

Reserved on 07.11.2023

Delivered on 11.03.2024

Neutral Citation No. - 2024:AHC-LKO:21075

Case :- WRIT - A No. - 6625 of 2003

Petitioner :- Anil Kumar Mishra

Respondent :- Union Bank Of India Through Its Chairman And M.D. Cintral

Counsel for Petitioner :- Anuj Kudesia

Counsel for Respondent :- R. Mishra,M.A. Mansoor

Hon'ble Saral Srivastava,J.

1. Heard Sri Vikas Kumar Agrawal, Advocate (bearing Bar Council Registration No.UP9044/2003) holding brief of Sri Anuj Kudesia, learned counsel for the petitioner and Sri Tushar Kant Mishra, Advocate (bearing Advocate Roll No.B/T0127/2022) holding brief of Sri Altaf Mansoor, learned counsel for the respondents.

2. The petitioner by means of present writ petition has assailed the order dated 23.01.2003 by which the disciplinary authority has inflicted the punishment of dismissal upon the petitioner and order dated 03.06.2003 passed by appellate authority rejecting the appeal of the petitioner.

3. The facts of the petitioner in brief are that the petitioner joined the service as clerk in the bank, thereafter, he was promoted as an officer in Zonal Office, Lucknow and he was posted at different places. It appears that a charge-sheet was issued to the petitioner on 22.08.2000 on the following charges:-

“(1) Failure to discharge his duties with utmost devotion, diligence, honesty and integrity.

(2) Failure to take all possible steps to ensure and protect the interest of the Bank.

(3) Acting otherwise than best judgement in performance of his official duties.”

4. The petitioner was asked to submit the reply to the charge-sheet. The petitioner was thereafter served a supplementary charge-sheet dated

18.10.200, 11.01.2001 & 13.09.2001. The petitioner submitted reply to the charge-sheet denying the allegation levelled against the petitioner.

5. The inquiry proceeding was commenced. Thereafter, the inquiry was completed and inquiry officer submitted the inquiry report to the disciplinary authority on 26.03.2002. The inquiry report was served upon the petitioner by the disciplinary authority and the petitioner submitted his reply on 14.06.2002 against the inquiry report. The disciplinary authority found that the charges against the petitioner were proved, and considering the gravity of charge, the disciplinary authority inflicted the punishment of dismissal from service upon the petitioner. The petitioner, thereafter, preferred an appeal against the order of dismissal which was also rejected by the appellate authority vide order dated 13.06.2003.

6. Challenging the aforesaid order, the only submission advanced by learned counsel for the petitioner is that the disciplinary authority has acted arbitrarily and malafidely in dismissing the petitioner from service without considering the case of the petitioner, and further that there was no direct or indirect evidence on record proving the dishonesty of the petitioner, and that the integrity of the petitioner is not credible. It is further argued that the disciplinary authority has acted in violation of Article 311(2) of the Constitution of India inasmuch as alongwith the inquiry report, no show cause notice of proposed punishment was given to the petitioner, and thus, the order impugned cannot be sustained in law.

7. Per contra, learned counsel for the respondents would contend that learned counsel for the petitioner could not point out from the record that there is any perversity or procedural error committed by the inquiry officer in conducting the inquiry. It is submitted that this Court under Article 226 of the Constitution of India while exercising the power of review can interfere with the order of punishment if the order of disciplinary authority is contrary to law or the procedure contemplated under the Rules to conduct inquiry have not been adhered to in conducting the inquiry whereas in the present

case, no such infirmity was pointed out by learned counsel for the petitioner in the order passed by disciplinary authority as well as appellate authority.

8. It is further contended that the petitioner was issued a show cause notice along with inquiry report, and the ground raised herein in respect of violation of principles of natural justice enshrined in Article 311(2) of the Constitution of India have not been raised by the petitioner before the appellate authority, therefore, it cannot be raised for the first time in writ petition. Accordingly, it is submitted that the order impugned cannot be sustained in law.

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

10. Though learned counsel for the petitioner has vehemently argued that the inquiry officer as well as disciplinary authority failed to consider the defence of the petitioner while holding the petitioner guilty, but he could not pin point anything from the record that which part of the defence of the petitioner was not considered by the inquiry officer, and therefore, the inquiry is vitiated.

11. So far as the issue with regard to violation of principles of natural justice as enshrined in Article 311(2) of the Constitution of India is concerned, following assertions appearing on page No.121 of the writ petition have been made by the petitioner in appeal:-

“The order of punishment of dismissal cannot also be sustained as it clearly violates the provisions of Article 311 of the Constitution of India as neither proper opportunity was given to defend myself in respect of extraneous material nor the Dy. General Manager (P) is competent to dismiss me from service as I was appointed in MMGS, III by an officer higher in rank to him. The Dy. General Manager thus lacked authority to dismiss me notwithstanding the Provisions of the Regulations.”

12. The averments contained above do not disclose which documents were not supplied to petitioner. Further, the petitioner could not demonstrate

that the Deputy General Manager, who passed the dismissal order, lacked the jurisdiction to pass impugned order. It is pertinent to note that in the writ petition, the averment has been made in respect of violation of Article 311(2) of the Constitution of India in paragraph No.26 of the writ petition which is reproduced hereinbelow:-

“(26) That it is settled law along with enquiry report the show cause notice imposing punishment must have been given to the delinquent officer before imposing major punishment but in the instant case no show cause notice or proposed punishment was given to petitioner which is denial of opportunity of hearing and is violative of principles of natural justice mentioned under Article 311(2) of Constitution of India.”

13. The averments made in paragraph No.26 do not disclose as to how the opportunity of hearing was not afforded to the petitioner. Since the petitioner has failed to point out any infirmity in the procedure adopted by the inquiry officer in conducting the inquiry by the inquiry officer, and the disciplinary officer have committed any error of law in inflicting the punishment of dismissal, this Court is not inclined to interfere with the order impugned in the writ petition.

14. It has also been urged that the punishment awarded to the petitioner is disproportionate to the charges levelled against the petitioner, and therefore, the matter be remanded to the disciplinary authority to consider the award of punishment afresh.

15. In respect of the aforesaid contention, it would be apt to refer to few judgments of the Apex Court.

16. 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 overdrawals 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."

17. 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.”

18. 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.

19. In such view of the fact, the writ petition lacks merit and is accordingly **dismissed** with no order as to costs.

Order Date :- 11.03.2024

R.S. Tiwari