IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :- 09.07.2015
(RESERVED ON 06.01.2015)

CORAM:-

THE HON'BLE MR. JUSTICE T.RAJA

Writ Petition No.4817 of 2007

K.Kannan ... Petitioner

Vs.

1. Indian Bank,
   rep. By its General Manager,
   Head Office,
   66, Rajaji Salai,
   Chennai 600 001.

2. The Deputy General Manager,
   Indian Bank,
   Head Office,
   66, Rajaji Salai,
   Chennai 600 001. ... Respondents

Writ Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records and papers from the files of the respondents herein relating to their impugned orders issued in Ref.No.24: PUN: VEL:VG: 2003 dated 10.10.2003, passed by the 2nd respondent and Order Ref.No.Nil, dated 10.11.2005, passed by the 1st respondent, and to quash the same and consequently, direct the respondents to reinstate the petitioner into service with backwages, with continuity of service and with all attendant benefits and to award costs.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mrs.Rita Chandrasekaran,
for M/s.Aiyar & Dolia.

O R D E R

The petitioner, who served as a Branch Manager in the Respondents/Indian Bank, having suffered the punishment of compulsory retirement vide order dated 10.10.2003, passed by the Disciplinary Authority/R2, as affirmed by the Appellate Authority/R1 on 16.11.2005, challenges the correctness of the same before this Court by way of the present Writ Petition.

2. Mr.S.Ilamvaludhi, learned counsel appearing for the petitioner, in an endeavour to assail the impugned orders, by terming the same as illegal and unjustified on the ground that there was no fair and proper enquiry proceedings conducted, would add that the respondents failed to note that, with regard to all the charges alleged against the petitioner, no evidence was produced to prove the same and that the Enquiry Officer (in short 'EO') merely relied upon the statements of M.Ws.1 and 2 viz., the Management Witnesses, who submitted their investigation reports. Besides that, even though the Presenting Officer listed out 4 witnesses on the side of the prosecution, no one was produced in the enquiry and thereby, the petitioner was denied the opportunity to cross-examine those witnesses in order to disprove the charges levelled against him. Further, the EO also had relied upon unsubstantiated circumstantial evidence. Therefore, the findings of the EO, holding the petitioner guilty of the charges, are perverse and bad in law as no reasonable person of any standard would come to such a conclusion. Neither the Disciplinary Authority/R2 nor the Appellate Authority/R1 independently applied their mind to the evidence available on record in a proper perspective, therefore, the impugned orders should be held to be suffering from the vice of non-application of mind.

3. Learned counsel for the petitioner again reiterated his arguments by stating that the whole enquiry proceedings got vitiated due to very many defects including - (a) the listed witnesses were not produced during the course of the enquiry; (b)) the documents concerning the listed witnesses which have been produced and admitted as management exhibits have not been identified by the concerned persons, who are the authors of such documents; and (c) the petitioner has not been given the opportunity to cross-examine the witnesses based on whose alleged report the charge sheet has been framed. Therefore, he contended that there has been a clear violation of the principles of natural justice throughout the course of the departmental proceedings.

4. Continuing his submissions, learned counsel for the petitioner would state that the writ petitioner, after joining the services of the respondents/Bank in the year 1984, by means of hard-work, dedication and sincerity, rose to the position of Branch manager. But, doubting his 22 years of honest and faithful service, he was issued with the Charge Memo, dated 13.03.2002, containing a number of charges. The enquiry proceedings conducted by the EO did not proceed in the right direction as pointed out above, however, the Disciplinary Authority, who is saddled with the obligation to apply his mind independently, also proceeded in a casual manner just to affirm the findings of the EO. He would submit that, while discussing on Charge No.4 - Imputation No.5, the Disciplinary Authority simply quoted the findings of the EO in respect of other charges and actually, left the findings on other charges without any discussion at all. According to him, the charges levelled against the petitioner are substantially not proved except for certain procedural irregularities, for which, he had already submitted his sincere regrets, however, in respect of the allegations that the petitioner received the loan proceeds, committed temporary misappropriation of funds and demanded illegal gratification as alleged under charge Nos.2, 4 and 9 respectively, the borrowers or the complainants were not produced as witnesses by the prosecution and, as such, on this ground alone, the charges would automatically fail. On that basis, he would state that it is well settled principle in domestic enquiry that charges of this nature need direct evidence and highest degree of proof, but, the EO, without even proper consideration of the evidence, abruptly held majority of the charges 'proved' and the Disciplinary Authority, without even independently applying its mind, simply confirmed the perverse findings recorded by the EO. Unfortunately, the appellate authority too, merely affirmed the order of punishment imposed by the Disciplinary Authority. Resultantly, the petitioner became the victim of perverse approach on the part of the authorities concerned, therefore, the impugned orders are liable to be interfered with.

5. Per contra, Mrs.Rita Chandrasekaran, supporting the impugned order of compulsory retirement in terms of Regulation 4(h) of the Indian Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, passed by Disciplinary Authority and affirmed by the Appellate Authority, would urge this Court to dismiss the writ petition by stating that what was imposed by way of the impugned orders is, in fact, a lenient mode of punishment having regard to the gravity of the proved charges and that the authorities at the hierarchy properly dealt with all relevant aspects before passing and affirming the order of punishment. While illustrating how serious the

irregularities committed by the petitioner are, she would advert to Charge No.4 and imputation No.5 and explain that the petitioner, who had received a cash of Rs.6000/- from a customer by name M.Murugan, did not enter the amount in the pass-book as well as in the Savings Bank ledger folio concerned. The receipt of the sum was not even entered in the cash scroll register maintained by the petitioner. That apart, remittance challan was also not found. These glaring negative aspects have been properly taken into account by the EO. While considering the findings recorded by the EO, the Disciplinary Authority clearly observed that what is clouding the affair is that the entire day's vouchers are not traceable. Very strangely, during the enquiry, when the petitioner was questioned on this, it was stated by him that rats had eaten away the vouchers. Having regard to the peculiar response received from the petitioner, the EO rightly concluded that it is difficult for anyone to accept the version that, on that particular day when the extraneous entry was found and transacted, all the vouchers of that day alone were damaged by rats. This has been properly appreciated by the Disciplinary Authority.

6. To demonstrate that there was no procedural violation in the departmental proceedings, she pointed out that the petitioner fully participated in the entire enquiry and he was, in fact, given defence assistance of one Mr.Marianthony, Manager, International Division of the Bank at its Zonal Office. Copies of all documents were furnished to him and he and his defence assistant were given inspection of all documents for two days preceding the enquiry. As many as 82 documents were marked on the Management's side and by its Presenting Officer and also, two witnesses on their side, by name - Mr.M.Subramanian - Manager (Inspection) Information Centre, Head Office, Chennai-1 and Mr.K.Lakshmanan, Senior Manager, Inspection Centre, Head Office, Chennai-1, were examined. These two witnesses are the Officers, who had enquired the borrowers concerned and who verified and inspected the documents. The documents furnished and the enquiries made of the borrowers were properly considered during the enquiry. Mr.M.Subramanian submitted his report dated 21.06.2001, marked as M.Ex.1 during the enquriy before the EO while Mr.K.Lakshmanan submitted the report dated 28.08.2011 marked as M.Ex.10. These reports with annexures were furnished to the petitioner well in advance. During the enquiry, those reports were put to MW-1/Subramanian and MW-2/Lakshmanan and they affirmed their respective reports during the enquiry and deposed, based on the same. Both of them deposed in the enquiry about the statements made by the borrowers concerned, both oral as well as by way of complaints made to the higher officials of the Bank. After allowing the petitioner to cross-examine the Management Side Witness and affording him full

opportunity and also, after properly appreciating all relevant aspects, the Enquiry Officer had thread-bare analyzed both the oral and documentary evidence and proceeded to record his findings with exhaustive discussion on each of the charges. He assigned cogent and convincing reasons for holding the petitioner guilty of imputations 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13(a), 13(b) and 15(a) which were proved; imputation-1, 9 and 15(b) as partially proved and imputation No.14 as not proved. In fact, the petitioner himself expressed satisfaction about the manner and method in which the departmental enquiry was conducted. According to her, when the departmental enquiry was held both in accordance with the principles of natural justice and in accordance with the Rules of the Bank, the petitioner cannot be allowed to say that there was violation of the principles of natural justice or any other procedural deviation. Further, merely because the Disciplinary Authority and the Appellate Authority discussed the details only relevant to the points, it cannot be said that they did not apply the mind independently while imposing/affirming the punishment of compulsory retirement. Ultimately, by stating that the High Court, under Article 226 of the Constitution of India, cannot sit as Appellate Court as against the decision of the Bank compulsorily retiring the petitioner from service for his proved acts of serious misconduct, learned counsel would plead for dismissal of the writ petition on the ground that there is no scope for interference since the impugned orders does not suffer from any illegality or irregularity.

7. This Court finds merits in the submissions of the learned counsel for the respondents except the one point made in regard to the scope of interference of this Court under Article 226 over the decisions of the Bank for the reason that would be assigned after discussion on the major issue. Primarily, it must be pointed out that when it was vehemently contended before this Court on behalf of the petitioner that the Enquiry Officer, on his own, had drawn the self-assumed conclusions with regard to Charge No.4 - Imputation No.5 as though the petitioner gave an explanation about the missing of entire day's vouchers, unfortunately, the petitioner has not even made available his explanation as part of the writ petition for perusal by this Court. Therefore, it is not even open now for the petitioner to say that the authorities had completely gone against his explanation more particularly when such explanation is not available for scrutiny by this Court.

8. Apart from the above, a close perusal of the report of the Enquiry Officer shows that the said authority meticulously analysed the entire evidence and materials and exhaustively dealt with each

charge for recording the reasons and conclusions to ultimately find imputations-2,3,4,5,6,7,8,10,11,12,13(a),13(b) and 15(a) 'proved'; imputations-1, 9 and 15(b) 'partially proved; and imputation-14 'not proved', and this Court is not able to see any deviation/violation of the principles of natural justice or procedural irregularity. Although the Disciplinary Authority has gone deeply into Charge No.4 and Imputation No.5, he found it not necessary to elaborately deal with and discuss each and every charge. While specifically dealing with Charge No.4 and Imputation No.5, the Disciplinary Authority observed that it cannot be accepted that it is by mere coincidence the rodents have picked up that particular days' vouchers and destroyed and that, had the petitioner entered the amount as the first entry in the scroll also on that day, which is the procedure and normal practice, things would have been different totally. A general observation was made that, in respect of other charges also, even repeated readings fail to convince one with the arguments of the defence side. Therefore, merely because a general discussion has been made and a specific conclusion was reached on a very serious charge, it cannot be argued now, particularly in the absence of the explanation of the petitioner before this Court, that the Disciplinary Authority was taken away by the findings of the EO. In fact, relating to Charge No.7 that the petitioner unauthorisedly drawn from SR II Advance which is against the rules of the bank, the Disciplinary Authority was not inclined to accept the explanation and arguments advanced by the petitioner finding that the same do not merit consideration and categorically held that all the actions of the petitioner as framed in the charge sheet and proved are not expected from an Officer of a Bank on whom the Bank reposed faith and posted him as custodian of public money and that, through his deeds, he lost the confidence of the Bank and such person with doubtful integrity has no place in a financial organisation like Bank where honesty and integrity are very much required. Even though the Disciplinary Authority found so against the petitioner, finally, it had only imposed the punishment of compulsory retirement from service in terms of Regulation 4(h) of the Indian Bank Officer Employees' (Discipline & Appeal) Regulation, 1996, and finding no ground to look it otherwise, the appellate authority also confirmed the order of punishment passed by the Disciplinary Authority and this Court also does not find any valid reason or a single ground to find fault with the impugned orders.

9. Before parting, in regard to the contention of the respondents/bank that this Court cannot interfere with the decisions of the bank as though it is an Appellate Court, it is but proper and necessary to advert to the clear position relating to the scope of

interference by this Court in alike matters while exercising its jurisdiction under Article 226 of the Constitution of India that it is not the general rule invariably applicable to all cases and that wherever the order passed by the disciplinary authority/appellate authority shocks the conscience of the Court, the Court would appropriately mould the relief. In that line, the Hon'ble Apex Court, in B.C.Chaturvedi v. Union of India (AIR 1996 SC 484(1)), ruled thus:-

> " 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof. "

While ruling so, the Apex Court made it further clear that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of the Apex Court, to which reference is not deemed necessary, as the position is well settled in law; and that, it may, however, be stated that this power of moulding relief can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience. In this regard, it is also relevant to extract below the following text from the aforesaid decision:-

> "23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is

not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case, AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter. "

10. In the same line, in a subsequent decision of the Apex Court (in Chairman and MD, United Commercial Bank and others v. P.C. Kakkar), the Apex Court reiterated the point by observing as follows:-

"11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed. "

11. In the light of the above rulings and observations of the Apex Court, I find that the authorities in fact showed some leniency in imposing the punishment of compulsory retirement for the proved charges of serious nature and the said decision being reasonable and not suffering from any serious flaw so as to shock the conscience of this Court, there is absolutely no ground at all for interference.

Net result, Writ Petition fails and it is dismissed as devoid of any merit. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

JI

To

1. General Manager,
   Indian Bank - Head Office,
   66, Rajaji Salai,
   Chennai 600 001.

2. The Dy. General Manager,
   Indian Bank, Head Office,
   66, Rajaji Salai, Chennai-1.

+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.34894
+1cc to Mr.S.Ilamvaludhi, Advocate, S.R.No.34506

WP.No.4817 of 2007

MSM(CO)
CA(15/09/2015)