

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.14431 of 2000

Date:18.09.2015

Between:

Mr. B.A. Ramarao

... Petitioner.

AND

State Bank of India, Zonal Office,
Visakhapatnam through its Deputy
General Manager and Disciplinary
Authority and others.

... Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.14431 of 2000

ORDER:

This writ is filed to declare findings of enquiry officer's report dated 26-07-1999, submitted to first respondent to the extent adverse to the petitioner, order of removal from service dated 09-10-1999 passed by the second respondent basing on the enquiry report and on the recommendations of respondent No.1 and its conformation order dated 16-02-2000 passed by the third respondent thereof in the appeal filed, as arbitrary, unjust, illegal, apart from being violative of the procedure contemplated to conduct the domestic enquiry, rules framed under State Bank of India Officers Service Rules including

Articles 14, 16, 19 & 21 of the Constitution of India, the punishment to the charges if proved and to set aside the same by directing the respondents to reinstate the petitioner into service with all attendant benefits by issuance of a writ in the nature of Mandamus.

2. Petitioner joined in the service of respondent-bank on 02-06-1967 in the post of Clerk-cum-Typist. He was promoted to the post of Officer Grade-II on 01-08-1977 thereafter promoted as Officer Grade-I from 01-10-1979. The petitioner was promoted to Officer Grade (MM-II) on 01-08-1989 and he worked as Branch Manager of S. Rayavaram Branch of State Bank of India, Visakhapatnam from 23-08-1993 to 30-09-1995. While so, petitioner was placed under suspension on certain allegations of temporary misappropriation on 21-05-1996.

Competent Authority issued a Charge Memo on 30-04-1998 to which petitioner submitted his explanation on 30-05-1998. An enquiry was ordered which was commenced on 06-11-1998 and completed on 21-06-1999 holding out of the four charges levelled against the petitioner; first charge is totally proved and charges 2 to 4 were partly proved. On 26-07-1999, petitioner submitted objections to the findings of the enquiry officer and the first respondent recommended punishment of removal on 04-10-1999. The punishment recommended by first respondent was approved by second respondent on 09-10-1999 and the same was confirmed by third respondent on 16-10-1999. The petitioner preferred appeal challenging the punishment of removal on 02-12-1999 and the appeal was dismissed on 16-02-2000. Thereafter, the petitioner filed the present writ questioning; (1) the findings of enquiry report dated 26-07-1999; (2) the order of removal issued through proceedings dated 09-10-1999; (3) confirmation of the removal in appeal through proceedings dated 16-02-2000; and (4) consequently to set aside the

above referred orders and direct the respondents to reinstate the petitioner with all service benefits.

3. According to petitioner, he discharged his duties with devotion and diligence and served the banks for 29 ½ years of spotless service. According to petitioner, he collected amounts from the borrowers of the loans that were earlier written-off by the Bank as the borrowers are found potential and credited those amounts to other accounts i.e., Non-performing Assets Account in order to reduce non-performing assets which is one of the important function of Branch Manager. According to petitioner, he disbursed only an amount of Rs.1,72,300/- out of the 49 agricultural term loans, after debiting the sanctioned amount to the borrowers account. According to petitioner, the entire loan amount paid to the borrowers suppliers who had issued the bills which are genuine and the borrowers have repaid the loan amounts. According to petitioner, out of the loan sanctioned and the drafts issued in respect of 22 agriculture term loans, borrowers failed to use the drafts drawn in favour of the sellers who were not in a position to supply the goods and at their request, the drafts were cancelled and cash payment was made to the borrowers who in turn purchased Electrical Motors/Oil Engines. According to petitioner, though borrowers failed to construct the sheds and kept the amount in term deposit, at his instance, the borrowers repaid the amount and got their accounts closed. According to petitioner, the enquiry officer has not followed the rules in conducting the enquiry and the appellate authority did not give any opportunity of personal hearing, did not enquire into the lapses committed by the enquiry officer and thereby injustice is caused to him, therefore, the orders of the enquiry officer and appellate authority are to be set aside.

4. Above are the contentions stated in the affidavit filed in support

of the writ petition. Counter affidavit is filed on behalf of the respondents disputing the allegations made in the affidavit filed in support of the writ petition. According to respondents, the contention of the petitioner that he discharged his duties with devotion and diligence is misconceived and a self-serving statement. According to respondents, petitioner has been provided with full opportunity to defend himself in the enquiry and the disciplinary enquiry was held strictly as per the rules. According to respondents, in the enquiry, number of documents have been marked and the witnesses examined on behalf of the bank were cross-examined on behalf of the petitioner. According to respondents, appointing authority has confirmed the orders only on due consideration of the enquiry report and also on consideration of written submissions made on behalf of the petitioner. According to respondents, during domestic enquiry, the allegations levelled against the petitioner were proved through oral and documentary evidence. According to respondents, the petitioner failed to account the amounts received, which amounts to misappropriation and criminal breach of trust and considering such evidence only, the enquiry officer found the petitioner guilty. According to respondents, there is no provision of personal hearing before the appellate authority as per the rules and the objection of the petitioner in this regard is not tenable. According to respondents, there is no violation of principles of natural justice at any stage of the disciplinary proceedings and enquiry has been conducted strictly in accordance with the service rules and no rule has been violated and there is no violation of provisions of Articles 14, 16, 19 & 21 and that the writ is devoid of merits and liable to be dismissed.

5. Heard both sides.

6. Both Advocates reiterated the contentions of their respective

parties as pleaded in the affidavit and counter affidavit. Advocate for petitioner submitted that there was no financial loss to the bank and the petitioner has not gained anything by collecting amounts from the borrowers whose accounts were written-off. He submitted that the petitioner deposited those amounts into the bank only and the respondents, without taking into consideration his 29 ½ years spotless service, removed the petitioner though there was no financial loss to the bank. He submitted that as per the bank guidelines, one of the duty of the Branch Manager is to reduce Non-performing Assets (NPA) and in that process, he collected money from some of the borrowers. He further submitted as the sellers were not in a position to supply the goods to the borrowers on their request, drafts were cancelled and cash was paid and the borrowers subsequently repaid the loan amounts and therefore, there was no loss to the bank.

He submitted that several important aspects were elicited during the cross-examination of the witnesses examined on behalf of the bank supporting the explanation of the petitioner for the charges levelled against him, but the enquiry officer has not considered those important aspects elicited during cross-examination. He further submitted that no opportunity was given to the petitioner to produce any evidence on his side and the enquiry officer completed the enquiry in two days after cross-examination of prosecution witness is over.

He submitted as no reasonable opportunity was given to the petitioner and the enquiry has to be treated as contrary to the principles of natural justice and the enquiry report has to be set aside consequently the punishment.

7. Learned Advocate for respondents submitted that the petitioner failed to point out as specific rule or guideline that is violated on the

other hand no procedural violation is noticed.

He submitted that instead of disbursing the loan amount in a phased manner as per the bank guidelines, entire money was paid on a single day. He further submitted that when the bank as written-off some loans collecting money from the said borrowers is a clear case of misconduct. He further submitted that this Court is not a Court of appeal to sit over the order of the enquiry officer and the punishment imposed thereon.

He submitted this Court can interfere only if rules concerning the enquiry are not followed. He submitted that the enquiry was conducted strictly in accordance with rules and there is no violation of any of the rules and therefore, the petitioner is not entitled for any relief. To support his argument, he placed reliance on the judgments of Supreme Court in **General Manager, Punjab & Sind Bank and others vs. Daya Singh**^[1] and **State of U.P., and others vs. Nand Kishore Shukla and another**^[2].

8. Now the point that would arise for my consideration in this writ petition is whether the order of the third respondent is arbitrary, unjust, illegal apart from violative of procedure contemplated to conduct the demotic enquiry?

9. **Point:-** The writ petitioner faced charges under four heads. Under the first charge, the allegation against him is that he collected monies from some of the borrowers whose accounts were written-off and those amounts were not accounted for and that he utilised those amounts for his personal benefits thereby misappropriated those amounts. Second allegation is that the petitioner had disbursed only Rs.1,72,300/- out of total loan amount of Rs.5,39,000/- to 49 borrowers and he deposited the remaining Rs.3,47,000/- in two different term deposits in the name of one Smt. G. Jaya and those

deposits were prematurely cancelled and closed the accounts of 49 borrowers on different dates. It is further alleged against the petitioner that he made disbursements to the beneficiaries on the basis of false bills. Another charge is that the petitioner alleged to have recredited loan accounts in respect of 21 borrowers at the rate of Rs.1,500/- and Rs.4,000/- in respect of one borrower from the loan amount on the same day. It is further alleged that out of three drafts issued in the name of suppliers, two drafts were allowed by the writ petitioner to be cancelled and the cash was disbursed and out of the two drafts cancelled, a sum of Rs.21,000/- was kept in a term deposit receipt in the name of Smt. G. Jaya. It is also alleged that writ petitioner, without conducting pre-sanctioned survey, disbursed the amounts.

Other allegation is that the writ petitioner sanctioned 64 Agricultural Term Loans (ATL) aggregating to Rs.4,15,100/- under the Government Sponsored Schemes and out this amount, a sum of Rs.84,150/- was deposited in the name of Smt. G. Jaya from out of the aggregate unit cost disbursed to the borrowers. It is further alleged that Loan Account No.ATL/LRP 156 covering purchase of Cart and Bullocks was closed on the date of disbursement itself. The enquiry officer, on consideration of the defence of the writ petitioner with reference to the evidence produced before him, found that charge under first category is proved in its entirety and the charges in respect of other three categories are partly proved. Aggrieved by the findings of the enquiry officer, the writ petitioner preferred departmental appeal and it was also dismissed and as a consequence, punishment of removal was given to the writ petitioner. Now the entire argument of the learned counsel for the writ petitioner is with reference to findings of the enquiry officer. According to Advocate for writ petitioner, when the bank circular instructions, permit collection of written-off amounts holding such act as misconduct is contrary to the procedure. He has referred to one

of the statement of the witnesses examined on behalf of the bank before the enquiry officer, wherein witness stated that the amount covered in written-off accounts, if credited to another NPA account of the branch, it will result in reduction of the NPAs of the bank to the extent of the amounts so credited. The above statement cannot be disputed because if amount collected from written-off accounts is credited to NPA account, it will definitely reduce NPAs of a particular branch to the extent of amounts so credited. But the point herein is whether that can be applied to the facts of this case. Though the writ petitioner contended that he paid the collected written-off amounts to the credit of other NPA accounts, but the evidence disclose that those amounts were not credited immediately as contended by the writ petitioner, but only after a long gap and the enquiry officer treated this as temporary misappropriation. Likewise, the writ petitioner mainly attacked the enquiry report in this writ petition.

10. In **State of U.P vs. Nand Kishore Shukla²**, the Hon'ble Supreme Court held in Para No.7 as follows:-

“It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order.”

11. From the above decision of the Hon'ble Supreme Court, it is clear that this Court cannot go into the correctness of even imposition of punishment like a Court of appeal and therefore, the contention raised on behalf of the writ petitioner with reference to correctness of the findings of the enquiry officer cannot be considered while

exercising the writ powers.

12. In **General Manager, Punjab & Sind Bank vs. Daya Singh¹**, the Hon'ble Supreme Court held when there is a clear documentary evidence on record in the hand writing of the charged officer which resulted in withdrawal of amounts, the same would amount to misappropriation and the interference by the High Court in such cases was found incorrect. In this case also, the writ petitioner deposited certain amounts in the shape of fixed deposits in the name of Smt. G. Jaya, who is found to be only a name lender as per the material on record.

13. The scope of writ is to examine whether there was any violation of procedure contemplated for domestic enquiry on account of which, the writ petitioner suffered injustice or whether there is any violation of principles of natural justice like not affording any opportunity to the writ petitioner in put-frothing his defence to the charges levelled against him. There are rules regulating conduct, discipline of the employees and also provision of appeals over the orders passed in domestic enquiry. Decision to initiate disciplinary action and procedure to be followed is contemplated in Section 2 under Serial No.68 and as seen from the material, both the enquiry officer and appellate authority have strictly followed all the provisions indicated under Serial No.68. Even otherwise, the petitioner failed to specifically indicate which of the procedure contemplated under Serial No.68 has been violated either by the enquiry officer or by the appellate authority. His entire objection to the orders of the enquiry officer and appellate authority is with reference to merits of the case, which cannot be examined by this Court as held by Supreme Court in **State of U.P vs. Nand Kishore Shukla²**.

14. Advocate for petitioner also contended that the disciplinary

authority instead of imposing minor penalty awarded major penalty and that it amounts to victimisation. But in the case of **State of U.P vs. Nand Kishore Shukla²**, Hon'ble Supreme Court held that even in case of punishment also, it is for the disciplinary authority to consider what was the nature punishment that will be imposed on the employer basing on the misconduct proved, and Court cannot interfere in respect of punishment. As the service rules provide punishment of removal also, the disciplinary authority by following the service rules imposed the penalty considering the gravity of the charge. Therefore, I am not in agreement with the submission of learned counsel for the writ petitioner that the punishment is imposed to victimise the petitioner.

15. On a scrutiny of the entire material, I am of the considered view that there is no violation of procedure contemplated under Serial No.68 in respect of disciplinary action and the writ petitioner participated in the enquiry, submitted his detailed explanation to each allegation elaborately and the enquiry officer considered in detail every aspect and thereby, there is no violation of principles of natural justice.

16. For these reasons, I am of the view that there are no merits in the writ and the same is liable to be dismissed.

17. Accordingly, writ petition is dismissed. As a sequence, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:18.09.2015

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[\[1\]](#) 2010 (7) SCJ 520

[\[2\]](#) (1996) 3 Supreme Court Cases 750