

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2964 OF 2003

PETITIONER:

V.K. Walnekar, S/o D.M. Walnekar,
Aged about 48 years, Ex-Cashier,
R/o Diprapara, Dayalbandh,
Distt. Bilaspur (C.G.)

Versus

RESPONDENTS:

1. Bilaspur Raipur Kshetriya Gramin Bank,
Through: its President,
Head Office: Vyapar Vihar,
Bilaspur (C.G.)
2. The General Manager,
Bilaspur Raipur Kshetriya Gramin Bank,
Head Office: Vyapar Vihar,
Bilaspur (C.G.)

POST FOR ORDER ON 29th SEPTEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

29th September 2003

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2964 OF 2003

PETITIONER:

V.K. Walnekar, S/o D.M. Walnekar,
Aged about 48 years, Ex-Cashier,
R/o Diprapara, Dayalbandh,
Distt. Bilaspur (C.G.)

Versus

RESPONDENTS:

1. Bilaspur Raipur Kshetriya Gramin Bank,
Through: its President,
Head Office: Vyapar Vihar,
Bilaspur (C.G.)
2. The General Manager,
Bilaspur Raipur Kshetriya Gramin Bank,
Head Office: Vyapar Vihar,
Bilaspur (C.G.)

Present: -

Shri H.B. Agrawal, Advocate:

For the petitioner

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 29th September, 2003)

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India, challenging the order dated 22.04.2003 of respondent No.2 by which the petitioner has been removed from the service and also the order dated 21.07.2003 by which respondent No.1 has dismissed the appeal of the petitioner.
2. Facts leading to filing of this writ petition are that the petitioner was working as LDC-cum-Cashier in the Bank. A letter dated 20.08.99 was served on the petitioner in connection with financial irregularities committed by the petitioner which was replied by him on 14.12.99. A second letter was also served on the petitioner on 04.01.2000 by respondent No.1 and ultimately, the petitioner was charge sheeted vide letter dated 05.09.2000. Reply to the charge sheet was filed by the petitioner. Vide order dated 19.10.2000, enquiry was instituted against

the petitioner and R.K. Gupta was appointed as Enquiry Officer and S.C. Sao was appointed as Presenting Officer. A notice was issued to the petitioner on 02.12.2000. The Enquiry Officer was changed and M.L. Agrawal was appointed as Enquiry Officer, who conducted the enquiry and the departmental nominee has filed 20 documents namely, PD-1 to PD-20 and some witnesses were also examined. The enquiry was held on 05.10.2002 and again on 09.10.2002. On 10.10.2002 Mohd. Ismail Qureshi, D.S. Chaudhari and S.L. Kaiwartya were examined. Thereafter, the Enquiry Officer submitted the report (Annexure P-20) and a show cause notice was issued to the petitioner by the disciplinary authority. The petitioner sent his reply on 09.04.2003. After considering the report of the Enquiry Officer and evidence, vide order dated 22.04.2003 respondent No.2 passed the order regarding the removal of the petitioner from services. The case of the petitioner is that this order is illegal as charges against the petitioner being harsh and excessive were not proved, and liable to be set aside. The petitioner filed the appeal against the termination order before respondent No.1, who dismissed the appeal vide order dated 21.07.2000.

3. I have heard the learned counsel for the petitioner and perused the report of the Enquiry Officer.
4. Charges against the petitioner regarding his misconduct were that on 20.07.99 when the petitioner was working as LDC-cum-Assistant Cashier, one Mohd. Ismail Qureshi paid him Rs.1,000/- for depositing in the account. However, the petitioner prepared a voucher of only Rs.600/- for depositing the same in the account. When the Bank Manager suspected and enquired from Mohd. Ismail, on enquiry Mohd. Ismail disclosed that he has paid Rs.1,000/- for depositing. On this the petitioner was called by the Bank Manager before whom he tendered his apology and prepared a voucher of Rs.1,000/- after destroying the earlier voucher and that amount was deposited. Again on 28.07.99,

when one Anil Agrawal sent Rs.3,000/- along with his person for depositing in his account, the petitioner deposited only Rs.2,000/- and entries to that effect were also made in the ledger and pass book. When Anil Agrawal came to know about this, he sent his person for rectification of the mistake, on this the petitioner again corrected by depositing Rs.3,000/-. On 15.04.99 also Rs.600/- were found less in the cash balance of the Bank. In his reply, the petitioner had admitted all these lapses, but he has given unbelievable explanation.

5. Mohd. Ismail and Anil Agrawal have been examined by the Enquiry Officer and they have proved the misconduct of the petitioner. The learned counsel for the petitioner has not pointed out any illegality or irregularity committed by the Enquiry Officer while conducting the enquiry, nor the learned counsel could point out any violation of principles of natural justice or violation of statutory rules. Therefore, I do not find any reason to interfere with the finding of the Enquiry Officer.
6. Moreover, as has been held by Hon'ble the Apex Court in the cases of *B.C. Chaturvedi vs. Union of India* and others reported in (1995) 6 SCC 749; *State of Rajasthan vs. B.K. Meena* and others reported in JT 1996 (8) SC 684; and *R.S. Saini vs. State of Punjab* and others reported in JT 1999 (6) SC 507 that technical rules of evidence have no application and even rule of adequacy of evidence or reliability of evidence cannot be permitted to be canvassed and where authority accepts the evidence and conclusion receives support from them, the disciplinary authority is entitled to hold the delinquent guilty when the findings are based on some evidence. The Court cannot re-appreciate or interfere and this is not a matter of no-evidence. Apart from that the petitioner himself has admitted in his reply to the charge sheet that some irregularities were committed by him. Therefore, there is no substance in the arguments of the learned counsel for the petitioner that to this effect the charges were not proved against the petitioner.

The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some materials on record are necessary to arrive at the conclusion.

7. The learned counsel for the petitioner submitted that the punishment awarded to the petitioner is disproportionate to the misconduct. On this count also, as has been held by the Hon'ble Apex Court in the case of Balbir Chand vs. Food Corporation of India Ltd. and others reported in JT 1996 (11) SC 507 that

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank."

In the case of B.C. Chaturvedi (*supra*), the Supreme Court held that

"The disciplinary authority or on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline and they are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief."

8. In the light of the above laws laid down by the Hon'ble Apex Court if we look into the misconduct of the petitioner, at the relevant time he was working as Assistant Cashier and on three occasions he was found committing irregularity. In the first instance, instead of depositing Rs.1,000/- of a customer, he prepared voucher of Rs.600/- only, and in other case also in the same year instead of Rs.3,000/- he made the entry of Rs.2,000/-. Later on, on enquiry by the party and the Bank

Manager, he admitted his guilty and rectified the mistake. Similarly, on 15.04.1999, Rs.600/- was found less in the cash balance. Therefore, charges against the petitioner are very serious because he tried to misappropriate the money which was detected by the Bank Manager and the depositor and accordingly, he had to deposit the whole amount. Therefore, in any manner, the punishment of removal awarded by the disciplinary authority and confirmed by appellate authority, by any stretch of imagination cannot be said to be conscious shocking or disproportion to the misconduct.

9. Therefore, the petition is liable to be dismissed and it is dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Soma

2/4
9/10