HIGH COURT OF GUJARAT (*D.B.*)

R A SHAH

Versus

REGIONAL MANAGER AND ORS

Date of Decision: 09 July 2012

Citation: 2012 LawSuit(Guj) 1889

Hon'ble Judges: V M Sahai, N V Anjaria

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 597 of 2004; 375 of 2004

Final Decision: Appeal dismissed

Advocates: R C Jani, Dakshesh Mehta

Cases Referred in (+): **9**

N.V. Anjaria, J.

[1] By invoking Clause 15 of the Latters Patent, the appellantoriginal writ petitioner has preferred the present appeal against the oral order dated 28.01.2004 of learned single Judge. By the impugned order, learned single Judge upheld the decision of the disciplinary authority dismissing the writ petitioner from service pursuant to departmental enquiry. Before the learned single Judge, the appellant-petitioner prayed to set aside the said order of dismissal dated 7.2.2003

[2] The profile of relevant facts may be set out. The petitioner was working as Development Officer with the respondent Insurance Company since 1984. A departmental inquiry was held against him pursuant to the charge-sheet dated 5.10.2000 for the following charges.

> "(i) Shri R.A.Shah had processed and recommended two false cattle claims,
>
> (ii) Shri R.A. Shah misappropriated company's fund to the tune of Rs. 62,00/- in connivances with the then Branch Manager and the then Senior Assistant of the Branch Officer concerned by canceling "A/c payee" seal from the cheques relating to the claim payment and also by issuing the claim payments cheque in the name of the insured person only without incorporating the name of the financier, whereas

the policies were issued in the joint name and the loss vouchers were also jointly discharged by the insured and the financier both. It was the charge that the delinquent deposited the claim cheques in the saving bank account no. 4(A/3402) in his name and one Mr. Kothari, an agent working with the Survodaya Sahkari Bank Ltd., Modasa."

2.1 Thus it was the charge that the petitioner exhibited lack of integrity, dishonesty and conducted himself in the manner unbecoming of a public servant. That he thereby acted in a manner prejudicial to the interest of the company and violated the relevant rules of General Insurance (Conduct-Discipline & Appeals) Rules, 1975. A preliminary inquiry was held and thereafter, a regular departmental inquiry was conducted.

[3] From the contents of inquiry report, it could be seen that the inquiry officer had before him the following details to support charge No.1.

(1) Claim No. 301102/47/97/733/97-98

Policy No.: 301102/97/1123/96-97

A/c : The Sakaria D.U.S.M. Ltd. and Shri Punjabi J. Bharwad

Period of Insurance : 27/12/96 to 26/12/97

Date of death : 20/12/1997

Amount paid Rs. : 10,000/- on 20/02/98 by cheque no. 757582

(2) Cattle Claim No. : 301102/47/97/734/97-98

Policy No : 301102/47/97/1123/96-97

A/c. : The Sakaria D.U,.S.M. Ltd. & Shri Hashmukhbhai Dudhabhai Patel Period of Insurance : 27/12/96 to 26/12/97

Date of death : 20/12/97

Amount paid : Rs. 10,000/- on 20/2/98 by cheque no. 757583

3.1 Charge No. 2 was supported by (a) the copies of cheques bearing different numbers bearing date 20.2.98 issued by the Modasa Branch office from the disbursement account drawn on State Bank of India, Modasa (b) a letter from Survodaya Sahkari Bank Ltd. confirming that the proceeds of all six cheques were credited in the said mentioned account (c) the specimen signature in relation to the

said account which was joined in the name of the delinquent and his agent. (d) a copy of letter dated 5.8.98 from one Sakaria DUMS Ltd. confirming to have received the payment of two false cattle claims, and (e) money receipt for Rs. 16,000/- issued by the Modasa Branch. 3.2 It was observed by the enquiry officer that the amount of Rs. 62,000/- represented by the above cheques was withdrawn from the said bank account and there as no evidence to suggest that the amount was passed on to the respective insured persons, which was the case in the recent statement. In the departmental proceedings, the defence of the delinquent was that there was shortage of manpower. As regards the second charge he stated that the Branch Manager had managed to cancel the Account payee seal. It was concluded by the inquiry officer that the delinquent was fully aware of the irregularity and the entire process of cancellation of account payee cheque and depositing the same in the joint account was with connivance with the branch manager. The charges against the delinquent-writ petitioner was held proved.

3.3 The inquiry officer in his inquiry report recorded the following ultimate findings.

"In the written statement as well as during the hearing Shri R A Shah has stated that due to shortage of staff he used to process the claim files in order to settlement of claims and all claim files were processed by him and he also accepted all the six cheques amounting to Rs. 62,000/- was (sic) deposited in joint account of himself and his agent and he could not give any evidence for his earlier statement that this amount was subsequently given go the insured for any other person"

3.4 The disciplinary authority by its order dated 7.3.2002, agreeing with the inquiry officer's report imposed punishment of dismissal of the petitioner considering the gravity of misconduct. On 15.04.2003, the petitioner preferred a departmental appeal which was rejected by order dated 9.6.2003.

[4] Learned advocate for the appellant submitted that it was a genuine and bonafide mistake on part of the delibnquent-appellant. He submitted further that the appellant had put in long service and looking to that a lesser punishment may be considered. It was submitted that the penalty of dismissal from service was harsh and disproportionate. It was submitted further that the petitioner was physically handicapped and the mistake was bonafide. He submitted that he could not produce the evidence in view of assurance given by the inquiry officer that a lenient view would be taken. It was further submitted that the learned single judge ought to have considered that appellant had 18 years of service to his credit and in view of the his personal and family condition, he deserves a lesser punishment. According to the

learned advocate, the appellant had not committed any offence as he had not taken any single amount as such, and the finding recorded to that effect was not correct.

4.1 On the other hand learned advocate Mr. Daxesh Mehta for the respondent submitted that the charges against the appellant delinquent were of fraud committed by him in crediting the cheques in his own account by tempering. He submitted that the charges were proved in the inquiry proceedings on the basis of cogent evidence and there was strong circumstances emerging from the evidence proving the misconduct. According to him, the penalty of dismissal was proper in the facts of the case. He thus supported the order of learned single Judge. An affidavit in reply was filed by the inquiry officer refuting the case of the petitioner-appellant denying factual allegations. Learned advocate for the appellant referred to and relied on the same also.

[5] Learned single Judge upon consideration of the facts and the rival submissions held that the delinquent petitioner was not able to adduce any evidence to show that the amount was disbursed to the beneficiaries. He observed that the material on record substantiated false claims were processed by the petitioner. While arriving at his findings, learned single Judge considered the facts of the case, the contents of the inquiry report and the material before the inquiry officer. He observed and held thus.

"It is not a mistake that may have been committed because of pressure of work nor that it could be done because of instructions of superior because the cheques, payable by the beneficiaries insured, are drawn in their respective names and /or issued after an endorsement of crossing and A/c payee. Those endorsements were either removed or not made and after endorsing it in favour of the petitioner the cheques were deposited in his account and amounts withdrawn by him. In absence of any material to show that amounts were withdrawn and were passed over to the beneficiaries, the inference is that the benefit is taken by the petitioner himself."

[6] The above principles as regards the scope of inquiry into the findings arrived at in the domestic Tribunal in the departmental proceedings are well settled. In Bank of India vs. Degala Suryanarayana, 1999 AIR(SC) 2407, the Supreme Court held that Strict rules of evidence are not applicable to the departmental inquiry proceedings and the only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer.

6.1 In Maharashra State Board of Secondary & High Secondary Education vs. K. S. Gandhi, 1991 2 JT 296, the Supreme Court was examining a case wherein in the

Marksheets of the moderators were tempered with in relation to 283 examinees of the secondary examination which included 53 respondents before the Court, and the marks were increased from the original. The fabrication moderators markesheets were done after the scrutiny by the concerned official and thereafter marksheet were taken out to Pune to feed in the Computer. It was inter-alia contended that there was presumption that the fabrication was done at the behest either the examinees/parents/guardians and it must be established that they were actually responsible for fabricating the moderator's markesheet. In the said decision the Apex Court elaborated the principles regarding nature of evidence which would hold good to prove the charge in the departmental proceedings. It was observed :

". It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation."

.....There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred with as much practical as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probability tending to draw an inference that the fact must be more probable." (para 37)

6.2 On the aspect of tempering of the marks, it was observed further as under :

"This is not an innocent act or a casual mistake during the course of performance of the official duty as is sought to be made out. It was obviously done as a concerted action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the

examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent's or guardian's behest. It is therefore clear that the conclusion reached by the Education Standing Committee that the fabrication was done at the instance of either the examinees or their parents or guardians is amply borne out from the record. The High Court in our view over-stepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive its own conclusions on the precious plea of satisfying 'conscience of the court'. (para 38)

6.3 The above principles regarding standard of proof in the departmental proceedings reiterated in Cholam Roadways Ltd. vs. G. Thirungnanasambandam, 2005 3 SCC 241. It was empasised in State of Haryana vs. Rattan Singh, 1977 AIR(SC) 1512that in the departmental proceedings, the differentiation is whether there is some evidence or there is no evidence in respect of the charge leveled against the delinquent. The Supreme Court held again in UOI vs. Sardarbahadur, 1972 4 SCC 618 that if the inquiry is properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. It was also observed if the findings were a reasonable inferences from the proved facts, they cannot be charactorised as perversed or cannot be treated as unsupported by relevant material. In Govt. of Andhra Pradesh v/s Mhmd. Narsullah Khan, 2006 2 SCC 373, it was observed. "By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law and procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority." (para-11)

[7] The impugned decision of learned single Judge would deserve appreciation in light of the above legal principles. For that purpose, we have considered the facts of the case carefully and have gone through the report of the inquiry officer and the findings recorded in it and the material on the basis of which they were arrived at.

7.1 It could be seen that, the tempering in the cheques by erasing the "Account payee" stamp and crediting the cheques in the joint account of delinquent and his agent were the facts indisputable. When the cheques which were meant for payment of claims to the insured person came to be deposited after erasing of account payee stamp in the joint bank account which was in the name of the delinquent and his agent and there being no evidence worth the name that the amount of the cheques were paid to the insured persons or the real beneficiaries,

in absence of anything contrary proved, the inference was that, as rightly observed by learned Single Judge, that it was for the benefit of the delinquent.

7.2 The delinquent was a Development Officer to whom the cheques payable to the claimants were given by the Insurance Company. His position was one of the trusts. He received from the insurance communication pany the sums payable towards the insurance claims and thereafter he was required to handover the cheques to the claimants thereof. The inquiry officer's report indicated that there was evidence before him being the copies of six cheques and the letter of the bank concerned, where the cheques came to be credited in the joint account. From the proved facts, the only necessary inference is that the cheques were manipulated by removing the account payee seal in order to facilitate the depositing thereof in desired way. It was clearly suggested therefore that the it was not bonafide or an inadvertent error, but was a misconduct committed for personal gain. The defence that due to paucity of manpower in the office, he was holding the post of Manager and due to burden of work. he was not aware of any fraud, was too lame an excuse to be countenanced.

7.3 The contention that the penalty is harsh and its quantum is required to be interfered with s merits no acceptance. An employee misuses the position of trust and misconduct by him is of tempering with cheques drawn for the payment of insurance claims to be credited in his own account instead of handing over them to the persons to whom it was payable, raised serious doubts about integrity of the appellant. The misconduct was found proved in the departmental proceedings on evidence which was legally ceptable and convincing on facts. The delinquent was therefore required to be dealt with iron hand and not leniently. In the facts and circumstrans of penalty could not be treated as disproportionate.

7.4 Selecting of penalty for the erring or misconducting employee held guilty after the departmental inquiry is the domain of an employer and the Court would not in writ jurisdiction lightly tinker with the penalty. The well settled principle regarding High Court's power to interfere in the penalty imposed was reiterated in M.P. State Agro Industries Development Corporation Ltd. vs. Jahan Khan, 2007 10 SCC 88 by observing,

"It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry proceedings or punishment is vitiated because of nonobservance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defene, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. All these principles

have been highlighted in Indian Oil Corporation v. Ashok Kumar Arora, 1997 3 SCC 72and Lalit Popli v. Canara Bank, 2003 3 SCC 583"

[8] Having regard to above position of facts and law, learned single Judge was eminently justified in dismissing the petition and in concluding that it was not just a mistake committed by the delinquent because of pressure of work. In absence of any material to show that the amounts credited in the joint account of the delinquent, were withdrawn and passed over to the beneficiaries, the only inference was that the benefit was taken by the petitioner. It was significant, which aspect was also noted by learned single Judge, that in the departmental appeal preferred by the appellant against the penalty order, the appellant did not take the defence that he was asked not to produce any evidence and that he had not taken any benefit out of the transaction. On the contrary, the delinquent-appellant admitted his mistake. The act alleged against the delinquent did constitute a serious misconduct which was proved on evidence in the enquiry.

8.1 For the foregoing reasons, no ground is made out warranting interference in the order of learned Single judge in excise of powers under the Letters Patent jurisdiction. Hence, the present Letters Patent Appeal is dismissed. No costs.