perspective of a "banker's eye". This is, of course, apart from the testimony of the sister- in-law of the respondent.

16. We have in the course of noting the submissions of the learned counsel for the parties in the context of the factual matrix recorded in para 9 that the Inquiry Officer had himself opined while observing the admitted signatures in comparison with the signatures in question from a "banker's eye", it was not just the ipse dixit of the Inquiry Officer but was based on the deposition of the sister-in-law of the respondent, Mrs. Meera Srivastava. The deposition of Mrs. Meera Srivastava was clear and unambiguous. She was staying in a joint family of which the respondent was a part. She unfortunately lost her husband in an accident. The two drafts were received from his employer and

those drafts were 2020 SCC Online SC 782.

kept in custody with the respondent, possibly because he was a banker and the elder brother of her deceased husband. Instead of extending the benefits of the same to her, the respondent went on a path of opening an account jointly in his and his sister-in-law's name, presenting the drafts, and drawing the amounts with appropriation of the same to himself. Mrs. Meera Srivastava had not even visited the bank to sign the account opening form or the signature cards, nor had she presented the drafts or signed the encashment vouchers. In fact, it is only when she complained about not receiving the amount that the bank inquired into it and, at least, the money was transferred to her. Her cross-examination elicited nothing, nor for that matter was it put to her in cross-examination that she had ever visited the bank, opened the account or signed the encashment vouchers. The relationships in the family were not estranged nor was there any endeavour to "fix" the respondent by a relative. In our view this evidence was enough to implicate the respondent.

17. The High Court appears to have applied the test of criminal proceedings to departmental proceedings while traversing the path of requirement of a hand writing expert to be called for the said purpose. This would go contrary to the settled legal position enunciated by this Court. It would suffice for us to refer to a recent judgment in Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI 3 where it has been observed while referring to earlier judicial precedents, that the standard of proof in departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt.

18. We may also notice that the High Court has opined that only charges 4 & 5 could really have been gone into by the Industrial Tribunal, which required further evidence in its opinion, of a hand writing expert. So far as the other charges are concerned, a conclusion was reached that no further evidence was led.

19. In our view this is neither the correct approach nor borne out of the record. Evidence was led. Even earlier, the material in respect of other charges emanates from the record of the bank which shows the conduct of the respondent which are apparent from the manner of framing of the charges themselves and the material led in support thereof. Thus, even the aspect of the other charges could not have been brushed aside in the manner it purports to. On the matter being remitted back, two witnesses (2020) 9 SCC 636 deposed as to these aspects, being MW-3 and MW-4. The respondent was a clerk-cum-cashier. It is a post of confidence. The respondent breached that confidence. In fact, the respondent breached the trust of a widowed sister-in-law as well as of the bank, making it hardly a case for interference either on law or on moral grounds. The punishment imposed on the respondent could also hardly be said to be disproportionate. The conduct established of the respondent did not entitle him to continue in service.

20. We are, thus, of the view that the impugned judgment dated 31.5.2018 of the High Court is liable to be set aside and the challenge to the award of the Industrial Tribunal dated 21.2.2013 is repelled.

21. The appeal is accordingly allowed leaving the parties to bear their own costs.

.....J. [Sanjay Kishan Kaul] .....J. [M.M. Sundresh] New Delhi.

January 19, 2022.