2019:GUJHC:15101

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9271 of 2006**

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N.D.SHAH
Versus
BANK OF BARODA

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Appearance:
MR AR MAJMUDAR(428) for the Petitioner(s) No. 1
MR NK MAJMUDAR(430) for the Petitioner(s) No. 1
MR DARSHAN M PARIKH(572) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE A.S. SUPEHIA**

**Date : 06/03/2019**

**ORAL ORDER**

**[1.0]** The present petition has been filed for quashing and setting aside the order dated 04.04.2005 passed by the Appellate Authority rejecting the appeal preferred by the petitioner and confirming the order passed by the Deputy General Manager and disciplinary authority dated 30.03.2004 by which the penalty of removal from service came to be imposed upon the petitioner.

**[2.0]** The brief facts giving rise to the present petition are as under:-

**[2.1]** While the petitioner was serving as Branch Head at Udhana Branch, Surat, the petitioner came to be suspended by an order dated 17.03.1998.

**[2.2]** Thereafter, the petitioner was served with a show cause notice dated 18.03.1999 by which the petitioner was called upon to show cause as to why the disciplinary action should not be taken against him for the lapse/irregularities alleged to have been reported against the petitioner while he was working as In-charge Chief Manager for the period from 18.07.1996 to 30.09.1997 and as Senior Branch Manager from 01.10.1997 to 24.02.1998 at Udhana Branch, Surat.

**[2.3]** Pursuant to the show cause notice, a letter dated 31.03.1999 was addressed to the Deputy General Manager, Bank of Baroda, South Gujarat Zone by the petitioner requesting that all the relevant documents relied upon by the bank authorities while issuing the show cause notice be supplied to him. It was mentioned in the said letter that without the relevant documents relied upon by the bank being supplied to him by the bank, he would not be able to submit his reply to the show cause notice.

**[2.4]** Thereafter, the petitioner had also sent one letter dated 01.02.2000 seeking permission of the authorities for availing assistance of legal practitioner in the disciplinary proceedings. By the memorandum dated 03.01.2000, the petitioner was served with articles of charges and statement of allegations. 10 charges were levelled against the petitioner. Thereafter, the authorities had decided to institute the disciplinary proceedings in terms of sub resolution 5(2) read with Regulation No. 6 of the Bank of Baroda Officers/Employees (Discipline & Appeal) Regulations.

**[2.5]** After holding the departmental inquiry, vide inquiry report dated 20.11.2003 prepared by the Central Vigilance Commission i.e. the inquiry authority, all the charges were held to be proved against the petitioner except one charge. It is the case of the petitioner that he was not given a reasonable opportunity to defend his case before the disciplinary authority and the Deputy General Manager disciplinary authority has passed an order dated 30.03.2004 imposing the penalty of removal. The petitioner has challenged the same by way of filling an appeal and the same was also rejected on 04.04.2005.

**[3.0]** Learned advocate Mr. Majmudar appearing for the petitioner has submitted that the impugned order of dismissal as well as the order of appellate authority are required to be quashed and set aside since only charge which is leveled against the petitioner was of irregularities and negligence. He has submitted that the relevant witnesses are not examined in the departmental proceedings. It is further submitted that the documents asked for by the petitioner were not supplied to him, hence the impugned order of imposing penalty is required to be quashed and set aside. It is submitted that the departmental proceedings are held in violation of the principles of natural justice, hence the same are vitiated. Lastly, it is submitted that in one of the criminal cases which was instituted against the petitioner for the same allegations, he has been acquitted, hence the penalty order may be set aside. No further submission is made.

**[4.0]** Per contra, learned advocate Mr. Darshan Parikh appearing for respondent No. 1 has submitted that there were serious allegations against the petitioner and there were at-least more than 10 charges considering of 40 allegations and most of them were proved in the departmental proceedings. He has submitted that the allegations pertain to violation of the breach of trust imposed upon the petitioner. He has further submitted that the petitioner had been followed the bank rules and committed such omissions, which show lack of probity, integrity and bona fides.

**[5.0]** Learned advocate Mr. Darshan Parikh for respondent No. 2 has placed reliance on the judgment of the Apex Court in the case of M.Mani V. Management of Bharat Heavy Electricals Limited, (2018) 1 SCC 285 for the preposition of law that the impugned order of imposing penalty cannot be set aside.

**[6.0]** I have given my thoughtful consideration to the submissions advanced by the learned advocates for the respective parties. The documents as pointed out by them are also perused.

The petitioner has been issued the memorandum dated 03.01.2000, with articles of charges and statement of allegations, inter alia, stating that he has committed various illegalities. It is alleged that without obtaining any signature of the authorized signatories, and without cross checking the same loans were sanctioned and granted. In some of the cases no serial number, date, amount of loan required, mode of execution of documents and mode of charging the security are followed by the petitioner. It is alleged that while disbursing the loans by issuing Bankers cheques and also while making payment of FDRs on due dates by issuing demand drafts usual bank charges were not recovered in many cases, thus causing financial loss to the banks. It is further alleged that while accepting the fixed deposit he did not apply the correct rate of interest but offered 1% higher rate of interest than applicable and did not sign the specimen signature cards/Account opening forms of Fixed Deposit account and current accounts as Branch Manager.

**[7.0]** The memorandum of charges pertain to different banks and cooperative societies. The documents on record also reveal that the petitioner was supplied almost 1400 pages containing two files. It is not stated by the petitioner that the disciplinary authority has placed reliance on such documents which were not supplied to him for proving the charges. Thus, the disciplinary proceedings cannot be set aside since the relevant documents on which the reliance is placed in the proceedings are supplied to the petitioner.

**[8.0]** In the disciplinary proceedings six witnesses were examined and the petitioner was also given full opportunity to examine them. The petitioner had an opportunity to cross-examine them for bringing out incongruity or differences and fallacy, in any of their depositions against him. It is also borne out from the appellate order that the petitioner's request for defence by an officer from another zone was allowed but the petitioner decided to defend himself. The request of the petitioner for engaging a lawyer for defending him in the departmental proceedings is rightly rejected since no rules or regulations are pointed out, which envisage the right of the delinquent to engage a lawyer in the departmental proceedings.

**[9.0]** The learned advocate for the petitioner has submitted that in one of the criminal cases the petitioner has been acquitted, hence, the penalty order may be set aside. No detail of the criminal case is pointed out to this Court. Be that as it may, at this stage , it would be relevant to incorporate the observations made by the Supreme Court in the case of M.Mani V. Management of Bharat Heavy Electricals Limited, wherein, the Apex Court has observed thus,

> "17. To begin with, when we examine the legality and the correctness of the Awards of the Labour Court, we are of the considered opinion that the Labour Court, having held and indeed rightly that the departmental enquiry conducted by the appellant was legal and proper committed an error in holding that the departmental enquiry got vitiated due to criminal court's order which had acquitted the respondents from the charge of theft. In our opinion, there was no occasion for the Labour Court to examine this issue once the departmental enquiry was held legal and proper. The Labour Court, in our opinion, committed yet 10 another error in holding that since the appellant failed to lead any evidence to prove the charge in Labour Court, therefore, the dismissal orders of respondents are liable to be set aside. This finding, in our opinion, was again not legally sustainable.
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> *18. In our opinion, once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of "dismissal" imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum.*
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> *19. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Dispute Act, 1947 11 (in short "the Act") and the law laid down by this Court in the case of The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors., (1973) 1 SCC 813. It was, however, not done thereby rendering the order of Labour*

*Court legally unsustainable.*

*20. Similarly, in our considered view, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal Court and other, i.e., departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.*

*21. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal Court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.*

*22. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal Court is of no avail. It is held that even if a person stood acquitted by the criminal Court, domestic enquiry can still be held - the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao-(2012) 1 SCC 442)*

*23. In the light of this settled legal position, the Labour Court was not right in holding that the departmental enquiry should have been stayed by the appellant awaiting the decision of the criminal Court and that it is rendered illegal consequent 13 upon passing of the acquittal order by the criminal Court. This finding of the Labour Court is, therefore, also not legally sustainable.*

**[10.0]** In the present case, the undisputed fact remains that the petitioner has not raised any grievances regarding violation of any regulations or rules. The enquiry has been held fairly and independently of the criminal proceedings, as per the rules. Hence, the acquittal in the criminal proceedings, is of no avail as observed by the Apex Court in the afore-noted judgment. It is not in dispute that the standard of proof required in the criminal proceedings is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities.

**[11.0]** The punishment of removal imposed upon the petitioner cannot, in any manner be said to be disproportionate to the gravity of the charges leveled against the petitioner. Once the disciplinary proceeding is held to be legal and proper in accordance with the rules and regulations and there is nothing pointed out that such proceedings are held in violation of the rules or regulations then this Court cannot re-examine the facts on which the misconduct is based and arrive on its own conclusion by acting as an appellate authority or reviewing authority and thereafter substitute the findings of the inquiry officer and alter or set aside the penalty imposed by the disciplinary authority.

**[12.0]** In the light of the aforesaid averments, the petition fails legal scrutiny and accordingly the same stands dismissed. Rule is discharged.

**(A. S. SUPEHIA, J)**

VISHAL MISHRA