

RESERVED

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A NO. 7405 OF 2021

Manish Kumar

....Petitioner

Versus

Human Resources Management
& others

....Respondents

Appearance :-

For Petitioner : Mr. Alok Mishra, Advocate

For Respondents : Mr. Krishan Mohan Asthana, Advocate

HON'BLE J.J. MUNIR, J.

This writ petition is directed against an order passed by the Assistant Manager, Human Resources, Management Section, Canara Bank dated 31.03.2021, punishing the petitioner with removal from service after disciplinary proceedings. Also under challenge is an order of the Deputy General Manager, Human Resources Management, Canara Bank, Head Office, Bangalore dated 02.06.2021, affirming the order of removal from service in appeal.

2. The petitioner's case is that he was appointed on 17.11.2008 on the post of a Probationary Officer (Assistant Manager) MMGS I with the Syndicate Bank at Chennai. The petitioner got a promotion on 26.06.2014 to the post of MMGS II. It is his case that on account of promotion, he joined the City Center Branch, Gwalior. He worked up to 19.03.2016 without any break in service. He was transferred from

time to time from one city to another and across states. He performed his duties honestly and with devotion. The petitioner was last transferred to District Etawah Branch on 16.09.2017, where he was posted as an Assistant Manager. The petitioner says that he has worked for a total of 13 years without any break in service. During this period of time, his work and conduct have been well regarded amongst the higher officials of the Bank. The petitioner was transferred to the Syndicate Branch, Etawah from Ahmedabad Main Branch in the year 2017, but unfortunately, due to what the petitioner described as serious illness resulting from his Diabetes etc., the petitioner was unable to perform his duties regularly with effect from 22.11.2018. Due to his ailment, the petitioner did not perform his duties and members of his family gave medical certificates, along with relevant documents of his treatment from time to time to the Bank establishment. The petitioner says that after he was fit and discharged from hospital, he produced a medical certificate dated 05.06.2020 before the Bank. It is then pointed out that on 05.06.2020, some dispute relating to property between one Bhure Singh and the petitioner erupted, which made the petitioner lodge a First Information Report¹ against Bhurey Singh. Bhurey Singh, as a measure of counterblast, lodged an FIR against the petitioner. In connection with Bhure Singh's the petitioner was arrested on 12.06.2020. He was granted bail by this Court on 10.11.2020 in the said crime. While the petitioner was in custody, he was suspended from service due to the long period of his absence and detention in custody. After release on bail, the petitioner requested the respondents to revoke his suspension and pay his salary. Instead, he was given a charge-sheet dated 10.03.2021.

3. After service of the charge-sheet, the petitioner was deputed as an Assistant Manager, Baghpat Regional Office on 12.03.2021. The

1 'FIR' for short

petitioner submitted a reply to the charge-sheet on 14.03.2021. He denied receipt of letters dated 16.03.2019 and 21.04.2019. The defence taken about the petitioner's absence from 22.11.2018 till 12.06.2020, while posted at the Etawah branch of the Bank, was that he was seriously ill and admitted to the Sir Ganga Ram Hospital, Delhi. The Disciplinary Authority appointed an Inquiry Officer to hold inquiry. At the end of the inquiry, the Inquiry Officer submitted a report, on the basis of which, after issue of a show-cause notice to the petitioner, he was removed from service by the Assistant General Manager, Human Resources Management Section, Canara Bank, Lucknow. The petitioner preferred an appeal to the Appellate Authority on 10.04.2021. The appeal was dismissed by the Appellate Authority, the Deputy General Manager, Human Resources Management, Canara Bank, Head Office, Bangalore, affirming the Disciplinary Authority.

4. Aggrieved, this writ petition has been filed under Article 226 of the Constitution.

5. A supplementary affidavit was filed, bringing on record certain documents, including attendance register in support of the plea that the petitioner was marked on leave on 22.11.2018 to 07.07.2019. Another supplementary affidavit was filed earlier by the petitioner dated 30.11.2023. A counter affidavit has been filed on behalf of the Bank. The petitioner has not filed any rejoinder affidavit. When the writ petition came up before the Court on 07.12.2023, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. The hearing was adjourned to 16.12.2023, when Mr. K.M. Asthana, learned Counsel for the Bank was indisposed, necessitating adjournment of the matter to 19.12.2023. On 19.12.2023, learned Counsel for both parties were heard, who concluded their submissions. Judgment was reserved.

6. Heard Mr. Alok Mishra, learned Counsel for the petitioner and Mr. Krishna Mohan Asthana, learned Counsel appearing for the respondents.

7. Upon hearing learned Counsel for parties and perusing the record, this Court finds that the following charge was framed against the petitioner :

You are presently transferred to Agra, Circle Office since 18.02.2021.

You were on unauthorized absence from 22.11.2018 while posted at our Etawah Branch (18655) e-syndicate till 12.06.2020 the time Police had arrested and detained you in jail on 13.06.2020 on account of impersonation as Police and Raw Officer. Hence, you have been deemed suspended vide proceeding ref; LC HRM SUSPENSION 552815 1024 2020 dated 16.06.2020.

You had been unauthorizedly absent from duties from 22.11.2018 to 12.06.2020 without any prior information / permission of leave from the competent authority. Due to your continued absence from duties without intimation, we had issued following letters to you instructing you to report for duties Immediately by below mentioned letters:

1. Ref No.8655/MARCH/2019-11 Dated 16.03.2019

2. Ref No.8655/APRIL/2019-2 Dated 21.04.2019

However despite of the above letters and follow up, you have neither responded nor reported back on duty.

In view of the above, vide letter ref no. Ref No.878/ROK/631505/2019-20 dated 19.11.2019 you were given final notice to report back on duty Immediately, failing to which necessary disciplinary action would be initiated against you.

However you have not reported for duties till detention in Police Custody.

The unauthorized absence from 22.11.2018 to 12.06.2020 has been treated as Absence without leave hence loss of pay.

By your above acts, you have failed to adhere the laid down guidelines of the bank.

The charges are fully enumerated in the statement of Imputations to Articles of Charge.

By your above actions, you have failed to discharge your duties with utmost devotion and diligence and thereby contravened Regulation 3[1] read with Regulation 24 of Canara Bank Officer Employees [Conduct] Regulations 1976 which is a misconduct punishable as per the provision of

Canara Bank Officer Employees' [Discipline & Appeal]
Regulation 1976.

8. The said charge was denied by the petitioner. He attempted to explain his absence mostly on the ground of his illness. The nature of the ailment that the petitioner has pleaded is not very definitive and appears to be a case where the petitioner has attempted to camouflage his absence by citing ailments, apparently of little consequence, behind high-sounding medical jargon. The Inquiry Officer, who went into the charges, held a preliminary hearing, which has been mistakenly described by the petitioner as a preliminary inquiry, followed by a regular inquiry the same day. The preliminary inquiry, that was held in this case, was, in fact, a preliminary hearing and the Bank too have committed the mistake of describing it as a preliminary inquiry. The inquiry that was held on 22.03.2021, was, in substance, a preliminary hearing in the regular inquiry. The regular inquiry was held on the same day i.e. 22.03.2021. Thus, it is not a case where there was a preliminary inquiry held, followed by a regular inquiry on the same day. It is a case where the preliminary inquiry being over, the regular inquiry commenced and concluded in one day. What this Court notices is that the respondents, who bore the burden of proving the charge against the petitioner, had discharged that burden by formally convening the inquiry before the Inquiry Officer, in whose presence, the Presenting Officer led documentary evidence and testified as a witness on behalf of the Management, M.W.1 to prove the documents.

9. During the hearing before this Court, a serious objection was taken that the Presenting Officer could not have acted as a management witness. There is no rule which forbids the Presenting Officer from acting as a management witness. This question arose before a Full Bench of the Calcutta High Court in **S.V.S. Marwari**

Hospital v. State of West Bengal and others². The question referred to the larger Bench by the Division Bench in the said case reads :

"As to whether mere participation of the Presenting Officer as a witness in the domestic enquiry is contrary to the principles of natural justice and renders the enquiry and the entire proceedings ineffective and without jurisdiction even in the absence of proof of prejudice to the employee concerned?"

10. In answering the question, it was held by their Lordships of the Full Bench in **S.V.S. Marwari Hospital (supra)** :

(16) In our view, the fact that the complainant acted as the Presenting Officer by itself will not vitiate a domestic enquiry if no other question of prejudice is there. There is no principle of natural justice which requires that a person who has lodged a complaint cannot be a Presenting Officer and a prosecutor in a domestic enquiry. This view of ours is supported by a decision of the Kerala High Court in the case of *Vijaya Mohan Mills v. Industrial Tribunal* reported in 1993 (1) LLJ 605. Similarly, in our view, an enquiry does not get vitiated merely on the ground that the Presenting Officer examined himself as a witness for proving the charges. This is also the view of the Andhra Pradesh High Court expressed in the case of *Management of Glaxo India Ltd. (supra)*. In a domestic enquiry the management has the right to present its case against the delinquent employee. This is done through the Presenting Officer. His job is to adduce evidence in support of the charges. Generally, he is not a witness. But if he also appears as a witness on behalf of the management, he has to be offered for cross-examination by the delinquent employee. The enquiry will stand vitiated if the delinquent is not allowed to cross-examine him.

(17) While the Enquiry Officer himself must necessarily be completely impartial and unbiased, the same cannot be expected of a Presenting Officer. He is after all, the management's representative and his job is to advance the Management's case. In fact, a Division Bench of the Madras High Court observed in the case of *R.S. Gopalan v. Current In-Charge and Managing Director, LIC of India* reported in 1985 Lab IC 1367, bias of a Presenting Officer in a departmental enquiry is not very relevant because the control of the proceedings is primarily with the Enquiry Officer and it is he who has to guard the interest of the delinquent also.

(18) As has been held by the Hon'ble Apex Court in the case of *Sur Enamel and Stamping Workers Ltd. v. The Workman* reported in AIR 1963 SC 1914, the requisite of a valid domestic enquiry are

2 2015 SCC OnLine Cal 348 : AIR 2015 Cal 82 (FB)

(i) the employee proceeded against has been informed clearly of all the charges levelled against him.

(ii) The witnesses are examined - ordinarily in the presence of the employee - in support of the charges.

(iii) The employee is given a fair opportunity to cross-examine the management's witnesses.

(iv) The employee is given a fair opportunity to examine his witnesses including himself in his defence if he so wishes on any relevant matter and

(v) The enquiry Officer records his findings with reasons for the same in his report.

(19) Ultimately the entire issue boils down to the question of prejudice. If the delinquent employee has suffered any prejudice by reason of the Presenting Officer acting as a witness on behalf of the management, the enquiry proceeding will possibly be held to be vitiated. The prejudice must be real prejudice as opposed to formal prejudice, affecting some substantial legal right of the employee. Naturally, the burden is on the employee to establish such prejudice.

(20) The object of holding an enquiry proceeding is to give the delinquent employee a reasonable opportunity to prove his answers and to defend himself against the charges levelled against him. A domestic enquiry must be in conformity with the rules of natural justice. The rules of natural justice which are at present confined to the procedural side of law are a body of uncodified moral principles intended to supplement the existing law and not supplant it. The details of the procedure that are to be followed by the Enquiry Officer in a domestic enquiry are not prescribed in any rules framed under any statute. Some of the Standing Orders have prescribed certain guidelines on the procedure to be followed in a domestic enquiry. Similarly, Central Civil Service (Classification, Control and Appeal) Rules prescribe certain guidelines on the procedure to be followed. The Enquiry Officer may evolve his own procedure in the absence of any guidelines but the procedure must be fair, free from arbitrariness and in conformity with the principles of natural justice.

(21) It is established law that an Enquiry Officer cannot act as a witness for the management or for that matter for the delinquent employee since a person cannot be a judge in his own cause. However, even an Enquiry Officer is at liberty to put questions to the witnesses and that per se would not vitiate the proceedings. *The Workmen in Buckingham and Carnatic Mills, Madras v. Buckingham and Carnatic Mills* was a case where the Standing Orders had no provision for appointment of Presenting Officer. It was contended on behalf of the dismissed workers that the Enquiry Officer had acted both as the prosecutor and the judge when he recorded the evidence. The Hon'ble Supreme Court observed that what the Enquiry Officer had done in the case was to

put questions to the witnesses and elicit answers and allowed workman to cross-examine those witnesses. Similarly, he had also taken the statements of the worker and asked for clarifications framed wherever necessary. Therefore, the enquiry proceedings were completely fair and impartial.

11. The question was formally answered in paragraph No. 22 of the report in the following terms :

(22) In view of the aforesaid discussion, our answer to the question referred to us is in the negative. In other words, mere participation of the Presenting Officer as a witness in a domestic enquiry is not contrary to the principle of natural justice and does not render an enquiry or the entire proceedings inoperative or without jurisdiction in the absence of proof of prejudice to the concern employee.

12. In the present case, nothing is pleaded by the petitioner to the effect in what manner, by the fact that the Presenting Officer testified as a management witness, the petitioner was prejudiced in his defence. In the absence of prejudice, there is nothing to disqualify the Presenting Officer from testifying as a management witness, particularly, when he is leading evidence on behalf of the Establishment, that is largely documentary in character, with which he is acquainted. The documents on which the Management have relied are mostly about the petitioner's unauthorized absence, the letter written to him to report for duty and those documents were of a nature that the Presenting Officer could very well prove on behalf of the Establishment/Management. Therefore, there is no substance in the petitioner's contention in this regard that the solitary witness examined being Presenting Officer himself, proceedings of the inquiry are vitiated.

13. A perusal of the counter affidavit shows that the copy of the inquiry report was served upon the petitioner *vide* memo dated 26.03.2021. The inquiry report being a document dated 25.03.2021, the petitioner was given an opportunity to file a reply to the show-cause notice. The petitioner made his submissions against the

findings of the inquiry report *vide* letter dated 23.03.2021, which was received by the Disciplinary Authority on 30.03.2021. The impugned order was then passed by the Disciplinary Authority, after considering the petitioner's case on 31.03.2021. The petitioner's appeal to the appellate authority was duly considered with reference to the evidence on record by the Deputy General Manager/Appellate Authority, who, by his order impugned dated 02.06.2021, after affording the petitioner opportunity of personal hearing on 25.03.2021, dismissed the petitioner's appeal, recording cogent findings.

14. A perusal of the inquiry report would show that the charge of absenteeism for a period of 1½ years was proved by the Establishment, by producing documentary evidence through the Presenting Officer, who also proved the documents, testifying as the management witness, M.W.1. The petitioner did not lead evidence in his defence, though he has annexed a few papers in his reply. He could have led that evidence and produced witnesses to establish his defence. He could have examined the doctors who had treated him and proven the kind of ailment that he suffered from, that made it impossible, as he says, for him to attend duties. In that event, the petitioner had to apply for sick leave. That was apparently not done. At this stage before us, through the supplementary affidavit dated 13.08.2023, the petitioner has annexed copies of attendance registers from the month of November, 2018 to February, 2021. These attendance registers do show that the petitioner was marked on leave by the Bank up to 06.06.2019 and absent from 07.06.2019. This aspect does not appear to have been brought to the notice of the Disciplinary Authority or the Appellate Authority. This was not a case urged by the petitioner in his reply to the charge-sheet or in his grounds of appeal. The documents annexed to the reply that he submitted to the charge-sheet also does not show that this

attendance record was annexed. At the hearing before the Inquiry Officer, this attendance record was not produced. Having failed to produce the attendance record at the inquiry, showing that for a substantial period of time, out of the total period at the inquiry of unauthorised absence alleged, the petitioner was on sanctioned leave, the petitioner cannot rely upon that record for the first time before this Court. The petitioner was given an opportunity by the Inquiry Officer to produce evidence in his defence. It was at that stage that the petitioner could have produced this attendance record and proved that for a good period of time out of the total unauthorised absence charged, he was on sanctioned leave, but he did not do that. He could have also produced witnesses to prove the said attendance record, say, by calling the Management's employee who maintained the relevant register. Nothing of this kind was done. In appeal too, this ground was neither taken nor this record annexed.

15. We cannot permit the petitioner to produce documents in his defence for the first time in the present proceedings under Article 226 of the Constitution. The inquiry has been held by the respondents, adopting a fair procedure and affording the petitioner due opportunity of hearing. The charge has been proved by the Establishment, where the petitioner has not led any evidence in his defence before the Inquiry Officer. No demonstrable prejudice has been caused to the petitioner during the process of inquiry. So far as the findings of the Inquiry Officer are concerned or those of the Disciplinary Authority and the Appellate Authority, this Court cannot sit in appeal over the same and substitute our own view of the evidence for that of the primary decision maker's. The scope of this petition is limited to a secondary review, where, re-appreciation of evidence is not our province.

16. In the considered opinion of this Court, no case of interference with the impugned orders is made out.

17. In the result, this petition **fails** and stands **dismissed**.

18. There shall be no order as to costs.

Allahabad

June 05, 2024

I. Batabyal

(J.J. MUNIR, J.)