

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 13th February, 2015
Judgment Pronounced on: 27th February, 2015

W.P.(C) 1861/2001

N.M. JAIN

..... Petitioner

Through: Mr. Ashok Bhalla, Advocate.

versus

K.P. HEGDE AND ORS.

..... Respondents

Through: Mr. Jagat Arora and Mr. Rajat Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The writ petition has been filed by the petitioner for issuance of writ, order or direction in the nature of Certiorari for quashing the order dated 12.10.1999 dismissing the petitioner from the services and order dated 22.03.2000 upholding the same by the appellate authority with consequential benefits.
2. The facts giving rise to the present writ petition are that the petitioner joined respondent Vijaya Bank as an Officer on 07.04.1972. During his posting at Ansari Road, Daryaganj, Delhi, his branch was adjudged best branch of the zone and was among 20

best branches of the bank in the country. The branch registered a new record of deposits during tenure of the petitioner and he received commendation letters for the same. On 11.07.1996, the petitioner was placed under suspension on the basis of investigation report dated 22.06.1996 wherein it was alleged that the petitioner had violated the guidelines while handling public issues during his tenure as Sr. Branch Manager, Ansari Road. It was also alleged that the petitioner gave undue favour to M/s G.K. Consultants, M/s Grieves Hotels Ltd. and M/s Natura Hue Chem Ltd. It is mentioned that the petitioner followed the prevailing practice in the absence of any specific guidelines. The actions of the petitioner did not cause any pecuniary loss to the bank or government exchequer.

3. On the submission of appeal, respondent No.3 revoked the suspension of the petitioner vide order dated 13.08.1996 and matter was ordered to be re-investigated through Mr. S.K. Rai, Chief Manager. A fresh show cause notice dated 15.09.1997 was issued to the petitioner and thereafter, a charge-sheet dated 09.05.1998 was issued to him. Departmental proceedings were initiated and inquiry was conducted by the Commissioner for Departmental Inquiries from 03.09.1998 to 18.10.1999. The Inquiry Officer submitted his final report on 30.09.1999 holding the petitioner guilty of committing procedural lapses, though the bank had not suffered any financial loss or subjected to any penal action by SEBI or RBI. The disciplinary authority imposed the penalty of dismissal of the petitioner vide order dated 12.10.1999. The petitioner

submitted an appeal, but the Appellate Authority rejected the appeal vide order dated 22.03.2000 and thereafter the respondent No.4 dismissed the review petition filed by the petitioner. It is mentioned that even if the enquiry report is held valid, the petitioner is not liable to be dismissed in view of Rule 2 & 2(a) of the guidelines framed by the respondent bank.

4. The case of the respondents reflected from the counter affidavit filed on behalf of the respondents jointly is the denial of the contentions of the petitioner. Various irregularities committed by the petitioner have been mentioned in the counter affidavit. The petitioner contravened the instructions of Registrars to Issues and MBD, ZO, Delhi while collecting application money in respect of public issues of M/s G.K. Consultants Ltd. and M/s Nature Hue Chem Ltd.; Ansari Road Branch was not designated as a collecting branch in respect of public issue of M/s Grivs Hotels Ltd.; application money was collected after closure of issues; specific issue collection accounts were not opened; short term deposits were directly created out of the application money collected without crediting it to the issue collection accounts; short term deposits on day to day basis were not marked nor marked as public issue funds; funds were not transferred to the controlling branch and irregularly sanctioned LTDs/OD limits. The irregularities committed by the petitioner subjected the bank to serious financial loss and putting the bank at the risk of penal action by SEBI and other regulatory authorities.

5. Learned counsel for the petitioner Mr. Ashok Bhalla and learned counsel for the respondents Mr. Jagat Arora advanced the arguments. The arguments were heard in detail and gone through the material available on the record.
6. The argument advanced by the learned counsel for the petitioner is that the petitioner never favoured any company; earlier suspension was revoked and the charge sheet was issued on the premises of the same allegations; prevailing practice was followed in the absence of specific guidelines; inquiry officer held the petitioner guilty only for not following the procedure but did not hold guilty for causing loss to the bank; punishment of dismissal awarded to the petitioner is harsh and disproportionate; bank failed to establish during inquiry that any financial loss was caused.
7. Further argument advanced by the learned counsel for the petitioner is that the inquiry report supported the plea of the petitioner. Despite the same, the bank awarded the punishment in violation to guidelines mentioned in Rules 2 & 2(a) as no financial loss was shown to be caused to the bank.
8. Learned counsel has referred to judgment in case of ***Union of India and Others vs. J. Ahmed (1979) 2 SCC 286*** in which it was observed that as under :

“.....A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct

as was held by this Court in *P.H. Kalyani v. Air France, Calcutta*, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence....”

9. On similar proposition of law, learned counsel has also referred to judgments in *The Matter of T.V. Choudhary with SLP No.14045/1985 E.S. Reddi vs. Chief Secretary, Government of A.P. and Another* (1987) 3 SCC 258; *Tata Engineering & Locomotive Co. Ltd. vs. Jitendra Pd. Singh and Another* (2001) 10 SCC 530; *Kailash Nath Gupta vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others* (2003) 9 SCC 480; *State of Uttar Pradesh and Others vs. Raj Pal Singh* (2010) 5 SCC 783 and

Rajendra Yadav vs. State of Madhya Pradesh and Others (2013) 3 SCC 73 to press the contention that the punishment must be proportionate to the allegations and that punishment of dismissal of the petitioner from service was grossly disproportionate to the charge of commission of procedural irregularity. The learned counsel referred to para of the inquiry report (Annexure P-5) which reads as under :

“A more significant lapse on part of the CO in handling these issues was that he did not transfer the short-term deposits, created out of share application money, to the controlling branch within the stipulated period of 10 days. On the other hand, he accepted the request of concerned companies and used these deposits as securities to allow LTD facilities to third parties. It has also been established that in sanctioning the LTDs to the third parties the CO exceeded the delegated power. It is thus established that in handling the three public issues the CO grossly violated instructions of Registrars to the issues and the MBD, ZO, Delhi. However, the bank has not provided any details and evidence of financial loss to the bank on account of lapses of the CO. Further, the risk of penal action by SEBI and other regulatory authorities is only a risk and bank has not been subjected to any penal action by SEBI or any other regulatory authority.”

10. The argument advanced by the learned counsel for the respondents is that various irregularities were committed by the petitioner while collecting application money in respect of public issues of three companies; he had accepted application money after closure of the

issues; irregularly sanctioned LTDs/over draft limits; irregularities committed by the petitioner subjected the bank to serious financial loss and putting the bank at the risk of penal action by SEBI and other regulatory authorities. In support of the contention, he has referred to a judgment in case of ***Disciplinary Authority-cum-Regional Manager and Others vs. Nikunja Bihari Patnaik (1996) 9 SCC 69*** in which it was observed that 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.

11. The petitioner shall be referred as Complained Officer (CO) for the purpose of inquiry proceedings.
12. Admittedly, none of the parties has challenged the inquiry report (Annexure P-5) however the counsel for the petitioner has interpreted the inquiry report in the favour of the petitioner claiming the failure on the part of the bank to establish any financial loss. Whereas the respondent bank has interpreted the inquiry report in its favour relying upon the conclusion drawn in the last paragraph of the report (Annexure P-5), but none of the parties challenged the inquiry report.
13. As demonstrated above by the petitioner, the inquiry officer has

specifically held about not causing any financial loss to the bank by the CO. Even the report given is in the negative terminology as it is mentioned that the CO failed to perform his duty with integrity, honesty, devotion and diligence etc. There is no clear cut finding whether the CO had been acting with dishonesty and caused the financial loss to the bank.

14. The contention of the learned counsel for the petitioner is to the effect that the order of dismissal is not in consonance with the report of the inquiry officer, particularly when the allegations levelled are to the effect of not opening the separate account for the public issues and failure on the part of the bank to establish any financial loss by the CO.
15. The punishment of dismissal of the petitioner from the services of the bank is disproportionate to the allegations proved in the inquiry conducted by the inquiry officer. The inquiry report dated 30.06.1999 shows that the bank had not provided any details and evidence of financial loss to the bank on account of lapses of the petitioner. The risk of penal action by SEBI or other regulatory authorities was only a risk and the bank had not been subjected to any such penal action by SEBI or any other authority. The only allegation established against the petitioner was that he did not follow the instructions in respect of public issues.
16. The dismissal order dated 12.10.1999 is contrary to the inquiry report. In the dismissal order, it was mentioned by the disciplinary

authority that the acts of misconduct/irregularities put the bank into financial loss. In the entire inquiry report, there is no mention of causing any pecuniary loss to the bank, but the disciplinary authority found as such which runs contrary to the record. As per the report of the inquiry officer, only the allegations of not following the procedure while dealing with public issues by the petitioner were established. The observation made in the dismissal order that the petitioner caused financial loss to the bank has not been substantiated from the record. In view of present set of circumstances, the respondents do not get any assistance from the judgment in case of *Nikunja Bihari Patnaik* (supra).

17. In the judgment in case of *Manju Khanna vs. The Registrar General, Delhi High Court* (W.P. (C) 891/2013 decided on 09.05.2014) the allegations levelled against the petitioner were that while working as Dealing Assistant in the Criminal Branch, trial court record of few criminal cases was misplaced/lost. After finding the petitioner guilty by the inquiry officer, the punishment of withholding of increments for two years without cumulative effect was imposed upon the petitioner. This Court while deciding the case held as under :

“We note that in the year 1995 a work study report by a Committee comprising three Hon’ble Judges of this Court had noted that due to insufficient staff it was difficult for the Dealing Assistants to effectively manage their seats and keep track of the files entrusted to them. On February 28, 2008 the then

Hon'ble Chief Justice of the Delhi High Court had suggested that a dealing seat should not have more than 500 files. It assumes importance to note that the inquiry report has taken note of the fact that at the given time the petitioner was dealing with 4500 files.

It is apparent that there is neither willful negligence nor lack of bona fide on the part of the petitioner. The overwhelming adverse conditions are the actual cause for the Trial Court Records to be misplaced. The failure is not that of the petitioner. It is the failure of the system.”

18. In view of above discussion and in view law laid down in case of ***J. Ahmed*** (supra), ***T.V. Choudhary*** (supra), ***Tata Engineering & Locomotive Co. Ltd.*** (supra); ***Kailash Nath Gupta*** (supra), ***Raj Pal Singh*** (supra), ***Rajendra Yadav*** (supra) and ***Manju Khanna*** (supra) this Court is of the view that the petitioner has not committed any major misconduct rather the branch of the bank followed the procedure with regard to handling of public issues of three companies and that the punishment of dismissal of the petitioner from the services of the bank is not appropriate. The dismissal order dated 12.10.1999 as well as order dated 22.03.2000 passed by the appellate authority are quashed.
19. As dismissal order dated 12.10.1999 and order dated 22.03.2000 passed by the appellate authority have been quashed, the petitioner would be entitled for consequential benefits thereof.

20. However, the bank management would be at the liberty to pass the fresh order on the premises of inquiry report dated 30.06.1999 (Annexure P-5) after giving an opportunity of hearing to the petitioner.
21. Accordingly, the writ petition is partly allowed. No order as to costs.

P.S.TEJI, J.

February 27, 2015
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