IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 02 of 2024

1. The Canara Bank through General Manager and Reviewing Authority, HR Wing, Head Office – Bengaluru, P.O. – J.C. Road, Bangalore South, P.S. – Bangalore, District – Bangalore, State – Karnataka.
2. The Deputy General Manager, Canara Bank, I.R. Section, Head Office – Bengaluru, P.O. – J.C. Road, Bangalore South, P.S. – Bangalore, District – Bangalore, State – Karnataka.
3. The Assistant General Manager, Canara Bank, HRM Section, Circle Office, P.P. Compound, Main Road, Ranchi, P.O. – G.P.O., P.S. – Chutia, District – Ranchi.

   Appellants are represented through its duly authorized signatory being Senior Manager, Canara Bank, Human Resource Management Section, Circle Office, Kaushalya Chambers, PP Compound, P.O. Ranchi GPO, P.S. Hindpidi, District Ranchi, State:- Jharkhand.

…. Respondents/Appellants

Versus

Sanjeev Kumar, S/o – Sri Jagat Narayan Prasad, resident of Doranda, P.O. & P.S. – Doranda, District – Ranchi.

…. Petitioner/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants: Mr. Pratyush Kumar, Advocate
Mr. Prashant Kumar Srivastava, Advocate
For the Respondent: Mr. L.C.N. Shahdeo, Advocate
Mr. Yash Raj Gupta, Advocate

Reserved on: 15.10.2024 **Pronounced on:23.10.2024**

***Per* M.S. Ramachandra Rao, C.J.**

1) This Letters Patent Appeal has been filed by the Appellant/ Canara Bank challenging the judgment dt. 10.11.2023 in W.P.(S) No. 3050 of 2021.

2) The respondent had filed the said Writ Petition seeking quashing of order dt.31.3.2020 (Annexure -12) passed by the appellant no.3

imposing on the appellant the major penalty of "*Removal from service which shall not be a disqualification for future employment*", and it's confirmation vide order dt.30.12.2020 (Annexure -14) in appeal by appellant no.2 and also by the Reviewing authority vide order dt.29.3.2021 (Annexure -16).

The background facts

3) The respondent was employed as a Manager in the Canara Bank (for short '*the Bank*'). During the period he had worked as Manager in charge in the Pithoria branch of the said Bank from 27.7.2017 to 7.10.2018, it was alleged by the Bank that complaints had been received against him from various customers and local public representatives that he was demanding bribe for sanctioning loans especially KCC/KMCC loans and that he was delaying sanction for such loans, when the bribe was not given by the loanee.

4) To find out the genuineness of the said allegations, an investigation/preliminary inquiry was conducted, in which, according to the Bank, statements of employees, customers and middlemen were taken; and certain video and audio clips were secured which supported the allegation against the respondent that he had sought bribe for sanction of loans and had also pressurized the AEO to clear the said KCC/KMCC loans at the earliest.

5) The following 3 charges had been levelled against the respondent by the Bank vide Annexure-3 Charge Memo dt.16.8.2019 :

(i) The respondent was pressurizing the AEO to do the KCC/KMCC loan proposals which were routed through middlemen;

(ii) The respondent was taking bribe from the loanee customers for sanction of KCC/KMCC loans through middlemen;

(iii) A video clip was also showing that the respondent was accepting bribe from middlemen.

The respondent was furnished the copy of the preliminary investigation/inquiry report dt.1.11.2018.

6) The respondent submitted explanation dt.29.8.2019 denying the charges.

7) The Disciplinary authority, i.e the Assistant General Manager of the Bank appointed (vide Annexure -5) a Divisional Manager of the Bank on 29.8.2019 as Inquiry Officer to conduct disciplinary inquiry against the respondent and also a Presenting Officer in terms of the Canara Bank Officers Employees' (Discipline & Appeal) Regulations , 1976 (for short the '*Regulations*').

8) Both the Bank and the respondent examined witnesses in support of their respective stands in the disciplinary inquiry.

9) The Inquiry Authority submitted an inquiry report (Annexure 9) dt.21.3.2020 holding that all the 3 charges were proved against the respondent.

10) Thereafter copy of the inquiry report was furnished to the respondent vide Annexure-10 dt.21.3.2020 and he was asked to submit his

representation on the findings of the Inquiry Officer by the Disciplinary Authority i.e., The Assistant General Manager.

11) The respondent submitted his representation dt.31.3.2020 (Annexure-11) to the Disciplinary Authority disputing the findings of the Inquiry Officer against him.

12) After considering the same, the Disciplinary Authority passed order dt.31.3.2020 (Annexure-12) imposing punishment of "*Removal from Service which shall not be a disqualification for future employment*" on the respondent.

13) The respondent submitted appeal dt.12.5.2020 (Annexure-13) to the Deputy General Manager, who was the Appellate Authority under the Regulations,contending that the said punishment is harsh and also raised contentions questioning the findings recorded by the Inquiry officer.

14) The Appellate Authority rejected the Appeal submitted by the respondent vide order dt.30.12.2020 (Annexure -14) after giving the respondent a personal hearing on 19.10.2020.

15) The respondent then filed a Review petitiondt.21.1.2021 (Annexure -15) before the General Manager of the Bank .

16) The same was also rejected vide Annexure-16 on30.3.2021 by the Reviewing Authority.

17) Challenging these orders -Annexures 12, 14 and 16, the respondent then filed the WP (S) No.3050 of 2021.

The judgment of the learned Single Judge

18) The learned Single Judge, in the impugned judgment, held that the main complainant Sarfaraz Ansari had not been examined in the disciplinary inquiry by the appellants and also that the punishment by the appellants on the respondent imposed is harsh and unsustainable in law.

19) According to the learned single Judge, such a punishment could not have been imposed without seeking reply by way of 2nd show cause notice.

20) The learned single Judge held that the appellants-Bank has not been able to prove that any loss has been caused to it, and it had not contended that respondent had defalcated any amount; that it's entire case against the respondent was based on video clips and transaction of some amount, which itself is questionable, and no justifiable answer has been brought on record by the Bank.

21) The learned Single Judge then considered the sufficiency of evidence adduced in the disciplinary inquiry against the respondent by the Bank and opined as under:

" *.. The three independent witnesses who had been examined are the neighbours of Nasim Ansari who had not applied for any loan. Secondly, the main witness i.e., Nasim Ansari, on whose statement the allegation has been made that the petitioner had taken bribe while sanctioning KCC loan, but during the regular inquiry, he clearly stated that he had not taken any money and the video clips were prepared only in order to*

take revenge. He has clearly deposed that in anger and to take revenge and tarnish the image of the petitioner, video clips were prepared…."…

22) The learned single Judge went on to hold that merely on the basis of some video clips, the respondent should not have been made guilty of an offence unless the same corroborates with other facts; that there is no evidence of bribe; and non- examination of the complainant is a serious lacuna on behalf of the Bank.

23) The learned Single Judge allowed the Writ Petition and set aside the orders of the Disciplinary authority, the Appellate authority and the Reviewing authority (Annexures 12, 14 and 16) and remitted the matter back to the appellants on the aspect of quantum of punishment and further directed " *and /or grant of lesser punishment, if any, other than dismissal, removal , compulsory retirement or reduction in rank ...."*

The LPA

24) Challenging the above judgment of the learned single Judge, this appeal has been filed by the appellants.

Contentions of counsel for appellants

25) Counsel for appellants contended *inter alia* that:

(i) the learned single Judge erred in holding that it was incumbent on the part of the Bank to issue a 2nd show cause notice;

(ii) the learned single Judge erred in holding that non -examination of the complainant is a fatal lacuna in the disciplinary inquiry held against the respondent by the appellants, but as per settled law,

such non examination of the complainant does not vitiate the disciplinary inquiry;

(iii) that in exercise of power of judicial review under Art.226 of the Constitution of India, the learned Single Judge could not have reappreciated the evidence adduced in the disciplinary inquiry; that sufficiency of evidence adduced to prove the charge against the accused is beyond the purview of judicial review;

(iv) that the learned Single Judge ought to have seen that serious charges are levelled against the respondent andthe essence of the charges levelled against the respondent was “loss of confidence” and since they were proved in the disciplinary inquiry, the Bank was justified in punishing him by removing him from service;

(v) that the serious charges against the respondent were that (i) he was pressurizing the AEO of the Pithoria Branch to do KCC/KMCC loan proposals which were routed through middlemen apart from (ii) taking bribe from the loanee customers for sanctioning KCC/KMCC loan through middlemen; and there was a video clip also showing that he was accepting bribe from the middlemen; the said AEO- Mrs.Rani Prasad Sinha had sent a mail dt.31.10.2018 stating that she was pressurized by the respondent for sanctioning KCC/KMCC loans and that middlemen /agents were regularly coming to the Branch for follow up of these loans; and the learned single Judge has ignored this material evidence against the respondent;

(vi) the respondent himself had examined as his witness Naseem Ansari, who had admitted as DW-1 that he had recorded the video clip in which the respondent and the said witness were talking about the bribe money taken from some other middlemen, and so the authenticity of the video clip cannot be doubted;

and so the impugned judgment deserves to be set aside.

Contentions of counsel for respondent

26) The counsel for the respondent however contended that the impugned judgment did not suffer from any error warranting interference by this Court; that the non-examination of the complainant was indeed fatal to the case of the appellants; that the learned single Judge was entitled to hold that the evidence adduced in the disciplinary inquiry was not sufficient to prove the charge against the respondent; that he was also correct in doubting the authenticity of the video clip produced in the inquiry; and that the punishment imposed on respondent was harsh and disproportionate to the proved misconduct as no pecuniary loss was proved to have been caused to the appellant Bank.

The consideration by the Court

27) Firstly, we are of the opinion that the learned single Judge erred in holding that a 2nd show cause notice had to be issued by the Bank to the respondent before imposing the punishment on the respondent.

No provision in the regulations framed by the Bank providing for such a 2nd show cause notice before imposing the punishment is pointed out by the counsel for the respondent.

Infact after the 42nd amendment to the Constitution of India, 1976[1], the requirement of 2nd show cause notice qua aspect of penalty stood deleted from Art.311 (2) of the Constitution itself. This was noted in ***Managing Director***, ***ECIL v. B.Karunakar***[2] and reiterated in ***State Bank of India v. Mohammed Badruddin***[3].

As held in ***Ganga Yamuna Gramin Bank v. Devi Sahai***[4], issuance of second show-cause notice for the purpose of obtaining the views of delinquent officer in regard to quantum of punishment is not a part of the common law principles of natural justice. Such a provision could be laid down by reason of a statute. The respondent does not enjoy any status. The service conditions of employees of the Bank are not protected in terms of unamended Article 311(2) of the Constitution of India.

Therefore the learned Single Judge has erred in holding that 2nd show cause notice before imposing punishment should have been given to the respondent.

28) Next we shall consider whether non examination of the complainant is fatal to the action taken by the Bank against the respondent.

No doubt Sarfaraz Ansari, the complainant has not been examined as a witness in the disciplinary inquiry. But in our opinion, such non examination is not fatal to the disciplinary inquiry when the other evidence adduced in the inquiry proves the charges.

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[1]W.e.f .3.1.1977
[2](1993)4 SCC 727 AT PARA 285
[3](2019)16 SCC 69
[4](2009) 11 SCC 266 : (2009) 2 SCC (L&S) 618, at page 270

In ***East India Hotels v. Workmen***[5] , the Supreme Court had held that it is not necessary that an outside complainant should be necessarily examined in a disciplinary inquiry and his non-examination will not make the inquiry invalid. It held:

> ***"6.****It is not necessary that Sethi should have given evidence. His absence may be due to the fact that it was now for the employer to take action on his complaint and to protect their prestige and reputation which was mainly their affair. It is, however, apparent from the evidence that Sethi had complained to Pyare Lal and Pyare Lal speaks to what the respondent did and what happened in his presence. He said even when he asked the respondent what was in the bottle the respondent replied that it contained 'NimbooPani' and that he was pouring the contents in the tub. Bakshi also found whisky in the gingerale bottle. He says that Agrawal was testing something when he came. The bottle was sealed by him in the presence of Sethi, Agrawal and Pyare Lal. Agrawal also gave evidence and so did Lal Singh. When the respondent was asked to sign the envelope he refused to do so and when he was asked by Lal Singh why he was refusing to do so, his reply was "Hum Jab esme sign karangetob mar jayanga". The respondent did not challenge this statement also. As the enquiry and the dismissal do not suffer from any defect and there is evidence from which the impugned conclusions can be drawn, we set aside the award of the Tribunal and substitute instead the finding that the dismissal of the respondent was justified.*
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> ***7.*** *The appeal is accordingly allowed, but in the circumstances without costs."*

This was reiterated in State ***Bank of India v. Tarun Kumar Banerjee***[6]where the Supreme Court had held:

> *" 5. …… The Tribunal, however, went on to say that even though the first respondent had not examined himself nor was any cross-examination directed at the witnesses to the question of his being a victim of conspiracy by the employees of the appellant Bank who are members of another rival union to which he belonged and placed heavy*

[5](1974) 3 SCC 712 : 1974 SCC (L&S) 245, at page 715
[6](2000) 8 SCC 12 : 2000 SCC (L&S) 1049, at page 17 :

reliance on non-examination of the complainant, non-production of money, non-production of the so-called confessional statements and non-production of any evidence which may have been available. But as far as the evidence tendered by the two witnesses is concerned who actually saw the incident having taken place in the manner referred to earlier, the charge of misconduct against the first respondent stood proved to the hilt and we fail to appreciate as to how the Tribunal could have taken any other view.

6.*A customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper banker-customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. When in the course of the domestic enquiry no reliance was placed on the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore, the learned Single Judge was justified in interfering with the same. In the writ appeal the learned Judges on the Division Bench reiterated the view expressed by the Tribunal which we have found to be fallacious." (emphasis supplied)*

So when the other evidence adduced in the disciplinary inquiry proves the guilt of the employee, non-examination of the complainant is not fatal to the case of the employer.

The learned Single Judge erred in relying on the decision of the Supreme Court in ***Commissioner of Police, Delhi v. Jai Bhagwan***[7]**.** That was a case where none witnessed the taking of the bribe by the respondent, but inference of payment of bribe was drawn on pretext that the respondent had returned Rs.100/- to the complainant. Also no

[7](2011) 6 SCC 376

other person was examined in that case who would have witnessed the payment of bribe to the respondent though the alleged bribe was said to have been paid in the Indira Gandhi International Airport, New Delhi near the X ray machine , which was a public place, where other passengers could have witnessed the payment of bribe. These factors together with the fact of non-examination of the complainant in the inquiry were relied on to interfere with the findings in the disciplinary authority.

In our opinion, if the evidence on record otherwise is sufficient to prove the guilt of the employee, mere non-examination of complainant is not fatal to the case of the employer.

Infact the decision in ***East India Hotels Ltd*** (5 supra) cited above does not appear to have been noticed in the case of ***Commissioner of Police*** (7 supra).

Therefore we hold that the learned single Judge erred in holding that non-examination of the complainant is fatal to the action taken by the Bank against the respondent.

29) We may point out that the respondent was holding the position of a Manager of a Bank and was dealing in public funds. He is thus holding a position of trust and confidence.

In ***Karnataka SRTC v. M.G. Vittal Rao***[8], the Supreme Court held that if a workman was holding position of trust and confidence, and he has abused his position and commits any act forfeiting the same, and to

[8](2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171, at page 453

continue him in service would be embarrassing and inconvenient to the employer, the employer's decision to impose harsh punishment, cannot be interfered with. It declared:

> *"25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. [Vide Air India Corpn. v. V.A. Rebellow29, Francis Klein & Co. (P) Ltd. v. Workmen30 and BHEL v. M. Chandrasekhar Reddy31.]*
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> *26. In Kanhaiyalal Agrawal v. Gwalior Sugar Co. Ltd.32 this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (SCC p. 614, para 9) (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. (See also Sudhir Vishnu Panvalkar v. Bank of India33.)*
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> *27. In SBI v. Bela Bagchi34 this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik35.*
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> *28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. [Vide Binny Ltd. v. Workmen36, Binny Ltd. v.*

Workmen37, Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd.38, Chandu Lal v. Pan American World Airways Inc.39, Kamal Kishore Lakshman v. Pan American World Airways Inc.40 and Pearlite Liners (P) Ltd. v. Manorama Sirsi41.]

30) The charges levelled against the respondent are indeed serious charges, which if proved, would require imposition of harsh punishment since they indicate that he cannot be trusted with handling of public money and the Bank was justified in having "loss of confidence" and removing him from service.

31) We shall therefore examine whether there is material to come to a conclusion that the respondent had indeed committed the misconduct indicated in the charges framed against him.

32) As regards the first charge, Mrs.Rani Prasad Sinha, AEO had sent an email dt.31.10.2018, before the disciplinary inquiry started, stating that she was pressurized by the respondent for sanctioning the KCC/KMCC loans and that middlemen and agents were regularly coming to the branch for follow up of these loans. She admitted sending the email dt.31.10.2018 with full consciousness and deliberately during the disciplinary inquiry as well.

Though during the disciplinary inquiry, she retracted in DEX-5 her allegation, and denied the allegation that the respondent had been pressurizing her to granting loans in any way, since the email dt.31.10.2018 had been sent by her out of her free will and full consciousness at a time when she was obviously under no threat, inducement or promise,the same, in our opinion, was rightly believed by

the inquiry officer. The subsequent statement DEX-5 made by her retracting the same was probably given on account of one or the other above factors.

33) The other two charges have been proved by the video clip taken by the respondent's own witness Naseem Ansari. So the respondent cannot question the authenticity of it when his own witness admitted that he had taken the said video.

Whether the said witness had taken the video with motive of revenge or in anger is wholly irrelevant when it's authenticity is not in doubt and the video footage contains conversation between the respondent and the his witness about bribe money for getting the loans sanctioned.

In the video clip admittedly, the respondent received the money from the person giving the bribe and kept it in his pocket without giving any receipt for the payment made to him. Non issuance of receipt by the respondent indicates that he received it as a bribe.

Also strict rules of evidence admittedly do not apply in a disciplinary inquiry. So the respondent cannot plead non compliance with Section 65-B of the Evidence Act, 1872.

34) Thereforethere was sufficient material evidence available on record to support the findings of the inquiry officer.

35) We therefore find no infirmity with the findings recorded by the inquiry officer which were affirmed by the disciplinary authority, the appellate authority and reviewing authority and hold that the learned

single Judge could not have reappreciated the evidence as he had done, and come to a contrary view.

In S***tate of Bihar v. Phulpari Kumari***[9], the Supreme Court held that that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". *Sufficiency of evidence is not within the realm of judicial review.* The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. It declared that the High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer.

36) Once the guilt of the respondent, who is holding a position of trust and confidence, is established in the disciplinary proceedings, then if the employer chooses to impose a harsh punishment of removal from service, no exception can be taken to it.

37) Therefore we hold that the learned single Judge erred in interfering with the quantum of punishment imposed by the appellants and remitting the said aspect back to the appellants.

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[9](2020) 2 SCC 130 : (2020) 1 SCC (L&S) 161, at page 131 :

38) Accordingly, the LPA is allowed; impugned judgment of the learned single Judge is set aside and the W.P.(S) No.3050 of 2021 is dismissed. No costs.

(M.S.Ramachandra Rao, C.J)

(Deepak Roshan, J.)

Rakesh/-