

(2004) 10 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 7744 of 1999

B. Viswanatha Rao

APPELLANT

Vs

Management of Canara Bank, Head Office and Another

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Canara Bank Employees Pension Regulations, 1995 — Regulation 29
Evidence Act, 1872 — Section 141, 142, 143

Citation : (2005) 106 FLR 320 : (2005) 1 KarLJ 562 : (2005) 1 KCCR 60 SN :
(2005) 2 LLJ 419

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : P.S. Rajgopal, for the Appellant; Ramadas and Anand, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—Petitioner has challenged in this writ petition the order of the Industrial Tribunal dated 16-1-1987 as per Annexure-C where domestic enquiry was held to be legal and valid and also the award passed by the Labour Court dated 27-1-1999 upholding the order of punitive discharge passed by the respondent 2.

2. Petitioner joined the services of the first respondent-Bank on 1-7-1971 as a Clerk on probation. He was confirmed. The disciplinary proceedings were initiated against the petitioner by issue of a chargesheet dated 21-5-1977. Charge against the petitioner was that when he was working in the S.B. department at the Town Hall Branch on 15-3-1974, has falsified the records of the Bank and due to gross negligence, involving the Bank in a serious loss and committed an act prejudicial to the interest of the Bank.

3. Petitioner filed a detailed statement of objections denying all those allegations. One D.P. Srinivasan was appointed as the Enquiry Officer. No person was appointed as the Presenting Officer. Petitioner was represented by one U.

Krishnamurthy Rao, a co-employee to defend him. Enquiry was conducted. Enquiry Officer gave a report holding that charges levelled against the petitioner has been proved. Acting on the said report of the Enquiry Officer, the Disciplinary Authority, accepting the said finding, proceeded to pass the order dated 20-4-1981 as per Annexure-M and the petitioner was discharged under Chapter XI, Regulation 4, clause (f) of the Canara Bank Service Code.

4. Against the said order, petitioner preferred an appeal to the Board of Directors of the Bank. The appeal also came to be rejected by proceedings of the Board dated 3-4-1982. Thereafter, he raised an industrial dispute. The Government, after conciliation having failed, referred the dispute to the Central Government Industrial Tribunal-cum-Labour Court to consider whether the Management of Canara Bank is justified in discharging the petitioner with effect from 11-4-1981?

5. Before the Labour Court, the petitioner contended that domestic enquiry conducted is not fair and proper. The Enquiry Officer himself acted as a Presenting Officer, led evidence on behalf of the management and also cross-examined the witnesses examined on behalf of the petitioner as well as the petitioner and therefore it is a case of Judge acting as a prosecutor and holding the petitioner guilty. Therefore, the entire enquiry is vitiated. He also challenged the report of the Enquiry Officer on merits.

6. The Labour Court framed a preliminary issue regarding validity of domestic enquiry. Regarding that issue, both the parties adduced evidence. The Labour Court, on appreciation of the evidence adduced before it, held that the domestic enquiry conducted is fair and proper. Thereafter the Labour Court proceeded to consider the material on record on merits and found that the order of punishment passed by the disciplinary authority do not call for any interference. Accordingly, reference was rejected by the impugned order dated 27-1-1999. Aggrieved by the said award, petitioner has preferred this writ petition.

7. Sri P.S. Rajgopal, learned Counsel for the petitioner contended that the order passed by the Labour Court on the preliminary issue is unsustainable in law and the consequently award passed on merits is also liable to be quashed. He submitted that the main ground on which he challenged the domestic enquiry before the Labour Court was that in the absence of a Presenting Officer, Enquiry Officer himself acted as a Presenting Officer and therefore entire enquiry is vitiated. The Labour Court considering the said contention has observed that such a contention is legally called as perverse finding and the fact of perversity has to be gone into when the case is to be decided on merits and definitely not at the stage of preliminary issue and having said so, while considering the merits, he never went to perversity of findings on the aforesaid issues and he submits that ex facie the impugned order passed by the Labour Court is liable to be quashed. From the evidence recorded in the enquiry, he pointed out that the entire Examination-in-Chief was done by the Enquiry Officer. He has also cross-examined in entirety the witnesses examined on behalf of the petitioner as well as the petitioner and has also re-examined the management witnesses and in

the light of the settled legal position, he has acted as a prosecutor as well as a Judge. Therefore, he contend that the entire enquiry is vitiated.

8. Per contra, learned Counsel appearing for the respondents contends that merely because Enquiry Officer has put few questions, that would not vitiate the enquiry. It is not the law that Enquiry Officer should not put any question at all. The material on record clearly discloses that they are in the nature of Court questions. He was not performing the function of Presenting Officer when leading evidence on behalf of management or cross-examining the defence witnesses and therefore he submits that it is settled law that merely because few questions are put by the Enquiry Officer, enquiry is not vitiated.

9. In view of the rival contentions, it is necessary to have a look at the law on the point:

(a) This Court in the case of Abdul Wajeed v. State of Karnataka, 1981(1) SLR 454 (Kar.) dealing with the validity of the enquiry where Enquiry Officer had cross-examined the defence witnesses, held, that the cross-examination of defence witnesses by the Enquiry Officer was in plain violation of the principles of natural justice and consequently the enquiry proceedings were vitiated.

(b) This Court in the case of C. Nagaraja Bhat v. Canara Bank, 1987(3) Kar. L.J. 232 dealing with the effect of non-appointment of Presenting Officer and cross-examination of defence witnesses by Enquiring Authority itself, has held that conduct of the enquiry in the absence of a Presentation Officer by the enquiry authority, as if he was the Presentation Officer, was clearly opposed to the rules of natural justice and fair-play as Courts have now come to understand.

(c) Again this Court in Radhakrishna Setty Vs. Deputy General Manager (Disciplinary Authority), Indian Overseas Bank, Central Office, Madras and Another, has held that in a departmental proceedings, Enquiry Officer is an important person. When he is the key person, on him depends whether the enquiry would be fair or impartial. No doubt, the inquiry officer does not function like a Court and its proceedings also cannot be equated with the proceedings of the Court. Further, strict rules of Indian Evidence Act would not apply to its proceedings but certainly the principles which are based on the rules of natural justice would definitely apply. Certainly the Enquiry Officer may obtain all information, material for the points under enquiry from all sources and through all channels without being fettered by rules and procedure which govern the proceedings in the Court. The only obligation which the law casts upon them while eliciting the truth cannot go beyond the limit as an Enquiry Officer and play the role of a Prosecutor giving an indication that he was not fair and that he was biased. Enquiry Officer himself had questioned the management witnesses and got all the documents marked in support of the allegations in the charge memo. After closing the Examination-in-Chief and the cross-examination of the witnesses by the defence representative, re-examines the witnesses which he characterises as clarification. What is much more strange is that he goes beyond

his scope to cross-examine the witnesses of the delinquent officer and assumes the role of Presenting Officer and a Prosecutor. This is evident from the cross-examination of the defence witnesses. While cross-examining by putting leading questions gives an impression that he was playing dual role that of an inquiry officer and the role of a Prosecutor. Therefore, it was held that the conduct of the enquiry in the absence of Presenting Officer by the inquiry officer as if he was the Presenting Officer is clearly opposed to the maxim "fair-play in action" and opposed to rules of natural justice. When the Enquiry Officer is biased and partial, any report submitted by him would suffer from illegality and the action taken by the disciplinary authority based on such report and the finding cannot stand on its own and necessarily deserves to be quashed as not in conformity with rules of natural justice and fair-play in action. This judgment was confirmed in writ appeal.

(d) This Court in the case of Bheemana Gowda v. Divisional Controller, Karnataka State Road Transport Corporation, Raichur, 1999(6) KLD 591 after noticing that the Enquiry Officer has also acted as Presenting Officer, it was observed that a prosecutor cannot be a Judge in a cause. Enquiry can be conducted without a Presenting Officer. But in such an enquiry, if the Enquiry Officer functions as Presenting Officer and cross-examine the witnesses, the enquiry becomes invalid.

10. (a) Per contra, learned Counsel appearing for the respondent-Bank relied on judgment of the Supreme Court in the case of Sukhadeo Vishwanath Garaje Vs. M/s Food Corporation of India and others, wherein it has been observed as under:

"It is true that the Enquiry Officer has asked questions to the petitioner and his defence witnesses, some of which were in the nature of cross-examination. However, it is to be borne in mind that in domestic enquiries the detailed procedure of recording evidence as followed in Courts need not be strictly adhered to. The rules of Indian Evidence Act do not apply to departmental enquiries. Very often there is no separate management representative to conduct enquiry proceedings on behalf of the management and only witnesses are sent to the Enquiry Officer to depose regarding the incident. In such cases the questions to such witnesses are put by the Enquiry Officer and not by the management. This procedure does not violate the principles of natural justice. If the Enquiry Officer examined the witnesses without the assistance of the management representative then it does not show that he himself was the prosecutor when the record shows that a bona fide enquiry was held. When the Enquiry Officer himself examined and questioned the witnesses it is not objectionable so long as due opportunity is given to the delinquent to cross-examine them. It is competent for the Enquiry Officer to put questions to the witnesses to ascertain the real incident. However, when all the question of the defence witnesses are put by the Enquiry Officer and it shows that the workman had no chance to put questions then the principles of natural justice would be violated. It is the duty of the Enquiry Officer to elicit truth from witnesses. He is even entitled to cross-examine the witnesses for the same and this will not bring

any bias. In most of the cases the Enquiry Officer is a layman and not conversant with the procedure of Court. If the enquiry records show that the Enquiry Officer in his own way tried to do justice to the delinquent and afforded him all the reasonable opportunity then the enquiry cannot be set aside on the ground that the Enquiry Officer examined the witnesses without any assistance from the management. The rules regarding questions as applicable in Courts are laid down under Sections 141, 142 and 143 of the Indian Evidence Act. Such officers may be very competent in their jobs but may not be able to frame the questions in the manner in which they are framed in the Courts and therefore the ban on putting leading questions cannot be made applicable to such enquiries. The Indian Evidence Act is not applicable to the departmental proceedings and the questions cannot be condemned on the ground that they were leading. It is only when the departmental proceedings reflect bias on the part of the Enquiry Officer that the enquiry can be said to be vitiated".

(b) The Supreme Court in the case of *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, has held that it may also be pointed out that there is no bar on an Enquiry Officer seeking clarification from the witnesses as long as it permits cross-examination of the witnesses from whom clarification has been sought.

(c) The Supreme Court in the case of *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, has held that merely because in a domestic enquiry, management is not represented by an officer separately do not prevent an Enquiry Officer from putting questions to the delinquent workman and to witnesses and such a conduct on the part of the Enquiry Officer would not vitiate the domestic enquiry.

(d) This Court in the case of *Bharath Electronics Ltd. Vs. K. Kasi*, has held that insofar as position in law is concerned, it is a common ground that if the Enquiring Authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the enquiry would be opposed to principles of natural justice. It is also settled law that an Enquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long as the delinquent employee is permitted to cross-examine the witnesses after the Enquiring Authority questions the witnesses, the enquiry proceedings cannot be impeached as unfair.

11. From the aforesaid judgments it follows that the law on the point is well-settled. Domestic enquiry in Industrial Law has acquired great significance and industrial adjudication attaches considerable importance to such enquiry. Enquiry is not an empty formality but it is essential condition to the legality of the disciplinary order. Holding of a fair and regular enquiry is sine quo non before an order of dismissal is passed on the ground of misconduct. The Disciplinary Enquiry is a quasi-judicial enquiry which is held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially because the

charges of misconduct, if proved will result not only in deprivation of livelihood of the workman but will also attach stigma to his character. The basic postulate of a domestic enquiry is that it must be fair in all respects and should not be conducted with "an evil eye and uneven hand".

12. The traditional judicial approach on the representation of the parties before Domestic Tribunals is that a domestic enquiry is a managerial function and as such it is best left to the management without the intervention of outsiders and persons belonging to legal profession. This approach is based on the view that enquiry before Industrial Tribunals are of simple in nature where technical rules as to evidence and procedure do not prevail and persons appointed to hold such enquiry are generally not lawyers. In other words, Enquiry Officers holding enquiry without being unduly influenced by strict rules of evidence and procedural juggernaut and hear the delinquent employee in person and in such an informal enquiry the delinquent Officer could at best be able to defend himself.

13. Normally much industrial establishments have highly trained officers who are engaged in representing the management in domestic enquiries. However, it is not incumbent on the management that it must appoint a Presenting Officer before domestic enquiry. It may leave it to the Enquiry Officer himself to elicit relevant information from the witnesses presented before him by the management and the workmen. Such procedure is permissible as long as the Enquiry Officer does not play the role of Presenting Officer. There is no legal compulsion that Presenting Officer should be appointed. The mere fact that the Presenting Officer was not appointed by the management is no ground to invalidate the enquiry.

14. In a domestic enquiry an Enquiry Officer is appointed to enquire into the truth or otherwise of the charges levelled against the delinquent employee. The whole purpose and object of such domestic enquiry is to get at the truth of the matter. No doubt it is the management which has to establish the charges levelled against the delinquent employee by examining witnesses to substantiate the charges. Thereafter it is open to the delinquent employee to adduce evidence in support of his defence. When a Presenting Officer is not appointed by the Management merely because few questions are put by the Enquiry Officer to such witnesses of the management it does not amount to Examination-in-Chief by the Enquiry Officer. The Enquiry Officer can put questions to the witnesses who appeared before him for clarification whenever necessary. If when such questions are put and the witnesses give answers which are against the interest of the opposite party then if the Enquiry Officer allows the witnesses to be cross-examined on those points the rules of fair-play is observed. The right of an Enquiry Officer to put questions to witnesses by way of clarification is well-recognised.

15. The purpose and object of permitting the Enquiry Officer to put such questions by way of clarification is to ascertain the real incident. Merely because

such questions are put by the Enquiry Officer in a case where no Presenting Officer is appointed by the Management it does not amount to examination in chief. However, under the guise of putting clarificatory questions if the Enquiry Officer puts leading questions to the witness of the Management and records evidence when no Presenting Officer is appointed and after cross-examination of those witnesses again puts questions by way of re-examination it cannot be said that those questions are put by way of clarification. Similarly in the absence of a Presenting Officer when the defence witnesses are examined if the Enquiry Officer cross-examine the defence witnesses on all the evidence which they have stated and that too by putting leading questions it is a case of the Enquiry Officer acting as Prosecutor and under those circumstances the entire enquiry gets vitiated. However, it is not possible to lay down as a rule of law what questions the Enquiry Officer is permitted to put in a domestic enquiry or how many questions he can put. The question whether the Enquiry Officer has put questions by way of clarifications or virtually he has done the examination-in-chief and cross-examination of the defence witnesses is dependent on the facts and circumstances of each case. The same has to be gathered by looking into the evidence, the nature of questions put, number of questions put, and the answers obtained and how the said answers have been made use of in preparing the report. Therefore the material on record in any particular case demonstrates that the Enquiry Officer acted as a Prosecutor, that too, in the absence of a Presenting Officer such an enquiry gets vitiated. The real test is whether the departmental proceedings reflect bias on the part of the Enquiry Officer. If so the enquiry can be said to be vitiated.

16. It is in this back ground we have to see in the facts of the case what is the role played by the Enquiry Officer, and whether it reflects bias on his part.

17. It is not in dispute that in the enquiry conducted against the petitioner no Presenting Officer was appointed on behalf of the Management. On behalf of the Management five witnesses have been examined and their evidences are produced before Court. A perusal of the aforesaid evidence shows that as noted in the deposition, Examination-in-Chief is conducted in the form of question and answers. Insofar as first witness is concerned after he was cross-examined again in the form of question and answer, re-examination has been conducted by the Enquiry Officer, Similarly, other four witnesses were also examined in chief in the form of question and answer at length and they have been cross-examined. Insofar as cross-examination of the defence witnesses is concerned the deposition recorded clearly shows that the cross-examination is conducted by the Enquiry Officer. Length of crossexamination, and the nature of questions put clearly demonstrates that they are not in the nature of clarification. In fact, we have the evidence of the Enquiry Officer himself to understand what exactly he did while recording this evidence. When he was cross-examined before the Labour Court, in the cross-examination he has stated that, that was the first enquiry he was conducting in his career. He states that he examined all the five witnesses in chief. He also elicited some answers in examination in chief. After

cross-examination of two witnesses he has cross-examined two defence witnesses and the delinquent. Thus his evidence removes any ambiguity if at all regarding the role which he has played in the enquiry. His evidence is supported by what he has actually done in the course of the domestic enquiry. Therefore the material on record clearly discloses that in the absence of a Presenting Officer being appointed by the bank, the Enquiry Officer has performed the role of a Presenting Officer. He has examined all the five witnesses on behalf of the management, as if he was the Presenting Officer. Questions and answers were recorded and the said questions put clearly shows that they were not put by way of clarification. On the contrary they were put to elicit the evidence in support of the case of the management to substantiate the charges levelled against the delinquent employee. Insofar as the role of the Enquiry Officer in putting the questions to defence witnesses is concerned, no one is kept in doubt. He has clearly recorded that it is the cross-examination by the Enquiry Officer. Length of the cross-examination, the nature of questions put and the nature of answers obtained clearly shows that the Enquiry Officer was acting as Prosecutor and he has cross-examined the defence witness to demolish their defence. Therefore, the material on record fully establishes the case of the petitioner that the Enquiry Officer was also acting as a Prosecutor in the case in the absence of a Presenting Officer. He was biased and the entire enquiry proceedings is vitiated on that ground. In the light of the aforesaid facts, the report submitted by him would not be of any value and the punishment imposed by the Disciplinary Authority on the basis of such an invalid report which in turn is based on an invalid enquiry is also vitiated. Under these circumstances it is not necessary for this Court to go into the merits of the award, as when once the domestic enquiry conducted is vitiated for the aforesaid reasons the order of dismissal passed would have no legs to stand, though, it is open to the management to substantiate the charges levelled against the delinquent employee by producing independent evidence before the Labour Court. In the instant case no such evidence is adduced because of the finding recorded by the Labour Court that the domestic enquiry is valid and proper.

18. In fact the approach of the Labour Court in this regard is not proper. When this contention was urged at the time of considering the validity of the domestic enquiry though such objection ought to have been considered and its finding recorded one way or the other the Labour Court brushed aside the said objections by observing if those objections are accepted it could be called as perverse finding which has to be gone into when the case is decided on merits and not at the stage of preliminary issue. But, while deciding the case on merits the Labour Court proceeds on the assumption that already a finding is recorded on the validity of domestic enquiry and the only question to be considered is whether misconduct alleged against the delinquent employee is proved or not thus depriving the petitioner of an opportunity to get the domestic enquiry set aside on the aforesaid grounds. Under the circumstances the award passed by the Labour Court cannot be sustained and is liable to be quashed. Accordingly, it

is quashed.

19. Learned Counsel appearing for the respondent contends that when a domestic enquiry is held to be not valid and proper the respondent-Management has a right to adduce independent evidence for the first time before the Labour Court to substantiate the charges levelled against the delinquent enquiry. Therefore, consequent to the setting aside of the award of the Labour Court on the aforesaid ground of invalidity of the domestic enquiry the matter has to be remanded back to the Labour Court giving an opportunity to the respondent-Bank to adduce evidence to substantiate the charges levelled against the petitioner.

20. Per contra, learned Counsel appearing for the petitioner submits that the incident in question occurred on 5th March, 1974, charge-sheet was issued in 1977, punishment was imposed on 11-4-1981 and in the last 24 years the petitioner has been kept away from employment. Because of the dismissal order he has not been paid any portion of the salary and if the matter were to be remanded back to the Labour Court for fresh adjudication in the aforesaid circumstances, it would be unjust, and having regard to the fact that the incident in question alleged to have happened nearly 30 years back this Court could direct reinstatement of the petitioner who will reach the age of superannuation shortly, with payment of a portion of back wages which would meet the ends of justice.

21. In this regard learned Counsel appearing for the respondent has relied on a judgment of the Supreme Court in the case of Bharat Forge Company Ltd. Vs. A.B. Zodge and another, . In a some what identical situation the Supreme Court remanded the matter back to the Tribunal with a direction to complete the enquiry within a period of six months and therefore he submits that similar directions be issued in this case also.

22. On the contrary, learned Counsel appearing for the petitioner relies on a judgment of the Supreme Court in the case of State bank of India Vs. The Workmen of State Bank of India and another, wherein the Supreme Court was concerned with the misconduct of the year 1966 and the employee being removed in the year 1970, after 23 years what should be the appropriate orders to be passed. The Supreme Court taking note of; the fact that for more than 23 years when matters were pending and also taking note of the fact that the delinquent employee in the meanwhile had become a lawyer, instead of remanding the matter awarded 50% of the back wages and the order of reinstatement was affirmed.

23. In the light of the aforesaid judgments this Court has to see whether it is a fit case for remanding the matter to the Labour Court for fresh adjudication or whether some equitable order could be passed in this Court itself thus putting an end to the controversy and giving quietus to this litigation which is pending for the last 30 years. In this regard it is to be noticed that the incident in question happened on 5-3-1974. The charge-sheet was issued on 21-5-1977. On

11-4-1981 punishment has been imposed. In the meanwhile it was submitted MW-1 H.R. Mallaiah is no more. MW-3 E.T. Bhaskaran is no more. The Enquiry Officer is also no more. Having regard to the nature of charges levelled against the petitioner even in the domestic enquiry no depositors were examined, to speak to the incident. Today 30 years have lapsed. Petitioner is aged 54 years. In another four years he will be attaining the age of superannuation. The fact remains that the petitioner has been kept away from employment for a period of 30 years. In that 30 years the very nature of job has undergone considerable change. Therefore, even if he is ordered to be reinstated it is doubtful whether his services will be of any use to the Bank and whether he will be able to discharge the present day responsibilities. Under these circumstances, I am of the view, sending the entire matter back to the Labour Court in the circumstances would be unjust. At the same time the petitioner also cannot be ordered to be reinstated to his original post with all consequential benefits. Justice of the case would be met by giving him some monetary benefit insofar as past service is concerned and he be permitted to retire under Regulation 29 of the Canara Bank Employees' Pension Regulations, 1995 as on today so that he would not be a burden on the institution and at the same time he would also be able to get some compensation. Hence, I pass the following order:

Writ petition is allowed.

The impugned awards passed by the Labour Court are hereby quashed. In lieu of reinstatement the petitioner shall be treated as having been in service from the date of discharge till today and thereafter he is retired under Regulation 29 of the Canara Bank Employees' Pension Regulations, 1995 with all consequential benefits flowing from such retirement. Petitioner will be entitled to only 50% back wages.

No costs.