IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.1593 of 2015
and
M.P.No.1 of 2015

I.SAVARINATHAN,
NO.21/A 13TH MAIN ROAD,
MGR NAGAR CHENNAI- 42. ...APPELLANT/PETITIONER

Vs.

1 THE ASST. GENERAL MANAGER,
DISCIPLINARY AUTHORITY/
CENTRAL BANK OF INDIA,
CENTRAL OFFICE, CHANDER MUKHI,
NARIMAN POINT, MUMBAI-400021.

2 THE DEPUTY GENERAL MANAGER /
APPELLATE AUTHORITY,
CENTRAL BANK OF INDIA,
ZONAL OFFICE, 48/49 MONTIETH ROAD,
EGMORE, CHENNAI-8. ...RESPONDENTS/RESPONDENTS

Appeal filed under Clause 15 of Letters Patent against the order, dated 8.1.2014 made in W.P.No.21680 of 2010 on the file of this Court.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records from the files of the respondents pertaining to their impugned orders (i) bearing CO:AGM-DA/2009-10/146, dated 11.09.2009, imposing the punishment of "dismissal which shall ordinarily be a disqualification for future employment" as per Regulation No.4 (j) of Central Bank of India Officer Employees (Discipline & Appeal) Regulation 1976 as amended upto date issued by the first respondent and (ii) the order of the second respondent bearing No.ZO/DGM/AA/10-11/1742, dated 29.07.2010 and to quash the same and consequently direct the respondents to reinstate the petitioner in service with continuity of service, with back wages and with all other attendant and consequential benefits and pass such further orders.

For Appellant : Mr.P.Godson Swaminathan

(ORDER OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

In view of the narrow points involved, we shall dispose of this writ appeal today at the admission stage itself.

2 This writ appeal at the instance of the writ petitioner arises out of the order of the writ Court passed in W.P.No.21680 of 2010 on 8.1.2014.

3. In 1974, the appellant started his career in the Central Bank of India as a Cashier cum Godown Keeper. In due course, he was promoted to Scale I then Scale II and subsequently, became a Scale III Officer viz., Senior Manager cadre. While he was working as Branch Manager, Kumbakonam and while he was working as Senior Manager, Mandaveli branch, Chennai it came to light that he has committed several irregularities.

4. The bank management issued him memos calling for his explanations. As his explanations were found not satisfactory, the following charges were framed against him.

Charge No.1:

Shri I. Savarinathan, during his tenure as Branch Manager at Kumbakonam Branch between August, 2001 to May, 2004, had committed the following irregularities in the account of M/s.Muthu Fisheries Private Limited.

i. Shri I. Savarinathan, while recommending the original sanction to Unit No.I of M/s.Muthu Fisheries Private Limited to the Sanctioning Authority/Regional Manager, Trichy, did not mention that M/s.Muthu Fisheries Privated Limited was a defaulter, who already had availed credit facilities with Bank of Baroda, Veppathur, which later became NPA & suit filed. He did not conduct the pre-sanction inspection properly.

ii. He did not obtain the confidential credit information report, credit asset status of M/s.Muthu Fisheries P Ltd., the closed NPA account with Bank of Baroda, Veppathur Branch. He also did not ascertain the conduct of the NPA account with Bank of Baroda. He did not appraise the true picture of the Company while recommending the original proposal to Regional Manager, Trichy.

iii. At the time of original sanction of the proposal of Unit No.I, subsequent enhancements and at the time of recommendation for fresh credit requirement to Unit No.II, he projected a highly and abnormally inflated worth of directors without proper assessment and justification.

iv. Satisfactory market report/financial reports on the promoters directors, were not obtained by Shri I.Savarinathan.

v. Valuation reports of the collateral security offered were not obtained from the approved FIV.

vi. Techno economic viability report from a Competent Authority on the project was not obtained/insisted from the party.

vii. Despite the above lacunae, he recommended the proposal to Sanctioning Authority for sanction and Sanctioning Authority on the strength of the recommendations, sanctioned the fresh proposal.

viii. He did not ensure infusion of margin money for the term loan sanctioned as per the stipulations.

ix. He failed to effectively monitor the account and scrutinise the stock properly.

x. Out of the boat advance of Rs.90 lacs sanctioned as term loan, an amount of Rs.87.20 lacs was paid to one Shri.M.Amanulla, a close relative of Shri.Shahul Hameed, Managing Director of M/s.Muthu Fisheries Privated Limited, instead of paying the amount to fishermen, who are the beneficiaries, thereby facilitated Shri.Amanulla to siphon off the Bank's fund.

xi. Out of the term loan of Rs.300 lacs sanctioned to Unit No.II of M/s.Muthu Fisheries P. Ltd., Shri Savarinathan without ascertaining the standing and reputation of M/s.Kovai Engg Equipments the machinery supplier, issued numerous DDs as detailed in annexe-II in favour of M/s.Kovai Engg Equipments at Coimbatore without ensuring whether such a factory exited and involved in machinery manufacturing activities, thereby facilitated Shri Syed Hassan, Managing Partner of M/s. Kovai Engg Equipments, a close relative of Shri Sahul Hameed, Managing Director of M/s.Muthu Fisheries P Ltd to siphon off Bank's funds to the tune of Rs.130 lacs.

xii. He released the working capital limit in full to Unit No.II before the unit obtained final clearance to commence production activity from Pollution Control Board, regular connection from TNEB. As on 01.06.2004, full working capital facility was released whereas the Company obtained clearance from Pollution Control Board on 07.06.2006 and regular power connection from TNEB on 31.07.2006.

xiii. He failed to obtain the receipts from the civil contractors who had given their quotations for construction.

On account of the aforesaid acts of omission and commission on the part of Shri. Savarinathan, the accounts have slipped into NPA and exposed Bank's funds to serious financial risk to the tune of Rs.1353.62 lacs.

Charge No.2:

Shri I. Savarinathan, while working as Senior Manager at Mandaveli Branch under Chennai Region from 09..06.2004 to 12.05.2007 has sanctioned and disbursed housing loans to the various parties in violation of the Bank's lending norms envisaged under housing loan scheme.

Instances of the acts of omission and commission are enumerated hereunder:

i) Shri I.Savarinathan sanctioned and disbursed housing loans to the various parties.

a. without obtaining approved plan of the flats/house.

b. disbursed 80-90% of the loan amount in one shot immediately on sanction instead of releasing the same in stages.

c. appraisals were done by I

Savarinathan himself.

d. valuation reports were not obtained at the time of disbursement of the loans.

e. EM not registered with Sub-register's office.

f. statements of assets and liabilities of the borrowers/guarantors were not obtained.

ii. Possessions of the property were not taken by the borrowers but remained with the builder and housing loans were sanctioned without adhering to the norms.

iii. Housing loans were sanctioned to borrowers who were located 50 kms away from Mandaveli Branch, where Bank's branches already existed nearby. The distance factor hindered the free monitoring of the account.

iv. Housing loans were sanctioned to the close relatives of the builders thereby extended under accommodation to the parties.

v. Sanctioned housing loans to the builders which is against the norms.

vi. Housing loans were sanctioned to members of the family members exceeding his sanctioning powers and without adhering to the norms.

vii. Housing loans were sanctioned to borrowers who were already NPA loanees/taken over NPA account from seller who is a NPA borrower and in violation of norms.

viii. Sanctioned and disbursed housing loans to property allotted by Government to SC/SC beneficiary who is not authorized to sell the property before completion of the requisite tenure.

ix. Even before commencement of construction activity / completion of construction, Shri I Savarinathan transferred the old housing loans and the loan liabilities in the name of new borrowers.

On account of the aforesaid acts of omission and commission on the part of Shri. Savarinathan the accounts have slipped in NPA and exposed Bank's funds to serious financial risk.

Charge No.3:

Shri I. Savarinathan sanctioned cent mortgage loans in violation of Bank's lending norms

Charge No.4:

Shri I Savarinathan had opened 2 trust accounts viz. M/s International Calvari Mission Trust (CD 890), Vellor Calvari Mission Trust (CD 889) without observing KYC norms, without exercising sufficient care and diligence and without obtaining the approval of RO, Chennai. He allowed huge transactions in the trust accounts inviting strictures from RBI.

Charge No.5:

Shri I Savarinathan as Senior Manager did not ascertain the genuineness of the construction agreement and the sale deed of the property offered as collateral security in the account of M/s.PTJ Exporters, thereby facilitated the borrower to defraud the Bank to a tune of Rs.10.96 lacs + interest.

5. D.V.Prakash, Chief Manager, Anna Salai Branch was appointed as enquiry officer. On behalf of the bank, a Presenting officer presented its case. The delinquent was defended by I.S.Fernando, a Senior Manager of the Bank. In the domestic enquiry, the management examined two witnesses and produced several documents and the delinquent official was given opportunity to let in his evidence.

6. Concluding the enquiry, the enquiry officer found that the five charges stood proved and submitted his findings to the Disciplinary Authority viz., Assistant General Manager, Central Bank of India, Mumbai, the first respondent herein.

7. On receipt of a copy of the findings of the enquiry officer, the delinquent submitted his detailed reply. Considering all the materials on record, the first respondent accepted the findings of the enquiry officer. The disciplinary authority found that the misconduct established are very serious in nature which has resulted in causing a huge monetary loss of Rs.20 Crores to the bank awarded him the following penalties:

Charge 1	Dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 as amended uptodate.
Charge 2	Removal from Bank's service which shall ordinarily be not a disqualification for future employment in terms of Regulation 4(i) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 as amended uptodate.
Charge 3	Reduction by one stage in the time scale of pay for a period of 2 years. Further, the CSO will not earn increments during the period of such reduction and on expiry of the said period the reduction will have the effect of postponing his future increments in terms of Reg. 4(f) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 as amended uptodate.
Charge 4	''Censure in terms of Reg.4(a) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 as amended uptodate.
Charge 5	Reduction by 2 stages in the time scale of pay for a period of 2 years. Further, the CSO will not earn increments during the period of such reduction and on expiry of the said period the reduction will have the effect of postponing his future increments in terms of Reg.4(f) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation, 1976 as amended uptodate.

Ultimately, the first respondent awarded him the consolidated penalty of dismissal which shall ordinarily be a disqualification for future employment'' in terms of Regulation 4(j) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulation 1976.

8. As against the said order of dismissal, the dismissed bank employee preferred departmental appeal. It was

considered and dismissed by the second respondent viz., Deputy General Manager, Central Bank of India, Chennai

9. Aggrieved, the dismissed employee filed W.P.No. 21680 of 2010 before the Writ Court for issuance of a Certiorarified Mandamus to set aside the said order of dismissal and his reinstatement in service with all the service benefits.

10. The Writ Court considering the submissions of the writ petitioner, bank management and the findings recorded by the enquiry officer and the order of the appellate authority and the materials on record concluded that the impugned orders does not suffer from perversity and also held that the penalty awarded is appropriate and it does not call for any interference and thus dismissed the writ petition.

11. Aggrieved, the writ petitioner has directed this writ appeal.

12. The learned counsel for the appellant contended that there is non application of mind on the part of the enquiry officer to the materials presented at the domestic enquiry and the findings are not supported by legal evidence. It is based on conjectures and surmises and the entire findings rest upon the ipse dixit of the witnesses examined by the bank management who are certain superior officers of the bank. The learned counsel for the appellant added that the findings recorded by the enquiry officer are perverse. The learned counsel for the appellant also contended that the said aspects were overlooked by Appellate Authority. They were also missed by the writ Court.

13. We have anxiously considered the submissions made by the learned counsel for the appellant, the findings of the enquiry officer, the order of the appellate authority, order of the writ Court and the materials on record.

14. Actually, this writ appeal is as against the order of the writ Court before which the correctness of the findings of the enquiry officer which ultimately, led to the dismissal of the appellant from the service of the bank which was confirmed by the Appellate Authority, has been canvassed invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

15. In such matters, it is not that judicial review is not available. It is available, but it is very limited, as this Court cannot act as an Appellate Court and it cannot be a superbody to oversee the orders of the Disciplinary

Authority who are the sole Judge of the departmental matters applying the relevant service rules and principles of service jurisprudence on the materials placed before them.

16. In Union of India and others vs. P.Gunasekaran (2015 (2) SCC 610) with regard to High Court's powers in dealing with such disciplinary matters, the Hon'ble Supreme Court laid down the following guidelines:

> '' In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:
>
> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence of and merits of the case;
>
> e. he authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
>
> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.
>
> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
>
> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
>
> i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.''

17. It is also apposite here to notice the following observations of the Hon'ble Supreme Court made in Rai Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and others (JT 1997 (3) SC 717)

''6.........The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice.''

18. In the instant case before us, there is no allegation that there is violation of principles of natural justice and there is no allegation that he was not given adequate opportunity to put forth his case and air his views before the enquiry officer and there is no allegation that he suffered any prejudice in the decision making process of the enquiry officer.

19. The grievance of the appellant is that the findings recorded by the enquiry officer is not backed by relevant materials and this has been missed by the appellate authority and also by the writ Court.

20. Perusing the findings recorded by the enquiry officer and the materials produced, it comes to light that there is complete appraisal of the materials produced by the bank management in support of the charges framed against the delinquent officer and clearcut findings were recorded on each charge referring to the relevant materials produced before it. The Appellate Authority also viewed the findings of the enquiry officer in the light of the appeal petition presented by the appellant and dismissed the departmental appeal.

21. The writ Court noted that while recording his findings the enquiry officer has not taken into account any materials which ought not to have been considered, overlooked any materials which ought to have been considered and rightly concluded that the findings does not suffer from any perversity and illegality.

22. In the light of the materials on record and the principles enunciated by the Hon'ble Supreme Court in considering the disciplinary matter before this Court, we have no occasion here to interfere with the findings of the enquiry officer which has been accepted by the Disciplinary Authority and by the Appellate Authority which were also considered and not disturbed by the Writ Court.

23. In State Bank of India and another vs. Bela Bagchi and others (2005 (7) SCC 435) while dealing with the dismissal of a bank employee for his commission of certain serious misconduct the Hon'ble Supreme Court held as under:

> ''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.''

24. In the instant case, the appellant, an officer of the bank acted quite as against the banks' norms and requirements in the matter of sanctioning of loan and enabled squandering of nearly 20 Crores of bank (public) money by certain persons. As the misconduct established is very serious, he was awarded the punishment of dismissal from service. In the facts and circumstances, the punishment

awarded to him is not shocking and disproportionate.

25. In view of the foregoings, this writ appeal fails and it is dismissed. The order of the writ Court is confirmed. However, no costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1 THE ASST. GENERAL MANAGER
DISCIPLINARY AUTHORITY,
CENTRAL BANK OF INDIA,
CENTRAL OFFICE,
CHANDER MUKHI,
NARIMAN POINT,
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2 THE DEPUTY GENERAL MANAGER/
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1 CC to Mr.Isaac Mohanlal, Advocate SR.No. 60385

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and M.P.No.1 of 2015

VGI (CO)
PSI (26.11.2015)