

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7168 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

C K SURTI

Versus

CHAIRMAN & MANAGING DIRECTOR

Appearance:

MR BP TANNA for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR RAJNI H MEHTA for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /02/2001

C.A.V. JUDGEMENT

#. The facts giving rise to this petition are as under :
The petitioner was serving as a Branch Manager in

Dena Bank Kamrej Branch. In April 1988, the Manager, R.D.D. sent his report to the Regional Manager, Dena Bank regarding direct dairy loans. Certain irregularities were alleged. The petitioner made voluntary statement before the Vigilance Department. Soon thereafter, the petitioner was suspended on 12-1-1989. A charge-sheet was given by the respondent no.2 to the petitioner on 16-5-1989. The petitioner submitted his written statement and written argument after receipt of charge-sheet. Inquiry was conducted and all the charges were found established against the petitioner. The report of the Enquiry Officer and the submissions made by the petitioner were considered by the Disciplinary Authority, and after considering the aforesaid material, the Disciplinary Authority ordered dismissal of the petitioner with immediate effect, without notice, on 17-7-1992 vide Annexure-'I'. It is this order, which is under challenge in this writ petition.

#. The main grievance of the petitioner is that, he was not supplied with all the documents, statements and materials on which reliance was placed by the Disciplinary Authority. It was also alleged that the Disciplinary Authority sought opinion of the Vigilance Commission, Public Service Commission or any other authority but, it was not supplied to the petitioner.

#. Another grievance is that, the order of dismissal is not a speaking order.

#. The next grievance is that, privilege could not be claimed by the Disciplinary Authority or by the Enquiry Officer in respect of a document which is sought to be relied upon during enquiry. Thus, alleging that the principles of natural justice were violated during enquiry, it is pleaded that the dismissal order is liable to be set-aside.

#. The stand of the respondent is that, the principles of natural justice were fully observed. The materials and relevant documents were supplied to the petitioner, and after considering the report of the Enquiry Officer, submissions made by the petitioner and all other material, order of dismissal was passed, which is valid, legal and in accordance with law.

#. Arguments on behalf of the petitioner and arguments advanced by Shri Rajni H Mehta for the respondent were considered and the material on record of the petition was also considered.

#. The first ground of attack is that, the impugned order is invalid because, privilege could not be claimed in respect of any document, which was sought to be relied upon during enquiry and all the documents upon which reliance was intended to be placed during enquiry, their copies should have been supplied to the petitioner.

#. Shri Rajni H Mehta, learned counsel for the respondent, however, argued that privilege was not claimed in respect of any document whose copies were supplied to the petitioner. On the other hand, he argued that privilege was claimed in respect of report of Shri PD Pathak, but subsequently the copy of report was supplied to the petitioner. Annexure-'A' is the copy of report of Shri Pathak. If, its copy was not supplied to the petitioner, he could not have filed alongwith his writ petition. Shri Mehta argued that no privilege was claimed by the respondent in respect of any document, which was relied upon during enquiry and the report of Shri PD Pathak was already on record of the Inquiry File. Hence, the allegation of claim of privilege during enquiry is unfounded. I agree with the contention of Shri Mehta. Consequently, on this ground, the enquiry report or the order of dismissal is not rendered illegal and invalid.

#. The next contention from the side of the petitioner has been that, the report of the Vigilance Officer was not supplied to the petitioner, rather privilege was claimed in respect of report of Vigilance Officer. In para-8 of the counter affidavit, it is clearly deposed that the respondent Bank has not relied on Vigilance Department's report and the aforesaid averments are ill-founded. It appears from the Inquiry Report also that, the Enquiry Officer has not relied upon any report of the Vigilance Department. Consequently, it is difficult to accept that any privilege was claimed in respect of Vigilance Department's report or that, its copy was not supplied. It is only the copies of those documents are to be supplied to the delinquent, which are relied upon during enquiry, either by the Enquiry Officer or by the Disciplinary Authority. Consequently, on this ground also, the impugned order (Annexure-'I') can not be quashed.

##. Another allegation in para-5 of the petition is that, if the Disciplinary Authority has sought opinion of the Vigilance Commission, Public Service Commission or any authority, the same is required to be supplied to the delinquent. On this point, categorical reply is to be

found in para-6 of the counter affidavit, where it is deposed that the Disciplinary Authority has not sought the opinion of Vigilance Authority or Public Service Commission or any other authority. No rejoinder to this has been filed by the petitioner. Moreover, the allegation in para-5 of the petition is presumptive because, it is stated that, if the Disciplinary Authority has sought opinion of the Vigilance Commission, Public Service Commission or any other authority, the same is required to be supplied to the delinquent. In face of categorical denial in para-6 of the counter affidavit that no opinion was sought by the Disciplinary Authority or Vigilance Authority or Public Service Commission or any other authority, the impugned order can not be quashed on this presumptive allegation made in para-5 of the writ petition.

##. The next contention has been that, the report of the R.D.D. was also not supplied to the petitioner, which has vitiated the enquiry. For this, para-11 of the petition can be referred. The petitioner himself has alleged that, he himself produced the report of the Manager, R.D.D., which does not hold him guilty. Shri Mehta, on this allegation, contended that the petitioner himself has admitted that he was in possession of the report of the Manager, R.D.D., and since it was filed by him during enquiry, he can not complain that the principles of natural justice were violated. Shri Mehta, further contended that, the report of the Manager, R.D.D. is based upon random checking and it does not refer to detailed enquiry. Moreover, he further argued that the Manager, R.D.D. was examined during enquiry and he was cross-examined. As such, the petitioner can not complain violation of principles of natural justice, if report of the Manager, R.D.D. was not supplied. Since, this report was already in possession of the petitioner, it can not be said that he was deprived of opportunity of making effective defence.

##. The next contention from the side of the petitioner has been that, the copies of material documents were not supplied to the petitioner, as a result of which, the enquiry stands vitiated. Reliance was placed upon the observation of the Apex Court in UNION OF INDIA v. MOHD. RAMZAN KHAN 1991(1) S.C.C. 588. The law laid down by the Apex Court in the aforesaid case can hardly be disputed and it is binding to all courts in India. The question, however, is whether the guidelines laid down by the Apex Court in Ramzan Khan's Case (Supra) have been violated during enquiry or not. After considering the entire material on record, I do not find anything to hold

that the guidelines in Ramzan Khan's case were violated during enquiry.

##. The case of CHANDRAMA TEWARI v. UNION OF INDIA AIR 1988 S.C. 117 was also referred by the learned counsel for the petitioner. However, in my opinion, the law laid down in this case, instead of helping the petitioner, goes against him. In this case, the facts were that, the copy of report submitted by the police in the criminal case relating to the alleged theft by the delinquent was not supplied to him. The document was not relied upon by the Enquiry Officer. On these facts, it was held that the document not being relevant or material, non-supply of its copy did not amount to violation of the principles of natural justice. No prejudice was caused to the delinquent in cross-examining the concerned police officer.

##. The law laid down in this case is as under :-

"It is well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copies of statements of witnesses recorded during investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the Enquiry Officer to support the charges, or if such document or material was not necessary for the cross examination of witnesses during the

enquiry, the officer can not insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether the document is material or not will depend upon the facts and circumstances of each case."

##. Thus, from the above observation of the Apex Court, the following proposition can be deduced :

- (1) The question whether a document is material or not will depend upon the facts and circumstances of each case.
- (2) The question of denial of reasonable opportunity of defence and violation of the principles of natural justice must be determined on the facts and circumstances of each case.
- (3) The delinquent officer is entitled to have copies of material and relevant documents only which may include copies of statement of witnesses recorded during investigation or preliminary enquiry or copy of any other document which may have been relied upon in support of the charges.
- (4) If, however, a document has no bearing on the charge or if it is not relied upon by the Enquiry Officer to support the charges or if such document or material was not necessary for cross examination of the witnesses during enquiry, the officer can not insist upon the supply of copy of such document.

##. In the case before me, the petitioner was very well in possession of the report of Shri PD Pathak. Hence, the petitioner can not complain of violation of principles of natural justice. The Manager, R.D.D. was examined and cross examined. As such, full opportunity of hearing was given to the petitioner. Since, no opinion was sought by the Disciplinary Authority, either from the Vigilance Department or Public Service Commission or any other authority, the Disciplinary Authority could not have supplied copy of such report, as the same was not in existence and never called for by the Disciplinary Authority.

##. I am unable to agree with the contention raised from the side of the petitioner that, the document which could have gone in the mind of the Enquiry Officer or the Disciplinary Authority was brought on record but, its copy was not supplied to the petitioner. Copies of material documents were supplied to the petitioner, who had full opportunity to meet the same.

##. The next contention has been that, the order of the Disciplinary Authority (Annexure-'I') is non-speaking order, hence it can not be sustained. I have examined the impugned order contained in Annexure-'I'. Paragraph-2 of this order reads as under :

"A copy of the report/findings dated 20-6-1991 of the Inquiring Authority was made available to Shri Surati vide Letter No.SGZ:PER:8/4:417:91 dated 16-7-1991 with the advise to go through the same to make his submission if he is desirous. Shri Surati has made submission dated nil. I have carefully perused Inquiring Authority's report/findings and submission made by Shri Surati in connection to the Inquiring Authority's report/findings. I fully affirm with the report/findings of Inquiring Authority."

##. It is, therefore, clear from this order that the Disciplinary Authority has considered the report of the Enquiry Officer and also submissions of the petitioner against the report of the Enquiry Officer and plea of his innocence. Since the Disciplinary Authority, after considering the aforesaid material, decided to agree with the report of the Enquiry Officer, he was not required to write a detailed judgment. In case of confirmation of the report of the Enquiry Officer, the Disciplinary Authority was justified in passing such order. The order quoted above shows that, the Disciplinary Authority has applied its mind to all the materials on record, including enquiry report and the submissions made by the petitioner before him. As such, the impugned order can not be said to be non-speaking order and it can not be set aside on this ground. Shri Rajni H Mehta, learned counsel for the respondent argued that the Vigilance Officer was examined and cross examined and therefore, there has been no violation of the principles of natural justice.

##. On the strength of counter affidavit, Shri Mehta has argued that serious charges were levelled against the petitioner in the nature of serious irregularities and malpractices in sanctioning and disbursing of loans, lack of interest and integrity and also of committing fraud with the bank, which resulted into loss to the bank. There was also allegation that the petitioner had sanctioned and disbursed loans on the basis of blank application forms, as well as, blank documents, without scrutiny or verification. The persons to whom the loans were sanctioned and the disbursement was made, the

application forms and documents in support thereof required to be filled up, scrutinized and verified by the petitioner, these documents were found blank, so also the application forms and yet the loans were sanctioned. It was alleged that payment was made to person other than the supplier of the animals, who in turn, was found to be fictitious person. The petitioner did not make scrutiny and verification with regard to such persons and loans were distributed on 25 such applications in slipshod manner.

##. All these allegations were found established during enquiry. Consequently, serious allegations were made and charges were framed against the petitioner, which were found established. Consequently, the order of dismissal is justified. I do not find any merit in this petition, which is hereby dismissed with no order as to cost.

February__, 2001. [D.C. Srivastava, J.]

/sakkaf