

(2004) 08 CAL CK 0033
In the Calcutta High Court

Case No : G.A. No. 1714 of 2004 and A.P.O. No. 192 of 2004

Bank of Maharashtra

APPELLANT

Vs

Dilip Kumar Pandit and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2004) 4 CHN 589 : (2004) 2 ILR (Cal) 509

Hon'ble Judges : Asit Kumar Bisi, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Hirak Mitra and Soumen Sen, for the Appellant;Dipankar Dutta, Sagar Bandopadhyay and Soma Kar Ghosh, for the Respondent

Judgement

Altamas Kabir, J.—Between 2nd May, 1990 and 8th October, 1991, the writ petitioner/respondent No. 1 worked as a clerk in the Savings Department at the Netaji Subhas Road Branch of the Bank of Maharashtra. On 8th October, 1991, the Bank, which is the appellant herein, suspended Shri Pandit from service allegedly on the ground of having made false entries relating to various accounts resulting in misappropriation of about Rs. 1,55,300/-.

2. On or about 15th June, 1992, a draft chargesheet was prepared and sent to the central office of the Bank for approval. Soon thereafter the questioned documents were sent by the Bank to the Government Examiner of the Central Forensic Institute, Kolkata, for opinion as to the manipulated and/or interpolated entries in the ledgers, charts, vouchers and balance books. On 30th July, 1992, the Criminal Bureau of Investigation registered a case against Shri Pandit, being R. C. Case No. 37 of 1992, in the Court of the 3rd Special Judge, Calcutta. On 30th November, 1995, the said Bureau, hereinafter referred to as "C.B.I.", filed chargesheet against Shri Pandit in the Court of the 3rd Special Judge, Calcutta. The proceedings in Case No. 37 of 1992 were, however, stayed in revision.

3. Thereafter, the Bank decided to go ahead with the departmental enquiry and on 16th November, 1998, chargesheet by the Bank was served on Shri Pandit by

registered post. On 29th December, 1998, a corrigendum to the chargesheet was issued whereby charge Nos. 3 and 4 were clubbed together as a single charge and the same was also served on Shri Pandit by registered post.

4. Shri Pandit filed a writ petition, being W.P. No. 22134 of 1998, inter alia, praying for stay of the departmental enquiry and also for" setting aside the order of suspension but the same was dismissed on 28th April, 1998. The appeal preferred by Shri Pandit, being MAT No. 1413 of 1999, was disposed of on 28th May, 1999, with liberty to the Bank and its authorities to continue with the departmental enquiry in keeping with the requirements of the Sastry Award and to give Shri Pandit all facilities to defend himself properly in the enquiry.

5. Thereafter, Shri Pandit filed a second writ petition, being W.P. No. 1303 of 2000, inter alia, for an order of injunction to restrain the respondents from giving any effect to the order of suspension and for a direction upon the respondents to pay him his full salary.

6. On 31st May, 2001, the Disciplinary Authority dismissed Shri Pandit from service. The appeal filed by him before the Appellate Authority was also dismissed on 18th September, 2001. The writ petition was dismissed on 11th October, 2001.

7. On 23rd May, 2002, Shri Pandit filed a third writ petition, being W.P. No. 1167 of 2002, challenging his dismissal order as confirmed by the Appellate Authority. The same was allowed by the learned Single Judge on 5th May, 2004, with a direction to the respondents to reinstate the writ petitioner in service. The question regarding payment of back wages was left to the respondents for a decision in accordance with law.

8. This appeal by the bank is directed against the said judgment and order dated 5th April, 2004, passed by the learned Single Judge.

9. Appearing for the appellant/bank and its authorities, Mr. Hirak Mitra, learned Senior Counsel, urged that in view of the material on record, which includes the evidence adduced before the Enquiry Officer, the learned Single Judge erred in setting aside the order of dismissal, which had been duly confirmed by the Appellate Authority after considering the evidence. Mr. Mitra urged that it was not for the learned Single Judge to reappraise the evidence in order to come to an independent finding of his own.

10. Mr. Mitra submitted that the writ petitioner had been charged with serious misconduct, which included interpolation and forgery. The Enquiry Officer, after giving a reasonable opportunity to the writ petitioner made and published his report on 1st October, 1999, but the Disciplinary Authority upon representation of the writ petitioner remanded the matter to the Enquiry Officer for a fresh enquiry on the ground that reliance had been placed on the report of a Handwriting Expert to prove the charges against the writ petitioner, but the same had not been made available to the writ petitioner nor was it exhibited. The

Disciplinary Authority held that in the said circumstances the Enquiry Officer could not have relied on the said report and the matter was sent back for a de novo enquiry.

11. Thereafter, during the de novo enquiry the writ petitioner also relied on the opinion of a handwriting expert in support of his contention that the entries appearing in the various documents were not in his handwriting and that he should not be held liable for the allegations with which he had been charged. However, on the basis of the report of the handwriting expert of the Bank, the Enquiry Officer, after applying his mind to the evidence adduced, found that the charges against the writ petitioner had been proved. The said report was, thereafter, forwarded to the writ petitioner for making representation, if any, to the Disciplinary Authority in respect of the punishment proposed against him. Such representation was duly made on 11th July, 2001, and was ultimately rejected by the Disciplinary Authority and such rejection was confirmed by the Appellate Authority.

12. Mr. Mitra then submitted that the learned Single Judge had failed to appreciate the fact that in order to become a handwriting expert no special degree was required to be obtained and such expertise is acquired through experience. Mr. Mitra submitted that Shri Puroshottam Chattejee, handwriting expert, who had been engaged by the Bank was duly recognized as a handwriting expert by the Office of the Legal Remembrancer as early as in 1965 and he was also on the panel of experts of questioned documents and his evidence should not have been discarded by the learned Single Judge only on the ground that he did not possess any specialized degree.

13. Mr. Mitra submitted that it is well-settled that in a domestic enquiry the rules of evidence are not so stringent as is applicable under the Indian Evidence Act and that the Enquiry Officer is merely required to come to a decision which a prudent man would arrive at on the basis of evidence adduced in the enquiry proceedings. Mr. Mitra submitted that, in any event, the learned Single Judge was not sitting in appeal over the findings of the Enquiry Officer and/or Appellate Authority which had the opportunity of appraising the evidence.

14. Mr. Mitra submitted that the learned Single Judge had come to an erroneous conclusion that the writ petitioner had not been given fair treatment and that the report of the Enquiry Officer is not based on any evidence but on surmise and conjecture. Mr. Mitra submitted that the order of the learned Single Judge was liable to be set aside.

15. Opposing the appeal on behalf of the writ petitioner/respondent, Mr. Dipankar Dutta, learned Advocate, submitted that while it is no doubt true that the Writ Court does not sit in appeal over the findings arrived at in a domestic enquiry, it may do so if the findings are perverse and not based on the evidence on record. Mr. Dutta submitted that this was a clear case of perversity which gave jurisdiction to the learned Single Judge to interfere with the order of the

Disciplinary Authority as affirmed by the Appellate Authority.

16. In support of his contention Mr. Dutta submitted that the entire case of the Bank is based on the evidence of Shri Puroshottam Chattejee, alleged to be a handwriting expert, but whose purported expertise was not disclosed before the Enquiry Officer. Mr. Dutta submitted that, in fact, a question put to Shri Chatterjee during cross-examination as to his qualifications was disallowed by the Enquiry Officer. Mr. Dutta submitted that mere experience cannot be a substitute for proper training in a profession which was basically scientific in its approach. Mr. Dutta urged that experience could only supplement the expertise gained through proper training and guidance as in any other science.

17. Mr. Dutta submitted that the handwriting expert engaged by the writ petitioner had superior qualifications and in keeping with the authorities on the subject had opined that it was not possible to establish the handwriting of an individual on the basis of one numerical digit.

18. Mr. Dutta submitted that the learned Single Judge had quite rightly come to a finding that there was no basis for the conclusion arrived at by the Enquiry Officer, which had been mechanically affirmed by the Disciplinary Authority as also the Appellate Authority.

19. Mr. Dutta submitted that the judgment of the learned Single Judge did not warrant any interference.

20. In support of his submissions, Mr. Dutta referred to and relied upon a Single Bench decision of this Court in the case of Swapn Ray v. Indian Air Lines Ltd. and Ors., reported in 1996(1) CHN 147, wherein it was, inter alia, observed that suspicion or presumption cannot take the place of proof even in a domestic enquiry and that in a writ petition under Article 226 the Court may interfere with the findings of the Tribunal on any question of fact that the Tribunal is competent to decide, if the Court is satisfied that the finding of the Tribunal is perverse and that the Tribunal has come to the finding on no evidence.

21. Mr. Dutta also referred to and relied on a Bench decision of the Allahabad High Court in the case Balkrishna Das Agarwal Vs. Smt. Radha Devi and Others, , wherein while considering the admissibility of expert evidence it was observed that an expert, really means a person who by reason of training or experience is qualified to express his opinion whereas an ordinary witness is not competent to do so. It was observed further that in view of section 45 of the Evidence Act, it is necessary that before a person could be characterized as an expert there must be some material on record to show that he is one who is skilled in a particular science and is possessed of peculiar knowledge concerning the same. He must have made special study of the subject or acquired special experience therein. As was submitted by him earlier, Mr. Dutta submitted that in the instant case there is no evidence whatsoever regarding the qualification and/or experience of expertise of Shri Puroshottam Chatterjee other than that of self-acquired experience.

22. The next case referred to by Mr. Dutta is that of the Hon''ble Supreme Court in the case of Magan Bihari Lal Vs. The State of Punjab, , wherein it was observed that it was well-settled that expert opinion must always be received with great caution and perhaps more so when relying on the opinion of a handwriting expert. It was observed further that it is unsafe to pass an order of conviction solely on the opinion of an expert without substantial corroboration since such evidence being opinion evidence is by its very nature weak and infirm and cannot of itself form the basis for conviction.

23. Various other decisions were also referred to by Mr. Dutta in this regard, including that of the Hon''ble Supreme Court in the case of Anil Kumar Vs. Presiding Officer and Others, , in which it was observed that the Enquiry Officer cannot merely record his ipse dixit that the charges are proved. An enquiry report in a quasi-judicial enquiry must show reasons for the conclusion.

24. Mr. Dutta submitted that the judgment and order of the learned Single Judge did not, in the circumstances, call for any interference and the appeal was liable to be dismissed.

25. While considering the application for stay filed in the appeal, the appeal itself was taken up for consideration on consent of the parties. The outcome of this appeal will depend mainly on the question as to whether the learned Single Judge was right in arriving at the conclusion that the report of the Enquiry Officer and the decision thereupon by the Disciplinary Authority was based on no evidence.

26. Admittedly, the finding of the Enquiry Officer regarding the guilt of the writ petitioner/respondent is based on the opinion of Shri Puroshottam Chatterjee, handwriting expert examined on behalf of the Bank. The evidence also indicates that Shri Puroshottam Chatterjee did not have any formal training in the science of examination of handwritings. Although, an attempt was made to show that he had been included in the panel of experts by the Legal Remembrancer's office as far back as 1965, there is no evidence in support of such a supposition. On the other hand, it is admitted that Shri Chatterjee acquired experience as a handwriting expert on the basis of experience gathered over the years. The question is, as was observed by the Hon''ble Supreme Court in the case of Magan Behari Lal (supra), whether reliance even in a domestic enquiry could be placed on the uncorroborated evidence of an expert who has had no formal training in the science of comparing handwritings, particularly when the opinion to be given is with regard to one numerical digit on some documents exhibited by the Bank.

27. We cannot but agree with Mr. Dutta that even in a domestic enquiry suspicion or surmise cannot be substituted for proof. The strict rules of evidence may not be applicable in a domestic enquiry, but the material on which a finding is to be arrived at must be able to stand the test of scrutiny. In the instant case the evidence adduced by the Bank should have been taken more seriously because of its very nature. Instead of relying on the evidence of a person who is not a

recognized expert, the Bank should have taken the help of an expert having proper qualification and training for the job at hand.

28. The decisions cited by Mr. Dutta support the contention that if the evidence of a handwriting expert is to be relied upon of the purpose of holding any person guilty of interpolation or forgery, such opinion must come from a qualified expert and even such opinion has to be treated with caution.

29. In the circumstances as indicated above we are not inclined to interfere in the appeal and the same is dismissed along with the application for stay, but without any order as to costs.

30. Stay as prayed for is considered and refused in the circumstances.

31. All parties to act on a xerox signed copy of the operative portion of this judgment on the usual undertakings.

Asit Kumar Bisi, J.

32. I agree.