

Subramanian M.A. Vs. Deputy General Manager, Staff Section, Canara Bank Circle Office and anr.

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SooperKanoon Citation : sooperkanoon.com/817441

Court : Chennai

Decided On : Dec-20-1999

Reported in : (2000)IILLJ897Mad; (2000)1MLJ637

Judge : M. Karpagavinayagam, J.

Acts : Evidence Act

Appeal No. : W.P. No. 14498/1992 and W.M.P. No. 20574/1992

Appellant : Subramanian M.A.

Respondent : Deputy General Manager, Staff Section, Canara Bank Circle Office and anr.

Advocate for Def. : S. Raveendran, Adv.

Advocate for Pet/Ap. : K.S. Lakshmikumaran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. M.A. Subramanian, the petitioner herein is seeking for the issue of a writ of certiorari to quash the order of the Deputy General Manager, Staff Section, Canara Bank, the first respondent herein in his proceedings No. MDUC-SSO-12574-E37, dated November 30, 1991 confirmed by the General Manager, Personnel Wing, Head Office, Bangalore, the second respondent herein in his order dated April 21, 1992 by calling for the records of the respondents.

2. The facts that are required for the disposal of the above writ petition are as follows:

'(a) The petitioner is working as an Officer in the Canara Bank, Madurai Circle. From 1981 to 1984 he was working as an Accountant in Madikerai Main Branch of the Canara Bank. During that period he was deputed to Mayamudi and Bekkasodlur Branches. Since the place of working had no boarding and lodging facilities, he was staying at Hotel Nandanavana, Gonikopal which is the nearest town to the place of working.

b) After completion of the deputation period, he submitted T.A. bill dated December 9, 1983 for Rs. 507.25 for his deputation to Mayamudi Branch, Gonikopal and another T. A. bill dated June 2, 1984 for Rs. 12,882.20 for his deputation to Bekkasodlur Branch. The bills were duly passed by the concerned section during 1983-84 itself.

c) Nearly after five years, the petitioner received a letter from the first respondent dated June 29, 1989 directing him to reimburse Rs. 9,064.75 immediately, since the bills produced by him were for inflated amount. He sent a reply stating that the bill amount that he claimed and obtained was the amount actually incurred by him.

d) Thereafter, the investigation was entrusted to one G.H. Pai, Manager, Canara Bank, Hosa Section, Bangalore. After investigation, he submitted his report dated January 30, 1990 on the basis of the statements obtained from one Devaiah, Proprietor of Hotel Nandanavana, Gonikopal and one M. B. Machaiah, Partner of Hotel Shalimar, Gonikopal stating that the bills were for the inflated amounts.

e) Then, on September 1, 1990 a charge memo was issued to the petitioner charging him with the misconduct of contravention of Regulation 3(i) read with Regulation 24 of the Canara Bank Officer Employees (Conduct) Regulations, 1976. The petitioner sent a reply dated September 20, 1990 denying the charges.

f) Thereafter, an enquiry was conducted in the presence of the enquiry officer appointed by the respondent. The said enquiry was held between January 5, 1991 and June 5, 1991.

g) On behalf of the management, two witnesses were examined, namely, M.W.1 B.B. Kamath and M.W.2 B.H. Pai and 13 documents were marked as exhibits. After the enquiry was over, the Inquiring Authority gave his report on September 17, 1991 holding that the charges against the petitioner were proved.

h) Disciplinary authority, thereafter, passed orders on November 30, 1991 agreeing with the findings of the enquiry officer and awarding the punishment to the petitioner of reduction to a lower stage in the time-scale of pay by two stages and recovery of the excess amount paid with interest at clean rate.

i) The petitioner filed an appeal before the second respondent, who, in turn, dismissed the same on April 21, 1992. The impugned order passed by the first respondent on November 30, 1991 confirming the same by the second respondent on January 21, 1992 are the subject-matter of challenge in this writ petition.'

3. I have heard the Counsel for the parties and also gone through the affidavit and other records filed by the petitioner and the counter-affidavit and typed set filed by the Counsel for the respondents.

4. The charge levelled against the petitioner is that he submitted two inflated/bogus T. A. Bills in connection with the expenditure during his deputation to Mayamudi and Bekkasodlur Branches and when he was asked through the letter dated June 29, 1989 to reimburse to the Bank the balance amount of Rs. 9,064.75 immediately he failed to reimburse the same and thus, he failed to discharge his duties and acted in the manner unbecoming of a Bank officer.

5. The enquiry officer mainly relied upon the statements of one Devaiah, Proprietor of Hotel Nandanavana and one Machaiah, one of the partners of the Hotel Shalimar. These statements have been marked before the enquiry officer.

6. Originally, the management proposed to examine these Devaiah and Machiah, in order to establish that the bills produced by the petitioner relating to the expenditure incurred by him for boarding and lodging in Hotel Nandanavana and Hotel Shalimar were inflated bills. But, they did not produce those witnesses since they told one Kamath, the Manager, Gonikopal branch that they would not be able to attend the enquiry since they were busy in their business.

7. In order to state the reason for non-production of those witnesses, the said Kamath was examined. While he was examined before the enquiry officer, he had not stated anything about the petitioner. Consequently, his statement made before the enquiry officer would not be of any use for the management for proving the charge.

8. But, M.W.2 G.H. Pai, the investigating officer marked the statements of Devaiah, the Proprietor of Hotel Nandanavana and Machiah, a partner of Hotel Shalimar as exhibits.

9. As noted above, the enquiry officer mainly relied upon these statements to come to the conclusion that the charges against the petitioner were proved. The statement of Devaiah which has been marked as one of the exhibits would simply show that one Babu used to give inflated bills. The statement of Babu which has been produced before this Court also would not show that he had given inflated bills to Subramanian, the petitioner. He only referred to one Laxman.

10. Under those circumstances, the statement of Devaiah which does not implicate the petitioner, in any way, would not be of any use for the management.

11. But, from the statement of Machiah, it is seen that the inflated bills were given to several persons including the petitioner Subramanian. This statement shall be considered to be important piece of material.

12. According to his statement, the bills in question were issued by him. He would state by way of a general statement implicating several persons that those bills were issued to them at the repeated requests.

13. Admittedly, the said statement was obtained by the investigating officer on January 22, 1990 behind the back of the petitioner. So, when this typed statement signed by the said Machiah was relied upon, he must have been examined by the management to establish the truth of the contents of the said statement. If only he was produced, the petitioner would be able to cross-examine him to cull out the materials from him as to whether he speaks truth or not.

14. It is well-settled that in a domestic enquiry the strict sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

15. At the same time, departmental authorities shall be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. In other words, fairplay is the basis for the enquiry. If perversity or arbitrariness or surrender of independence of judgment is found, then it would certainly vitiate the conclusion reached by the enquiry officer.

16. The above principles have been laid down in *State of Haryana v. Rattan Singh*, : (1982)ILLJ46SC and *ACC Ltd. v. Labour Court, Coimbatore*, 1977 Lab I.C. 1465 (Mad)

17. It is also settled that before a regular enquiry was conducted, when statements were taken from certain persons behind the back of the delinquent, those persons shall be called as witnesses on behalf of the management to give the statement before the enquiry officer and to give opportunity to the delinquent for cross-examination.

18. The Apex Court in *Central Bank of India v. P.C. Jain* : (1969)ILLJ377SC :

'It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in

the Evidence Act, but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act.'

19. If this rule is applied to the case on hand, then it can be certainly held that the fair enquiry has not been conducted by the Enquiry Officer. The submission of the management that Machiah was unable to come because he was busy in his business may not be countenanced for taking a view that even in the absence of the examination of the said Machiah, his statement can be acted upon.

20. This view of mine finds support from the decision of a Division Bench of this Court rendered in *Indian Airlines v. W.B. Correya*, : (1978) IILLJ437Mad wherein the necessity of the examination of those witnesses whose statements were relied upon by the Enquiry Officer, is clearly emphasised. The relevant observation is as follows at p. 440:

'7. If the statement is not put to the witness and he had not been given an opportunity to affirm the same as indicated above, there is in fact no evidence of that witness in the course of the chief- examination at all and it is very doubtful whether such a statement, notwithstanding copies thereof had already been furnished to the worker, can be used as substantive evidence against the worker concerned. It is this aspect of the matter which weighed with RAMANUJAM, J. who held that the failure to put these statements to the witnesses and the witnesses not having affirmed their statement-not having stated that stood by their statement violated the principles of natural justice. No decision of any Court was brought to our notice by the learned Counsel for the appellants holding that this requirement need not be satisfied even in domestic enquiry. On the face of it, the procedure followed by the enquiry officer is certainly defective, detrimental and prejudicial to the case of the respondent herein.'

21. Even in the decision in *Kuldeep Singh v. Commissioner of Police*, 95 F.J.R. 80, cited by the Counsel for the respondents, it is held that once the department knew that the witnesses being labourers were employed somewhere in, Devli Khanpur, their presence should have been procured by the department and they should have been produced before the enquiry officer to prove the charge framed against the delinquent. This observation would squarely be applicable to the present case as well.

22. The learned Counsel for the respondents on the strength of the decision in *State of Haryana v. Rattan Singh* (supra), wherein the Supreme Court observed that the passengers of the bus who paid the amount to the conductor of the bus without getting the ticket were not examined, but then believed the statement of the Inspector of the Flying Squad and held the charges proved, would state that in the present case also, non-examination of Devaiah and Machiah would not affect the evidence of the investigating officer and on the basis of the statement of the investigating officer, the charges shall be held to be proved.

23. This submission, in my view, does not deserve acceptance. In the said case, the conductor was caught red-handed by the Flying Squad Inspector in the bus itself and the passengers told the Flying Squad Inspector in the presence of the conductor that they already paid money. But however, they were not incline to give any statement and to participate in the enquiry. That is not the case here.

24. Admittedly, the statements were recorded from Devaiah and Machiah behind the back, that is, not in the presence of the petitioner and those statements have been marked as exhibits in the enquiry proceedings. It is not the case of the department that they declined to participate in the enquiry. It is stated by M. W. 1 that they were unable to come since they were busy in their business work.

25. Under those circumstances, the department should have asked some more time from the enquiry officer to produce those witnesses, in order to establish that the contents of their statements recorded by the investigating officer were true. When such thing has not been done, the enquiry officer should not have relied upon the statements and hold that the charges are proved on the basis of those statements.

26. At this stage, the Counsel for the respondent requests this Court to remit back the matter to the enquiry officer to give further opportunity to the management to establish the contents of the said statements by procuring those witnesses. For this course, the learned Counsel for the petitioner does not seriously object, though he would merely state that the petitioner already attained the age of 55 years.

27. In the facts and circumstances of the case, unless an opportunity is given for examination of the said Devaiah and Machiah with reference to the inflated bills, the enquiry officer cannot hold that there is some evidence to prove the charges framed against the petitioner.

28. Thus, in order to give an opportunity to both the management and the petitioner for procuring the material witnesses who have to be tested in the cross-examination before the enquiry officer, it is appropriate to set aside the impugned order dated November 30, 1991 and remit back the matter to the enquiry officer to ensure for the examination of those witnesses by giving sufficient time to the parties and to come to a proper conclusion.

29. In the result, the writ petition is allowed and the impugned order dated November 30, 1991 is set aside. The matter is remitted back to the enquiry officer to give an opportunity to the parties for examining those witnesses as stated above and to come to a proper conclusion. Since the charge memo relates to the year 1990 and the impugned order was passed in the year 1991, I deem it fit to direct the enquiry officer to finish the enquiry within two months from the date of receipt of a copy of this order and accordingly directed. In view of the above, W.M.P. No. 20574 of 1992 is closed. No costs.