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Case :- WRIT - A No. - 2000949 of 1998

Petitioner :- R.C.Dubey

Respondent :- United Bank Of India Through Chairman And M.D.

Counsel for Petitioner :- S.K.Kalia,Ankit Pande,Gaurav Mehrotra,Shivansh Agrawal,Sobhit Mohan Shukla,Tushar Mittal

Counsel for Respondent :- Amit Bose,Avdhesh Shukla

Hon'ble Saral Srivastava,J.

1. Heard Sri Tushar Mittal, learned counsel for the petitioner and Sri Avdhesh Shukla, learned counsel for the respondents.

2. The petitioner by means of present writ petition has assailed the order dated 15.06.1996 by which the disciplinary authority has inflicted the punishment of dismissal upon the petitioner and order dated 04.11.1997 passed by appellate authority rejecting the appeal of the petitioner.

3. The facts of the case in brief are that the petitioner while working as Branch Manager of Allahabad Branch of the Bank committed certain irregularities in disbursing the loan and in issuing number of bank guarantees. The petitioner was sent a letter dated 09.09.1991 asking him to explain the irregularities committed by him. The petitioner in response to the said letter submitted his reply vide letter dated 26.11.1991 stating that he did not commit any irregularity in sanctioning the loan and issuing bank guarantees.

4. However, the authorities found the explanation of the petitioner not satisfactory, and the petitioner while posted as Deputy Regional Manager at Lucknow was placed under suspension vide letter dated 05.12.1991. The petitioner was served a charge-sheet dated 24.07.1992 which was subsequently corrected by corrigendum dated 04.11.1992. The charges

levelled against the petitioner in the charge-sheet dated 24.07.1992 are reproduced hereinbelow:-

“Articles of Charges-

During your tenure of service as Manager at Bank's Allahabad Branch. You had committed acts and omitted to discharge duties in breach of the provisions contains in Regulation 3(1) & 3(3) of the United Bank of India Officer Employees' (Conduct) Regulations, 1976. You are, therefore, charged as under:-

1. You sanctioned and allowed in injudicious manner several advances to liquor dealers beyond your authority as detailed in Annexure-A to the charge-sheet in violation of the norms, rules and procedures laid down by the Bank in this regard.

2. You failed and neglected to take all possible steps to ensure and protect the interest of the Bank. In fact you granted advances in a reckless manner without processing the advance proposals of the parties as per the norms of the Bank and without obtaining adequate primary and additional securities to safeguard the interest of the Bank which were extremely prejudicial, detrimental and injurious to the interest of the Bank.

3. You failed and neglected to report such advances sanctioned by you through your monthly discretionary power statement in time to your Regional Office in violation of the instructions of the Head Office and despite receipt of reminders issued from the Regional Office from time to time in this regard.

4. You failed and neglected in utter dereliction of duty to undertake pre/post lending inspection in respect of the units mentioned in Annexure-A to whom you had advanced Bank's money.

5. You have also failed to mention the account number in regard to borrowal accounts (Name of the parties) in the ledger folios maintained in this regard at the Branch and instead you had made entries of the said loan accounts in the loan ledger which was not in use at the Branch during the relevant time with a view to conceal your wrongful acts.

6. You unauthorisedly and wrongfully allowed advances even after the withdrawal of your discretionary power by the Zonal Manager.”

5. The petitioner denied the charges levelled against him vide letter dated 03.08.1992. The inquiry officer started the inquiry and the petitioner was informed by the bank that the inquiry will not be held by P.K. Gopinathji and will be held by an officer appointed by the bank. Thereafter, one Dharati Das Gupta was appointed as inquiry officer to enquire on various charges levelled against the petitioner. The inquiry officer submitted inquiry report dated 16/20.02.1995 holding that the charges levelled against the petitioner are proved.

6. The disciplinary authority, thereafter, proceeded with the matter and issued a notice along with the inquiry report. The petitioner submitted objection dated 02.03.1995 against the inquiry report stating therein that the inquiry was not conducted as per law and the finding of the inquiry officer holding the charge proved against the petitioner is based upon misappreciation of evidence on record.

7. The disciplinary authority vide order dated 15.06.1996 considered the objection of the petitioner and found that the inquiry has been conducted following the principles of natural justice and the proper assessment of oral and documentary evidence on record have been made by the inquiry officer, consequently, the disciplinary authority found that the charges against the petitioner are proved, the disciplinary authority considering the gravity of charge levelled against the petitioner, inflicted the punishment of dismissal from service under Regulation 4 (h) of United Bank of India Officers Employees (Discipline and Appeal) Regulation, 1976.

8. The petitioner, thereafter, preferred an appeal which was also dismissed by the appellate authority by recording a finding that the petitioner has misconducted himself by sanctioning the loan beyond his authority. The appellate authority dealt with all contentions of the petitioner and recorded a finding that all the documents have been supplied to the petitioner. In this respect, paragraph Nos.(vii) & (ix) of the order of appellate authority are reproduced hereinbelow:-

“(vii) With regard to the contentions made in the paragraphs 12, 14 and 15, I find that all the available documents/records requisitioned by Shri Dubey for his defence were supplied to him at the enquiry and therefore, no existing documents were withheld from him to prepare his defence which can prejudice his case.

(ix) With regard to the submission made in the paragraphs 18, 19 and 20, I find that by mere keeping title deed in the Bank's Branch File equitable mortgage of the property cannot be created unless it is deposited with the Bank along with the Memorandum of Deposit of Title Deed and the same are entered in the Bank's Register. I find that Shri Dubey did not follow any of the above procedures for creating equitable mortgage of the borrowers property in respect of the loan and therefore, his arguments made in this paragraph does not have any merit. With regard to the submission that General Manager (Credit) had informed the Board about the creation of the mortgage I find this point has been elaborately dealt with by the Enquiry Officer at page 16 of the enquiry report and as such the argument made by Shri Dubey on this issue has got no substance in it. The allegation against the witness made in this paragraphs does not hold good in view the Enquiry Officer's findings which had taken due care of the deposition of management witnesses in this regard.”

9. Challenging the aforesaid order, learned counsel for the petitioner has submitted that the inquiry has been conducted in violation of the principles of natural justice inasmuch as the documents demanded by the petitioner vide letter dated 21.12.1993 were not supplied to the petitioner. It is submitted that the petitioner demanded the documents mentioned in letter dated 21.12.1993 inasmuch as these documents could prove the innocence of the petitioner, and thus, non-supply of these documents has seriously prejudiced the rights of the petitioner to defend himself properly, and thus, the entire inquiry is vitiated on account of violation of principles of natural justice. Therefore, impugned order of dismissal as well as order passed by the appellate authority affirming the order of the dismissal cannot be sustained in law.

10. He further submits that in the present case, the punishment of the dismissal awarded to the petitioner is disproportionate to the charges

inasmuch as none of the charges discloses that the bank had suffered any loss due to the petitioner and there was only slight deviation from procedures required to be followed while sanctioning the loan, therefore, in such view of the fact, the matter may be remanded to the disciplinary authority to consider the award of punishment afresh. In support of his case, learned counsel for the petitioner relied upon the judgment of apex court in the case of ***State of Uttar Pradesh and others Vs. Saroj Kumar Sinha, 2010 (2) SCC 772.***

11. Per contra, learned counsel for the respondents would contend that all the documents which were necessary in the matter have been supplied to the petitioner. It is submitted that the inquiry has been conducted in accordance with the rules. The petitioner could not demonstrate that the procedure contemplated under the rules has not been followed in conducting the inquiry. It is submitted that as there is no procedural illegality in conducting the inquiry, and the petitioner has failed to demonstrate that the finding of the inquiry officer is perverse or based upon misreading of evidence, therefore, this Court cannot exercise its power under Article 226 of the Constitution of India to interfere with such finding. It is submitted that the principles of natural justice has been adhered to since all the documents sought by the petitioner have been supplied to him during inquiry. It is further submitted that neither in appeal filed by the petitioner against the dismissal of order nor in the writ petition, the petitioner has specified the documents which were not supplied to the petitioner and non-supply of those documents have prejudiced the petitioner in the inquiry.

12. It is further submitted that merely because the bank did not suffer any loss does not absolve the petitioner, and in the facts of the present case, considering the conduct of the petitioner, just punishment has been awarded to the petitioner. He has placed reliance upon the judgments of the Apex Court in the case of ***State Bank of India and another Vs. Bela Bagchi and others, 2005 (7) SCC 435, Maharashtra State Seeds Corporation Ltd. Vs.***

Haiprasad Drupadrao Jadhao and another, 2006 (3) SCC 690 and Lalit Popli Vs. Canara Bank and Others, 2003 (3) SCC 583.

13. I have considered rival contentions of learned counsel for the parties and perused the record.

14. So far as the first contention of learned counsel for the petitioner regarding violation of principle of natural justice is concerned, the record reveals that the petitioner has been supplied all the documents which were necessary for the enquiry. The only documents which were demanded by him and not supplied to the petitioner are stated in letter dated 21.12.1993 appearing on page No.176 of the paper book. The inquiry proceeding reflects that some of the documents have been supplied to the petitioner, however, the document relating to the loan disbursement of the year 1989, according to the petitioner, were not supplied. In this respect, it is pertinent to note that the order of the disciplinary authority was assailed by the petitioner by filing appeal in which only vague averment has been made in paragraph Nos.12, 13, 14 & 15 that the documents demanded by the petitioner were not supplied. Paragraph Nos.12 to 15 are reproduced hereinbelow:-

“12. That the appellant was not afforded adequate opportunity of defence during the course of inquiry particularly non-supply / non production of specified letters of the appellant by which he had sought confirmation of his action with respect to grant of term loans and issuance of bank guarantees, which were also duly confirmed by the R.M. / A.G.M. The said letters were not produced before the Enquiry Officer on the pretext that they were not traceable. Though the appellant had given photocopies of few of the said letters before the Enquiry Officer which amply demonstrated that term loans which were granted by him were confirmed by the R.M./A.G.M. and which was in full knowledge of the authorities which implied the approval of his actions by the higher authority and as such the appellant could not be charged for the said act which was done in the interest of the Bank itself and under full knowledge of Regional Manager.

13. That it may be humbly submitted here that the A.G.M. used to confirm the term loans on individual letters of the appellant, and as such the appellant cannot be attributed any ulterior motive for his actions which were in fact in the interest of the Bank.

14. That so far as non production of defence documents are concerned, it is further submitted that a perusal of enquiry proceeding (at Page No. 47) would reveal that the then Branch Manager of Allahabad Branch and Regional Manager Central Region had stated that they could not trace out the letters specified by the appellant for which he had requested to be produced before the Enquiry Officer to substantiate his defence that his actions were with the consent of the A.G.M. and as such he can not be charged for exercising powers exceeding his jurisdiction.

15. That non-supply of these documents had prejudiced the defence of the appellant and as such the enquiry proceedings are vitiated on this ground alone of not affording adequate opportunity of defence.”

15. The petitioner again in paragraph Nos.15, 16 & 18 of the writ petition has made vague averment with regard to non-supply of document. However, perusal of the paragraph No.18 of the writ petition reveals that the letters dated 03.04.1989, 15.05.1989 & 25.05.1989 were not supplied to the petitioner on the pretext that they are not available.

16. The respondent bank has given a detail reply to paragraph No.18 of the writ petition in paragraph No.16 of the counter affidavit wherein it specifically stated that the charges against the petitioner are in respect to the year 1990 or 1991 whereas the letters demanded by the petitioner were of the year 1989 i.e. prior to the charges levelled against the petitioner. Paragraph No.16 of the counter affidavit is reproduced hereinbelow:-

“16. That with regard to the contents of para-18 of the writ petition, it is submitted here that in the chargesheet issued against the petitioner the specific allegations levelled against him was to the effect that during his posting as Manager of the Allahabad Branch of the Bank, he had sanctioned several advances to the borrowers by way of term loans and Bank Guarantees and accepting in drawing in the OD accounts in excess of his discretionary powers and in violation of the norms and rules of the Bank. A perusal of the list of

advances which was the basis for the chargesheet issued against the petitioner, would show that all the said advances were in respect of the year 1990 or 1991. In view of the above, the so called letters referred to in the para under reply which pertained to the year 1989, were as a matter of fact irrelevant for the purposes of the disciplinary proceedings conducted against the petitioner. Moreover, the letters mentioned in the para under reply according to the Bank were not available in the Bank and they had not been also recorded in the despatch register of the Branch. In other words, the said letters were not a part of the record available with the bank and as such, there was no question of the petitioner or the Bank relying on the same for the purposes of departmental inquiry against the petitioner. It is further submitted here that even according to the petitioner, the said letters mentioned in the para under reply were sought to be produced by him to indicate that his actions had the consent of the Regional Manager/Assistant General Manager. However, assuming that the documents concerned supported that stand of the petitioner, it was of no avail to the petitioner as if the petitioner had acted in excess of his authority contrary to the norms and rules of the Bank no kind of consent granted by any of the superior officer could validate the unauthorised action of the petitioner. It could not possibly be consented by the petitioner that simply because in the past the petitioner's unauthorised acts may have the consent of the Regional Manager/Assistant General Manager, and as such, the respondents could not proceed with any inquiry in future for the said act.”

17. So from the averments made by the petitioner in paragraph No.18 of the writ petition, it is evident that the letters dated 03.04.1989, 15.05.1989 & 25.05.1989 could not be supplied to the petitioner for the reason that they were not available with the bank. Non-supply of these documents could not prejudice the case of the petitioner for the reason that the charge against the petitioner is that he had disbursed the loan beyond his limit without following the due procedure and this charge is not denied by the petitioner. The petitioner is taking the defence that it is the practice of the bank that usually the loans were sanctioned and subsequently, the approval is taken by the competent authority. In view of the fact that the petitioner did not deny the fact that he sanctioned the loan beyond his limit without taking prior approval of the authority as the sanction is obtained later on, therefore, in

such view of the fact, this Court is of the view that non-supply of those documents have not prejudiced the case of the petitioner, therefore, there is no violation of principles of natural justice.

18. So far as the judgment of Apex Court relied upon by the learned counsel for the petitioner is concerned, the law postulated in the said judgment was that if the document demanded by the delinquent employee prejudices his right to defend the case is not supplied, the order of punishment is vitiated for violation of principles of natural justice and could not be sustained, but the fact in the case of *Saroj Kumar Sinha (supra)* are different from the facts of the present case inasmuch as in that case the delinquent was not supplied with the documents referred in the charge-sheet which were relied upon by the department in the charge-sheet. In such view of the fact, judgment relied upon is not applicable in the facts of the present case.

19. The Apex Court in the case of *Lalit Popli (supra)* held that the High Court while exercising the jurisdiction under Article 226 of the Constitution of India does not act as appellate authority. It further held that the jurisdiction of the High Court is circumscribed by limit of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. It further held that judicial review is not akin to adjudication of case on the merits. In the present case, since the petitioner has failed to demonstrate that there is any procedural error committed by the inquiry officer in conducting the inquiry and the order passed by the disciplinary authority as well as appellate authority violates the principles of natural justice or the disciplinary authority and the appellate authority has committed any error of law, therefore, this Court does not find any ground to interfere with the order of disciplinary authority and appellate authority.

20. So far as the contention of learned counsel for the petitioner that since the bank has not suffered any loss, therefore, the punishment awarded to the petitioner is disproportionate to the charge levelled against the petitioner. In

this regard, this Court may note that the Apex Court in the case of ***Bela Bagchi and Others (supra)*** has held that merely because the bank did not suffer any loss cannot be a ground to absolve the delinquent employee inasmuch as acting beyond one's authorities by itself a breach of discipline and misconduct. Paragraph No.15 of the judgment is reproduced hereinbelow:-

“15. 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. As was observed by this Court in Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted beyond authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

21. Similarly the Apex Court in the case of ***Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, 1996 (9) SCC 69*** has held that if delinquent authority has acted beyond its authority that is a misconduct. Paragraph Nos.7 & 8 of the judgement are reproduced hereinbelow:-

“7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank 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. It requires the officer/employee to maintain good conduct and

discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is 'misconduct' within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organisation - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-

drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterize them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No.9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No.8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterized as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

8. We must mention that Sri V.A.Mohta, the learned counsel for the respondent, stated fairly before us that it is not possible for him to sustain the reasoning and approach of the High Court in this case. His only submission was that having regard to the age of the respondent [37 years] and the facts and circumstances of the case, this Court may substitute the punishment awarded to the respondent by a lesser punishment. The learned counsel suggested that any punishment other than dismissal may be imposed by this Court. We considered this request with the care it deserves, but we regret that we are unable to accede to it. The learned counsel for the Bank, Sri V.R. Reddy, Additional Solicitor General, also stated, on instructions of the Bank, that it is not possible for the Bank to accommodate the respondent in its service in view of his conduct.”

22. The Apex Court in the case of **Mecken Singh N. Marak** (*supra*) has held in paragraph No.15 as under:-

“15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental enquiry, the court should also take into consideration, the mental set-up of the delinquent, the

type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with with iron hands.”

23. In the case of ***Maharashtra State Seeds Corporation Ltd. (supra)*** the Apex Court has held in paragraph No.23 as under:-

“23. The first respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. He not only defalcated a huge amount but also misappropriated some bags of seeds. It was in the aforementioned situation improper for the High Court to interfere with the quantum of punishment. It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power.”

24. In view of the law laid down by the Apex Court in the aforesaid cases, this Court is of the view that punishment awarded to the petitioner is not one which shocks the conscience of the Court. In such view of the fact, contention of learned counsel for the petitioner with respect to quantification of punishment being misconceived and is rejected.

25. For the reasons given above, the writ petition lacks merit and is accordingly ***dismissed*** with no order as to costs.

Order Date :- 11.03.2024

R.S. Tiwari