

(2015) 07 DEL CK 0103
In the Delhi High Court
Case No : LPA 868 of 2013

K.L. Chhabra

APPELLANT

Vs

The Assistant General Manager, Punjab National Bank

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 DEL CK 0103

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Jagat Arora, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J—K.L. Chhabra the appellant herein while posted as Computer Operator Category "B" at Naraina Vihar Branch of Punjab National Bank on June 16, 2006 was allegedly involved in an incident for which he was suspended on January 16, 2006 and a charge-sheet was served on February 04, 2006 with the following charges.

"It is alleged that while working as CTO Category "B" at BO: Naraina Vihar, New Delhi on 16.01.2006, you embezzled the amount of Rs. 3000/-. The detail of the embezzled transaction is given below. It is reported against you that:

? On 16.01.2006 at 11.00 A.M., Shri Vijay Kumar tendered one withdrawal slip form for Rs. 3000/- along with the passbook in S/F A/c No. 01-336983 in the name of Shri Amarnath Prasad. After entering/posting the withdrawal slip in the system and verifying the specimen signature/Balance in the A/c you returned the passbook to Shri Vijay Kumar and told him that payment will be made to Shri Amarnath Prasad A/c holder. However in computer the amount was debited in SF A/c No. 336983 at 11.17 A.M.

? In the evening when the A/c holder Shri Amarnath along with Shri Vijay Kumar came to the Branch to collect the payment you told him that you had already

made the payment to the bearer of withdrawal slip, Shri Vijay Kumar in the morning. After exchange of arguments between the A/c holder Shri Amarnath Prasad and you. Shri Amarnath Prasad lodged a written complaint about non receipt of payment in lieu of the withdrawal slip. In this way you did not give the payment of Rs. 3000/- to the customer after debiting his account and pocketed the customer's money.

? On the same day your comments were called and you were instructed to submit your reply immediately but you did not submit any reply.

Your above act constitute gross misconduct in terms of para 5(d) & (j) of the Bipartite settlement dated 10.04.2002 as amended from time to time."

2. Pursuant to a domestic inquiry the charges were held proved and the Disciplinary Authority issued order for dismissal of K.L. Chhabra from service without notice on August 16, 2007. The departmental appeal having failed industrial dispute was referred for adjudication inter alia to decide the legality and validity of the domestic inquiry. Vide the order dated June 14, 2010 the Tribunal held that the inquiry conducted by the management was just, fair and legal. Vide the award dated August 27, 2010 the punishment of dismissal without notice was substituted with punishment of removal from service with superannuation benefits and without disqualification from future employment.

3. The order dated June 14, 2010 and the award dated August 27, 2010 were challenged by the W.P.(C) No. 8159/2011 which was dismissed vide the impugned order dated May 13, 2013 with the directions to the respondents to comply with the award within four weeks failing which outstanding amount shall be paid with interest @ 8% p.a. from the date amount became due, till payment. Vide the impugned order the learned Single Judge considered the contentions of the appellant i.e. Shri Virender Kumar Singh MW-1 was not mentioned in the list of witnesses though examined, Vijay Kumar being a minor money could not be handed-over to him, discrepancies in the statement of Vijay Kumar MW-4 and Virender Kumar MW-1 and that the evidence of three witnesses of the management was recorded on August 16, 2006 at the back of the appellant.

4. The learned Single Judge held that Virender Kumar Singh was one of the two complainants regarding the incident and thus even if not mentioned in the list of witnesses was justifiably examined as a management witness and that strict rules of evidence and procedure do not apply to departmental proceedings. The second argument with regard to non-delivery of the amount to Vijay Kumar being a minor at the time was considered on the facts and it was noted that as per the evidence Vijay Kumar had tendered the withdrawal slip for Rs. 3,000/- pertaining to the account of Shri Amar Nath Prasad and the appellant had asked Vijay Kumar to come in the evening with the account holder to collect the payment of Rs. 3,000/- and when he came in the evening with Amar Nath, the appellant informed that the money had already been paid to the bearer of the withdrawal form in the morning. With regard to discrepancy in the statement of

Vijay Kumar and Virender Kumar, Court found that the only aspect was the manner and time on which non- payment of amount of Rs. 3,000/- was conveyed by Vijay Kumar to Virender Kumar which was a minor discrepancy and does not weaken the foundation of the case set up by the management against the appellant.

5. Regarding the contention that three management witnesses were recorded behind the back of the appellant, the Court noted that this contention was premised on the absence of signatures of the appellant and his defence assistant on the proceeding sheets of August 16, 2006 however even when other witnesses were examined who were admittedly examined in the presence of appellant, the appellant or his defence assistant had not signed the proceeding sheets except on the date when appellant himself was examined. Learned Single Judge also noted that in the reply to the show cause notice the appellant did not raise any grievance with regard to recording made in Para 3.6 of the inquiry report. Further when Virender Kumar Singh was examined he stated in his examination-in-chief that the appellant tried to get in touch with him to influence him which thus showed that the examination was in presence of the appellant. The Court also noted that when Virender Kumar Singh made the statement the inquiry officer stated to the appellant not to telephone, contact or influence the witness in any manner to which he replied that if the inquiry officer wanted he could dismiss him from service, in any case, he would get his dismissal quashed from the Court. Relying upon the decision in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, AIR 1964 SC 477 : (1964) 5 SCR 64 . the Court held that scope of interference under Article 226 of the Constitution of India was limited and a writ of certiorari could be issued for correcting errors of jurisdiction committed by the inferior courts or Tribunal or if they have acted without jurisdiction or in excess of it. It was held that the evidence led by the management including that of two complainants constitutes some evidence and there are no reasons to make false complaint against the appellant. Hence the writ petition was dismissed.

6. The appellant filed a review petition as well before the learned Single Judge which was dismissed vide the impugned order dated August 02, 2013 hence the present appeal challenging the orders dated May 13, 2013 and August 02, 2013 passed by the learned Single Judge.

7. Before this Court the appellant who appears in person again urges the same grounds as raised before the learned Single Judge. It is urged that there was no evidence against the appellant, the learned Single Judge considered irrelevant material produced in a sham inquiry and that the review petition was dismissed by a non-speaking order.

8. Before advertng to the contentions raised by the appellant in person it would be appropriate to note of the scope of interference in a writ petition. In the decision reported as *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S)

721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583 it was held:

"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 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 Vs. Union of India and others, AIR 1996 SC 484 : (1995) 8 JT 65 : (1996) LabIC 462 : (1996) 1 LLJ 1231 : (1995) 6 SCALE 188 : (1995) 6 SCC 749 : (1995) 4 SCR 644 Supp : (1996) 1 UJ 80 , Union of India and another Vs. G. Ganayutham (Dead) by LRs., AIR 1997 SC 3387 : (1997) 7 JT 572 : (2000) 2 LLJ 648 : (1997) 5 SCALE 606 : (1997) 7 SCC 463 : (1997) SCC(L&S) 1806 : (1997) 3 SCR 549 Supp : (1997) AIRSCW 3464 : (1997) 8 Supreme 269 , Bank of India and Another Vs. Degala Suryanarayana, AIR 1999 SC 2407 : (1999) 82 FLR 1004 : (1999) 4 JT 489 : (1999) 2 LLJ 682 : (1999) 4 SCALE 75 : (1999) 5 SCC 762 : (1999) SCC(L&S) 1036 : (1999) 3 SCR 824 : (1999) AIRSCW 2529 : (1999) 6 Supreme 39 and The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, AIR 2000 SC 22 : (2000) 67 ECC 16 : (1999) 8 JT 493 : (1999) 6 SCALE 673 : (2000) 1 SCC 416 : (2000) SCC(L&S) 144 : (1999) 4 SCR 205 Supp : (2000) 2 SLJ 98 : (2000) 1 UJ 134 : (1999) AIRSCW 4137 : (1999) 9 Supreme 42 .) "

9. From the facts on record it is evident that the plea of the appellant that Vijay Kumar being a minor the amount of Rs. 3,000/- withdrawn could not be handed over to him fortifies the claim of the complainant who states that when Vijay Kumar tendered the withdrawal form along with the passbook appellant refused to give the money on the ground that the payment would be made to Amar Nath, the account holder. However, as per record the amount was debited in the aforesaid account at 11.17 A.M. and from the evidence of the management witnesses it is clear that in the evening when Amar Nath and Vijay Kumar went to collect the payment, appellant stated that amount had already been paid to the bearer of the withdrawal slip i.e. Vijay Kumar in the morning.

10. Though it is not the scope of this Court to re-appreciate the evidence, however from the evidence on record no other interfere can be drawn as drawn by the inquiry officer and the Tribunal. Though sufficiency of evidence cannot be gone into by this Court, however still a perusal of evidence on record would show that the management led sufficient evidence to prove the charges against the

appellant by examining its four witnesses which could not be rebutted by the appellant who entered the witness box in his defence. Merely because the findings are not in favour of the appellant it cannot be held that irrelevant material was considered by the learned Single Judge, more so for the reason that the appellant has not been able to point out the irrelevant material considered by the Tribunal or the learned Single Judge. It is well-settled that a review petition is maintainable only if the petitioner is able to show any error apparent on the face of record or produces any additional evidence which despite due diligence could not be placed at the time when the order under review was passed. No such pleas have been substantiated and thus the learned Single Judge was not obliged to reiterate its findings dated May 13, 2013 again while dismissing the review petition.

11. Finding no merit in the appeal the same is dismissed.