REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.10942 OF 2014
[Arising out of SLP (Civil) No. 4648 of 2008]

G.M. (OPERATIONS) S.B.I & ANR. .. APPELLANT(S)

VERSUS

R. PERIYASAMY ..RESPONDENT(S)

JUDGMENT

S. A. BOBDE, J.

Leave granted.

2. The appellant, General Manager of the State Bank of India has preferred this appeal against the Judgment and Final Order dated 30.08.2007 passed by the High Court of Judicature at Madras in Writ Appeal No. of 2375 of 1999. By

the impugned Judgment the High Court dismissed the appellant's Writ Appeal and confirmed the finding and Judgment of the learned Single Judge by which the respondent's Writ Petition was allowed and the orders dismissing him from service were set aside.

3. The respondent – Periyasamy, was serving as a Permanent Cash Officer at the Dharmapuri Branch of the State Bank of India in 1986. In a departmental enquiry, he was charged with being accountable for a shortage detected in the currency chest in his joint custody along with one Ganesan. By the second charge, he was charged with not adhering to the laid down instructions regarding currency chest transactions and for committing lapses in the maintenance of the currency chest register. By the third charge, he was charged with excessive outside borrowings in violation of Rule 41(i) of the State Bank of India (Supervising Staff) Service Rules.

4. An enquiry was duly conducted. The charged officer, the respondent, was given an opportunity to defend himself

and an Inquiry Report dated 03.11.1986 was submitted to the disciplinary authority. The disciplinary authority considered the entire report and after discussing the same came to the conclusion that there was a preponderance of the probability that the respondent had been surreptitiously removing currency notes from the chest over a period of time, the shortage being Rs. 1,25,000/-. The disciplinary authority also took note of the fact that he was lending money to others, even without a pro-note indicating that he had large amounts of cash. The disciplinary authority, therefore, recommended the dismissal of the respondent from the service of the Bank in terms of Rule 49(h) of the State Bank of India (Supervising Staff) Rules by an order dated 27th July, 1989. Thereafter, the Chief General Manager considered the Inquiry Report and the recommendation of the disciplinary authority and concurred with the views of the disciplinary authority. Against the dismissal, the respondent preferred an appeal under the Service Rules of the Bank. However, the appeal was also turned down by the order dated 14.05.1990. Against the said orders, the respondent

preferred a Writ Petition before the Madras High Court. As observed earlier, the learned Single Judge allowed the petition and the Division Bench dismissed the appeal against the petition. Hence, the Bank has preferred this appeal.

5. While the respondent was working as a Cash Officer, at the Dharmapuri Branch with Ganesan, the branch-accountant, as a joint custodian, the Branch inspection took place between 20.02.1986 to 05.04.1986. The respondent had been working as the Cash Officer from 16.11.1985. Certain irregularities were found in the inspection. As a result of the irregularities, instructions were given to follow the dual locking system for the storage bins where cash was stored and for the dividing doors with effect from 05.04.1986. On that very night, the respondent met with an accident. The strong room keys which were supposed to be in the physical possession of the respondent were found in his Cupboard in the Branch. From 07.04.1986 to 09.04.1986, one Swaminathan officiated as the Cash Officer. From 10.04.1986 to 11.04.1986, one N Krishnan officiated as the Cash Officer. From 12.04.1986 to 17.04.1986, again, Shri

Swaminathan officiated as the Cash Officer. According to the appellant, there was no transfer of notes from the operative bins of the bank to the storage bins and there was no cash withdrawal from the storage bins between 05.04.1986 to 14.04.1986. On 15.4.1986, a cash shortage of Rs.40,000/- was noticed by the officiating Cash Officer. Therefore, the verification of the entire currency chest was conducted, which showed a total cash shortage of Rs.1,25,000/-. An internal investigation was conducted wherein it was found that the shortage in cash had taken place between 16.11.1985 and 05.04.1986 when the respondent and Ganesan were joint custodians. Show cause notices were issued to the respondent and Ganesan. Apparently, the other joint custodian, Ganesan has also been punished but he has not challenged his punishment. In the reply to the show cause notice, the respondent admitted various lapses on his part regarding the maintenance of the currency chest books. In particular, the respondent stated in his reply that perhaps the shortage of Rs. 1,25,000/- escaped his attention due to various reasons and was thus unfortunate. The

respondent sought permission to peruse the relevant books and registers at the Dharmapuri branch and was allowed to do so. The Inquiring Officer eventually submitted a report and held the respondent guilty of charges as stated earlier. The following are the important features of the Inquiry Report:

a) When the branch inspection was concluded on 05.04.1986, it was noticed that during the tenure of the respondent as the permanent Cash Officer of the Branch, several currency storage bins inside the branch strong-room were not locked with dual pad locks and some were kept open when they were not being operated upon.

b) Shortages were detected in the note bundles by the respondent. Upon further inspection, shortages in three more sections from the bundles last handled by the respondent, were also discovered.

c) The two employees, who acted as Cash Officers after the charged officials, i.e. the respondent and Ganesan

exited on 05.04.1985, had performed their duties, during the period 05.04.1986 to 14.04.1986 when the storage strong room was locked with dual pad locks and they had functioned in the presence of the permanent Accountant of the Branch.

d) Unlike in the case of acting Cash Officers, when the respondent used to function as Cash Officer, the Accountant Shri Ganesan was in the habit of leaving him alone inside the Strong Room while he attended to his desk work outside. The significance of this last finding is that the shortages were found to have occurred between 16.11.1985 to 5.4.1986 when the respondent worked as the Cash Officer of the Branch and not from 05.04.1986 to 15.04.1986, when others had acted as Cash Officers for the reasons stated hereinbefore. The respondent was also convicted of the other two relatively minor charges.

6. The learned Single Judge, at the instance of the respondent, went into the entire matter in tedious detail.

The Single Judge considered the entire evidence, even reproduced it in parts, and upon re-appreciation of the evidence, virtually disagreed with the findings of facts recorded by the Inquiry Officer and set aside the respondent's dismissal.

7. Shri Vikas Singh, the learned senior counsel for the appellant submitted that both, the learned Single Judge as well as the Division Bench, in confirming the order, have violated the well settled parameters of the scope of the Jurisdiction of the High Court under Article 226 of the Constitution of India in such matters. Shri Singh submitted that the High Court embarked on the unusual and unwarranted exercise of re-appreciating the evidence and reversed the well considered findings of fact recorded by the Inquiry Officer. The learned counsel for the appellant brought to our notice the very first decision, which authoritatively settled the law on this point in the ***State of Andhra***

Pradesh and others vs. ***Shri Rama Rao***[1], where this Court observed as follows:

> *"This report was considered by the authority competent to impose punishment and a provisional conclusion that the respondent merited punishment of dismissal for the charges held established by the report was recorded. A copy of the report of the Enquiry Officer was sent to the respondent and he was called upon to submit his representation against the action proposed to be taken in regard to him. The respondent submitted his representation which was considered by the Deputy Inspector General of Police, Northern Range, Waltair. That Officer referred to the evidence of witnesses for the State about the arrest of Durgalu on March 5, 1954, and the handing over of Durgalu to the respondent on the same day. He observed that the evidence of Durgalu that after he was arrested on March 5: 1954, he had made good his escape and was again arrested on March 8, 1954, could not be accepted. Holding that the charge against the respondent was serious and had on the evidence*

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AIR 1963 SC 1723

been adequately proved, in his view the only punishment which the respondent deserved was of dismissal from the police force."

8. In ***State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya***[2], this Court observed as follows:-

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion

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2 (2011) 4 SCC 584

or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India : (1995) 6 SCC 749, Union of India v. G. Ganayutham : (1997) 7 SCC 463, Bank of India v. Degala Suryanarayana : (1999) 5 SCC 76 and High Court of Judicature at Bombay v. ShashiKant S Patil (2000) 1 SCC 416).”

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard.

9. It is not really necessary to deal with the judgment of the learned Single Judge since that has merged with the judgment of the Division Bench. However, some observations are necessary. The learned Single Judge committed an error in approaching the issue by asking whether the findings have been arrived on acceptable evidence or not and coming to the conclusion that there was

no acceptable evidence, and that in any case the evidence was not sufficient. In doing so, the learned Single Judge lost sight of the fact that the permissible enquiry was whether there is no evidence on which the enquiry officer could have arrived at the findings or whether there was any perversity in the findings. Whether the evidence was acceptable or not, was a wrong question, unless it raised a question of admissibility. Also, the learned Single Judge was not entitled to go into the question of the adequacy of evidence and come to the conclusion that the evidence was not sufficient to hold the respondent guilty.

10. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In ***Union of India Vs. Sardar Bahadur[3],*** this Court held that a disciplinary

3 (1972) 4 SCC 618

proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in ***State Bank of India & ors. Vs. Ramesh Dinkar Punde***[4]***.*** More recently, in ***State Bank of India Vs. Narendra Kumar Pandey***[5]***,*** this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt. Further, in ***Union Bank of India Vs. Vishwa Mohan***[6]***,*** this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court

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4 (2006) 7 SCC 212

5 (2013) 2 SCC 740

6 (1998) 4 SCC 310

held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a Government Department, this Court in ***Commissioner of Police New Delhi & Anr. Vs. Mehar Singh***[7]***,*** held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often criminal cases end in acquittal

7 (2013) 7 SCC 685

because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long standing view on this subject was settled by this Court in ***R.P. Kapur Vs. Union of India***[8]**,** whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order[9]. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim *omnia praesumuntur*

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8 AIR 1964 SC 787

9 Minister of National Revenue v. Wright's Canadian Ropes Ltd. (1947) AC 109 at 122; Associated Provincial Picture Houses Ltd. v. Wednesbury Cpn. (1948) 1 KB 223 at 228; Fawcett Properties Ltd. v. Buckingham County Council (1959) Ch. 543 at 575, affirmed (1961) AC 636.

rite esse acta which means 'all things are presumed to be done in due form[10].'

11. The Division Bench, in appeal, apparently found it fit to rely on an additional affidavit filed for the first time by the respondent in his Writ Petition, referring to the letter dated 30.12.1987 by which the respondent is purported to have sought the production of certain documents. It is not disputed that the respondent had not at any stage earlier made any grievance that he had written a letter dated 30.12.1987 calling upon the bank to produce certain documents for his perusal and which was denied. It is further not in dispute that there is no record of the bank having received the letter and there is no proof for it. The bank has denied receiving the letter and according to the bank they had received a letter dated 28.12.1987 and they had replied by their letter dated 14.01.1988. In their reply, there was no reference to the letter dated 30.12.1987 because they had not received it. We find that in the

10 Point of Ayr Collieries Ltd. v. Lloyd – George (1943) 2 All ER 546.

absence of proof that any such letter demanding certain documents was received by the bank, it was not permissible for the High Court to proceed to draw an inference that there was a failure of natural justice in the bank having denied certain documents. Thus it may be said, that an administrative authority such as the Appellant, cannot be put to proof of the facts or conditions on which the validity of its order must depend, unless the Respondent can produce evidence which will shift the burden of proof on the shoulders of the Appellant. How much evidence is required for this purpose will always depend on the nature of that particular case. In ***Potato Marketing Board v. Merricks***[11], it was held that if an order has an apparent fault on the face of it, the burden is easily transferred. However, if the grounds of attack are bad-faith or unreasonableness, the Plaintiff's task is heavier.

12. On the question of shortage of money, the Division Bench merely upheld the findings of the learned

11 (1958) 2 QB 316 at 331; Cannock Chase DC v. Kelly (1978) 1 WLR 1.

Single Judge that there was no clinching evidence in support of the charges. The Division Bench approved the findings of the Single Judge that the inquiry report that the shortage of cash occurred only between 16.11.1985 and 05.04.1986, when the respondent was a joint custodian, was based on surmise and conjecture. The Division Bench did not care to advert to the evidence. That evidence rightly relied on by the enquiry officer which established that the shortage did occur between 16.11.1985 and 05.04.1986. In fact the inquiring officer has given cogent reasons for rendering the findings that the shortage could not have occurred after 05.04.1986 upto the discovery of 15.04.1986, when two acting cashiers had functioned. Moreover, the observation that there is no clinching evidence in support of the charges is another way of saying that the evidence is insufficient or inadequate, which is not permissible. It bears repetition that sufficiency or adequacy of evidence is not the ground on which the findings of facts may be set-aside by the High Court under Article 226. The justification offered by the Division Bench that the learned Single Judge had to

undertake the exercise of analysing the findings of the enquiry officer because the appellants had deprived the respondent of his livelihood is wholly untenable. A transgression of jurisdiction cannot be justified on the ground of consequences, as has been done. Moreover, the reliance by the Division Bench on ***Mathura Prasad Vs. Union of India & Ors.***[12] is entirely misplaced, since that case arose in an entirely different set of circumstances. We also find it difficult to understand the justification offered by the Division Bench that there was no failure on the part of the respondent to observe utmost devotion to duty because the case was not one of misappropriation but only of a shortage of money. The Division Bench has itself stated the main reason why its order cannot be upheld in the following words, "on reappreciation of the entire material placed on record, we do not find any reason to interfere with the well considered and merited order passed by the learned Single Judge."

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12 (2007) 1 SCC 437

13. We accordingly set-aside the impugned order and dismiss the writ petition of the respondent.

14. Having regard to the circumstances of the case, we find it appropriate to direct the appellant to pay an adhoc sum of Rs.3,00,000/- to the respondent who has retired long ago and has drawn pension of which he will be deprived hereafter. Appeal disposed off as allowed.

.....J.
[J. CHELAMESWAR]

.....J.
[S.A. BOBDE]

New Delhi,
December 10, 2014