IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8010 of 2010
Date of Decision: **23.02.2015**

Pawan Kumar Jain **…Petitioner**

Versus

The State of Punjab and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. A.S. Khaira, Advocate
for the petitioner.

Mr. Manjit Singh Naryal, Addl. A.G., Punjab
for respondents No.1 and 2.

Mr. Parminder Singh, Advocate
for respondent No.3.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing of order dated 31.07.2006, whereby, as a measure of punishment, a cut of 50% has been imposed on the entire retiral benefits due to the petitioner. Also assailed are the orders dated 10.09.2008 and 30.04.2009 (Annexures P-7 & P-8), whereby the appeal and revision filed by the petitioner against the order of punishment have been dismissed.

The petitioner joined the Punjab State Cooperative Bank – respondent No.3 as a Clerk in the year 1969. He earned promotions as Senior Clerk, Junior Accountant, Senior Accountant and finally as Senior Manager in the year 1994. He retired on attaining the age of superannuation on 31.03.2005.

In the year 2004, the petitioner was working as Branch Manager at Sector-35, Chandigarh Branch of the respondent-Bank which had disbursed a term loan of Rs.18 lacs and cash credit limit of Rs.2 lacs to M/s Gevana Frozen Foods Pvt. Ltd. The petitioner was served a charge-sheet containing the charge "putting the bank's funds at risk due to lack of proper documentation of collateral security and its mortgage".

The list of allegations against the petitioner are as under:

> *"Sh. P.K. Jain (Sr. Manager) working as Branch Manager BO 35 has disbursed the term loan amounting to Rs.18.00 lacs and cash credit limit of Rs.2.00 lacs to M/s Gevana Frozen Foods Pvt. Ltd. while executing the certificate under Section 63-A in the civil court it was found that the property mortgaged by way of registered mortgage was not properly done. The land mentioned in the mortgage deed does not tally with the land mentioned in the valuation report. Further the land stated in the mortgage deed has already been sold, as the mutation was not entered into revenue records. The loan disbursed has already become non-performing assets and further in absence of collateral security, the bank financial interest is on stake."*

The petitioner submitted his reply denying the allegations. An enquiry was ordered. which resulted in submission of the enquiry report dated 08.03.2005 (Annexure P-2). A show cause notice dated 07.10.2005 was served upon the petitioner proposing imposition of punishment of 50% cut on the total retiral benefits due to him. The petitioner replied to the show cause notice. Ultimately, punishment order dated 31.07.2006 (Annexure P-5) was passed imposing a cut of 50% on the leave encashment and security amount etc. on the petitioner.

Learned counsel for the petitioner has mainly raised the following points:

(i) In the enquiry report, it has been clearly stated that the petitioner alone could not be held responsible for the lapse. The enquiry report accepted the fact that major lapses took place at the Head Office. The lapse was on the part of all those who dealt with the case. The petitioner had not recommended the land as collateral security. The enquiry officer recommended that to fix proper responsibility, the authorities may thoroughly investigate the whole case.

(ii) The petitioner alone has been made a scapegoat and awarded punishment, whereas, all others, who dealt with the case at the Head Office and were mainly responsible for sanction of the loan have not been proceeded against.

I have gone through the enquiry report (Annexure P-2). The facts as emerging therefrom are that the respondent Bank had sanctioned a loan of Rs.15.00 lacs and a cash credit limit of Rs.2.00 lacs to M/s Gevana Frozen Foods Pvt. Ltd. vide sanction letter dated 07.04.1999 on the recommendation of the Sector 35-C Branch, where, the petitioner was the Branch Manager. On the loan application, detail of the collateral security offered was shown as "land village Kalka value of Rs.30 lacs approximately" by the party. But, on the office note residential House No.2644/1, Sector 47, was shown as security by the Sector 35 Branch as well as by the Head Office. On the sanction letter dated 07.04.1999, the detail of collateral security, against which loan was sanctioned was not mentioned. It was simply noted that "the loan amount shall be secured with mortgage of the property offered as collateral security". During enquiry, it was revealed that the loan case was re-opened at Head Office Level to enhance the amount of sanctioned loan from Rs.15.00 lacs to 18.00 lacs without any fresh recommendation from the Branch. The office note revealed that the term loan of Rs.15.00 lacs and CC Limit of Rs.2.00 lacs was sanctioned to the party against their requirement of Rs.18.00 lacs and 2.23 lacs respectively keeping in view the value of collateral security offered. The office note also revealed that the party offered to replace security. It offered to mortgage land consisting of Khewat No.72, Khatauni No.99 at Village Dhapali (Kalka) of sufficient value. Without any recommendation of the Branch to replace the security, the General Manager (NFS) mentioned that the party had offered to mortgage additional property worth Rs.7.00 lacs so that the security margin is covered for advancing the loan. The General Manager recommended that with this additional property being mortgaged, the security margin would be Rs.27.00 lacs, hence, the sanctioned term loan may be revised from Rs.15.00 lacs to Rs.18.00 lacs. The competent authority allowed the proposal and a fresh sanction letter dated 04.05.1999 was issued. In this letter, it was mentioned that "it is understood that you shall be arranging Regd. Mortgage of the property of the value of at least Rs.27.00 lacs". No detail of the property was mentioned. It was found that there was a difference of six Khasra numbers in the valuation report and the mortgage deed.

Based on the above facts, the enquiry officer concluded as under:-

> *"From the perusal of the above, it is found that on the application form the collateral security was mentioned as land at vill. Kalka. The recommendation of the branch mentioned a residential House No.2644/1, Sector 47 as the collateral security and the loan was originally sanctioned against this security. It was proposed to be replaced as land of village Dhapali (Kalka) at the H.O. level without any recommendation of the Branch. The final approval does not show any specific security it mentioned as additional property worth Rs.7.00 lacs . While AGM (NFS) mentioned that*

the party represented to change the collateral security. GM (NFS) mentioned that the party has offered to mortgage additional property. All this is thereon the documents presented by the PO. In the note the mentioned land was khewat No. 72, Khatuni No. 99 at vill. Dhapali (Kalka) whereas the Jamabandi shows the land as Khewat No. 25, Khatuni No. 72 of village Garinda and this land at vill. Garinda was actually mortgaged in favour of the bank. The Jamabandi was old i.e. for the year 1991-92. The land was already sold and the mutation was not entered in favour of the bank. No one tried to ascertain the correctness of the land. Proper detail of the security was not mentioned on the sanction letter. Clearly the loanee committed a fraud with the bank but the bank has also not taken the due precautions to prevent this fraud."

It was established that the loanee had committed a fraud with the bank and the bank had not taken due precautions to prevent the fraud.

Regarding the role of the petitioner, the pertinent conclusions of the enquiry officer are as under:

"But the main point in the whole case is of collateral security. Clearly the party committed a fraud with the bank by mortgaging a land which was already sold. The bank has lodged an FIR No. 457 dated 12.12.2003 against the person who has actually mortgaged the land. He was also arrested by the police. Still the original file of the case is there with the Economic Offences Wing of the UT Police, Sector 17, Chandigarh as per letter No. CC/EA-3/4365 dated 30.08.2004 of the Estt. Officer of Punjab State Coop. Bank produced during the course of enquiry. The plea of the delinquent

employee, Mr. Jain, that he was not associated with the changed security seems to be correct. Why the H.O. replaced/changed the security without the recommendation of the branch? As already explained, the land mentioned in the note was at Dhapali-Kalka but fard jamabandi was of Garinda Vill. and it was this land which was mortgaged with the bank. Proper detail of the security was also not mentioned in the sanction letter. Moreover, the Fard Jamabandi is for the year 1991-92 whereas the loan was advanced in the year 1999. It is a known fact that Jamabandi is prepared after a period of every 4 years. Why last Jamabandi was not obtained. Valuation report is also not correct. All this facilitated the fraud. The H.O. should not have allowed the disbursement of the loan, if the documents were not proper and correct. No doubt the loan has become NPA and the financial interest of the bank are at stake, but for this only Sh. P.K. Jain alone cannot be held responsible. This is also mainly due to the fact that he never recommended this land as collateral security. The lapse is there on the part of all those who dealt with the case. To fix proper responsibility the authorities, if so desired, may thoroughly investigate the whole case.

I have minutely gone through the record and evidence produced during the course of enquiry and on the basis of it my findings are that:-

Shri P.K. Jain, Sr. Manager, Apex Bank alone is not responsible for putting bank's funds at risk due to lack of proper documentation of collateral security and its mortgage."

Thus, the contention of Learned counsel for the petitioner that the lapse was mainly at the level of Head Office is clearly borne out from the enquiry report. It is clearly established that the petitioner never recommended the land in question as collateral security. It was done at the level of Head Office. The lapse was on the part of all those who had dealt with the case. The enquiry officer recommended that to fix proper responsibility the authorities, if so desired, may thoroughly investigate the whole case.

In paragraph No.19 of the writ petition, the petitioner has averred that the action against him is clearly discriminatory. One Shri Amrit Kaur, who was working as Accountant in the same bank and in the same office at the relevant time and dealt with the case, was never charge-sheeted. No other person, either junior or senior to the petitioner, was ever charge-sheeted. The loan case was approved up to the level of Managing Director of the Bank. No action has been initiated against any other employees except the petitioner. These averments have not been denied in the written statement. It is only stated that there was no recommendation from the Branch to take any action against any staff member and that the petitioner was directly responsible for the loss.

However, in the written statement in the Preliminary Objections the action against the petitioner is justified by stating that the Managing Director of the Bank had written to the enquiry officer to intimate as to what extent the petitioner is responsible. In response thereto, the enquiry officer vide his letter dated 20.7.2005 intimated that the petitioner was responsible to the extent that he had not got the mutation of the land (collateral security) entered in favour of the Bank with the revenue authorities well in time. The petitioner had written for this mutation to the Halqa Patwari in the year 2003, whereas, the loan was sanctioned in the year 1999.

In paragraph No.23 of the writ petition, it has been averred that the petitioner had acted in good faith in the interest of the bank and obtained additional security. The loanee had offered alternative security. However, the Head Office did not accept the same due to reasons best known to the Head Office. A copy of the letter dated 7.3.2005 written by Shri Pardeep Bhardwaj, Director of Gevana Frozen Foods Ltd., offering alternative security alongwith valuation report of the approved valuer of the bank has been annexed as Annexure P-9. It has been averred that if the security offered by the loanee which was of the value of Rs.21.42 lacs had been accepted, the loan could have been easily recovered by the bank without any difficulty. However, it was not accepted by the Head Office for some unknown reasons. These averments have not been denied in the written statement. It is only stated that it was the duty of the petitioner to get mutation of the land sanctioned in favour of the bank, which was mortgaged in favour of the bank and against which, loan was sanctioned in favour of the loanee.

From the above, it is established that the enquiry report has clearly held that the petitioner alone is not responsible for putting the bank's funds at risk and the lapse is on the part of all those who dealt with the case, primarily those at the level of the head office. The petitioner had never recommended the land as collateral security. It was accepted at the Head Office level without checking the documents and title-deeds which facilitated the fraud. The enquiry officer recommended that the authorities may thoroughly investigate the whole case and then fix the responsibility. The only lapse of the petitioner pointed out was that it was the duty of the petitioner to get mutation of the land sanctioned in favour of the bank, which was mortgaged in favour of the bank and against which, loan was sanctioned in favour of the loanee for which he wrote to the Halqa Patwari only in the year 2003, whereas, the loan already stood sanctioned in 1999. However, without taking any further action to fix responsibility of all involved, only the petitioner has been proceeded against and the others, lapse on whose part may be more serious, have been let off. Further due to the efforts of the petitioner to safeguard the interest of the bank, the Director of Gevana Frozen Foods Ltd., had offered additional security, which offer if accepted would have enabled the bank to recover the loan but the same was not accepted by the Head Office for some inexplicable reason.

From the above, the contentions of the petitioner of having been unfairly treated and discriminated against, appear to be justified. There is no explanation as to why proper action to fix responsibility of all those responsible for the lapse was not taken. There is no explanation as to why the offer of Shri Pardeep Bhardwaj, Director of Gevana Frozen Foods Ltd., offering alternative security was not accepted, which offer if accepted, would have enabled the bank to recover the loan.

It is well-settled that there can be no discrimination even in the manner of meting out punishment. The authorities cannot be selective in imposition of punishment. The Hon'ble Supreme Court in **Rajendra Yadav v. State of M.P*., (2013) 3 SCC 73,*** at page 76, observed as under:-

> ***"9.*** *The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident.*
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> *Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.*
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> ***10.*** *The principle stated above is seen applied in a*

few judgments of this Court. The earliest one is DG of Police v. G. Dasayan wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. *In Shaileshkumar Harshadbhai Shah case the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.*

12. *We are of the view that the principle laid down in the above-mentioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently,* *we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly."*

Clearly, in the present case, the petitioner has been singled out for punishment. Others, whose lapse may be more serious, have not even been proceeded against nor has their responsibility been fixed as recommended by the enquiry officer.

In these circumstances, the order dated 31.07.2006 (Annexure P-5) passed by the punishing authority cannot justifiably be sustained and is hereby quashed. Consequently, the orders dated 10.09.2008 and 30.04.2009 (Annexures P-7 & P-8) dated passed by the appellate authority and the revisional authority, respectively, are also quashed. The amount withheld pursuant to the order Annexure P-5 be released to the petitioner within two months of the date of receipt of a certified copy of this order.

(HARINDER SINGH SIDHU)
JUDGE

February 23, 2015
Atul