

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.3942/1999 and W.P.(C) 3061/2000**

% Reserved on: **20th April, 2015**
Pronounced on: **24th April, 2015**

W.P.(C) No.3942/1999

S.P. MEHRA Petitioner
Through: Mr. Rishab Raj Jain, Pallvi Deepika,
Advocates

Versus

SYNDICATE BANK AND ORS. Respondents
Through: Mr. Jagat Arora, Advocate

W.P.(C) 3061/2000

S.P. MEHRA Petitioner
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CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, petitioner, who was an employee of the respondent no. 1/Bank impugns the order passed by the departmental authority/Disciplinary Authority dated 19.7.1999 imposing the punishment of dismissal from service.

2. Against the petitioner a charge-sheet dated 30.3.1998 was issued in which the allegation against the petitioner essentially was that he had stood as a guarantor for five accounts belonging to his relatives and acquaintances without taking prior permission from the respondent no.1/Bank or without informing the respondent no.1/Bank. Against the petitioner by the charge-sheet there was also an allegation that he was engaging in trade or business outside the scope of his employment and which was hence stated to be a service misconduct.

3. The charge-sheet dated 30.3.1998 reads as under :

“

CHARGESHEET

It is alleged against you as under:-

That you are the guarantor for the following loan accounts:

1- DL sanctioned to M/s Kay Cloth House which is now transferred to Loans in Court a/c no:3/88 which is showing a

huge balance to be recovered from you and the principal borrower at our K.G.Marg Branch.

2. DL-35/76 granted to Sh.O.P.Mehra at our K.G.Marg Branch.

3. OSL-6/87 granted to M/s S.B.Enterprises at Nirman Vihar Branch.

4. Other loan granted to your brother at our A.A.Road Branch.

5. Gift India Advertisers which is now transferred to Loans in court a/c no:3/91 in which your wife is a partner.

It is observed that neither you have taken prior permission from the competent authority to stand as a guarantor to the above loan accounts nor taken the required initiative to ensure that the loans are closed/regularised in view of your position as a guarantor specially employed in the bank. Now all the above loans have become sticky and the bank is compelled to file suits to recover the dues. As such you have misused your official position to get the above loans sanctioned to the people either related or closely connected to you.

It is further observed that you have availed a D.L.22/92 from our Barakhamba Road Branch on 22.11.92 and while availing that facility you have not disclosed your indirect liabilities referred to above and thus concealed the information from the bank. It is further alleged that you have also got liabilities with UCO Bank, Chandni Chowk Branch and also with Thrift and Credit Society of the bank employees union.

The above go to show that you have misused your official position to get the loans to the people related/closely known to you and not ensured the repayment. You have also concealed the indirect liabilities while availing the D.L. You have also not obtained permission from the competent authority to stand as a guarantor to the above loan accounts. The above acts on your part are highly objectionable and constitute the misconduct of doing acts prejudicial to the interest of the bank vide clause 19.5(J) of the Bipartite Settlement. Further, the above

transactions also indicate that you are engaging/engaged in trade or business outside the scope of your employment which also constitute misconduct under clause 19.5(a) of the Bipartite Settlement. Hence you are hereby required to submit your explanation and also to take immediate steps to settle dues under the above loan accounts within 15 days of receipt of this letter failing which we shall be constrained to proceed further against you.

Yours faithfully

Sd/-

ASST. GENERAL MANAGER”

4. Petitioner replied to the charge-sheet vide his letter dated 30.6.1998 denying the charges.

5. Thereafter, the Enquiry Officer held proceedings against the petitioner and held the petitioner guilty in terms of Enquiry Report dated 3.2.1999 and the conclusion of the Enquiry Officer in this regard reads as under :

“Conclusion

On going through the enquiry proceedings, it is accepted by CSE that his family members have enjoyed various loan facilities from the bank due to his position/contacts with the various authorities of the bank and that all such accounts are not yet closed and he has also not disclosed his indirect liabilities, while availing other loan facilities for self and while standing as guarantor for loans at various branches and also did not fill up the loan applications properly, thus concealed the facts. Further though the loans were sanctioned in the absence of specific permission from the competent authority to stand as a surety/in violation of HO guidelines, it is due to his misuse of his position as an employee/union activist in the bank.”

6. Before I give my observations and conclusions I would like to observe that really the departmental proceedings were completely unnecessary in the present case, and this is because it is not as if against the petitioner there is an allegation that he has misappropriated any moneys or he has wrongly got sanctioned the loans in the five accounts in which he stood as the guarantor or that the petitioner has derived any benefit whatsoever from the mere technical default of not informing the respondent no.1/Bank of his standing as the guarantor. Most importantly, it is not understood as to how the respondent no. 1/Bank claimed that petitioner did not inform the respondent no. 1/Bank of his standing as the guarantor inasmuch as the record of this case shows that the petitioner in the various applications for loans is duly shown as the officer of the respondent no.1/Bank, and therefore, respondent no. 1/Bank cannot say that it was not having knowledge that petitioner was an employee of the respondent no.1/Bank when loans were sanctioned in the five accounts in which the petitioner stood as the guarantor. Also it will be relevant to note that petitioner in the enquiry proceedings has been able to establish that the requirement of the respondent no.1/Bank being informed came into existence by means of a circular of the year 1979 but the loans in question were of the year 1976. Finally and most importantly it has to be noted that the loan accounts are not running into lakhs and crores of rupees and the

loan amounts were essentially for amounts of Rs. 3,500/- to Rs. 25,000/- and that too which were not availed of by the petitioner but in these accounts he only stood as a guarantor. With respect to the account of M/s. Gift India Advertisers, the fifth account, petitioner was not even a guarantor and the wife of the petitioner was a partner in that account but admittedly that loan account stands closed and it has been so recorded by the Enquiry Officer himself at internal page 4 of his report. The net position therefore is that out of the five accounts in which there is an allegation of petitioner standing as a guarantor without informing the respondent no.1/Bank, three accounts already stand closed and with respect to two accounts, the only fault as alleged against the petitioner is that he stood as a guarantor, and which is of course not an illegal act in itself, and the only illegality alleged is that the petitioner did not inform the respondent no.1/Bank about the same.

7. In my opinion, the entire proceedings against the petitioner are unfortunate and without any basis inasmuch not only there is no illegality alleged in the petitioner standing as a guarantor for his family members being his parents and brother, the only allegation against the petitioner of his not informing the respondent no.1/Bank is not a very serious allegation because in all the accounts where the petitioner stood as a guarantor, the loan papers duly showed the petitioner to be an employee of the respondent

no.1/Bank. This Court therefore fails to understand as to how once in the loan papers petitioner is shown as the employee of the respondent no. 1/Bank, and the loans are being granted by the respondent no. 1/Bank itself the present can be a case of standing as a guarantor without prior permission. Surely, no case was thus made that petitioner did not inform the respondent no.1/Bank of his standing as a guarantor. More importantly, the Enquiry Officer in the subject Enquiry Report dated 3.2.1999, at internal page 6 of the report, para 2, clearly holds that the requirement of the respondent no.1/Bank being informed came into existence by a circular of 1979 whereas the loans in question were of the year 1976 and which observations of the Enquiry Officer read as under :

“The CSE brought on record that concept of seeking permission from competent authority came in 1979, whereas the referred loans belong to 1976. Further, the same was not questioned by the sanctioning authority before sanctioning/releasing the facility.”

8. A reading of the aforesaid facts and the record of this case leads to the following salient conclusions:

(i) There is no charge against the petitioner of any misappropriation of monies or any concealment of facts.

(ii) The charge against the petitioner is at the very best only a technical charge of his allegedly not informing the respondent no.1/Bank of his
W.P.(C) 3942/1999 & W.P.(C) 3061/2000

standing as a guarantor in the five accounts.

(iii) Even this charge against the petitioner is totally frivolous because loans were given by the respondent no. 1/Bank itself in which the petitioner was shown as an employee i.e in the loan papers petitioner is duly shown as the employee of the respondent no. 1/Bank.

(iv) The requirement of informing the respondent no.1/Bank as noted by the Enquiry Officer came into existence by means of a circular of the year 1979 whereas the loans in question are of the year 1976.

(v) Out of the five loan accounts, three accounts already stand cleared, and with respect to the other two accounts which were of the parents and family members of the petitioner, surely, petitioner as a family member could not have refused to stand as a guarantor, and which action in itself is also not illegal as per even the case of the respondent no. 1/Bank.

(vi) The Enquiry Officer in his conclusion given at the end of the Enquiry Report dated 3.2.1999, (reproduced above) has not arrived at a finding that the petitioner was carrying on any business as was alleged in the charge-sheet against the petitioner.

(vii) Against the petitioner there is no charge that he has illegally got the loans sanctioned because sanctioning of the loans has been done by the competent authorities of the respondent no.1/Bank as per due process and it

W.P.(C) 3942/1999 & W.P.(C) 3061/2000 *Page 8 of 12*

is not even the case of the respondent no.1/Bank that there are any irregularities with respect to sanctioning of the loans in which the petitioner stood as a guarantor. This aspect is buttressed by the facts that admittedly respondent no. 1/Bank has not even alleged any wrong doing against the petitioner or any of its other officers with respect to sanctioning of the loans in the five loan accounts.

9. In view of the above, action of the respondent no. 1/Bank in imposing the punishment of dismissal from service of the respondent no.1/Bank is a complete illegality to say the least and accordingly the entire departmental proceedings including the Enquiry Report dated 3.2.1999 and the order passed by the Disciplinary Authority dated 19.7.1999 are quashed.

10. Learned counsel for the respondent no.1/Bank sought to argue that this Court should not interfere in the punishment imposed by the respondent no.1/Bank inasmuch as this Court interferes only if punishment is shockingly disproportionate. In support of his argument, reliance is placed by the counsel for the respondent no. 1/Bank upon the judgment of the Supreme Court in the case of *Life Insurance Corporation of India & Others. Vs. S. Vasanthi*, 2014 IX AD (S.C.) 37.

This argument urged on behalf of the respondent no. 1/Bank is liable

to be rejected for two reasons. Firstly, petitioner is not guilty at all and once the petitioner is not guilty at all there is no question of imposing any punishment whatsoever upon the petitioner, whether minor or major or dismissal from service. Even assuming that petitioner has to be held guilty, the judgment in the case of *S. Vasanthi (supra)* as relied upon by the respondent no.1/Bank, will have no application to the facts of the present case inasmuch as in the said case the Hon'ble Supreme Court held that courts will not interfere with the punishment imposed by the departmental authority unless punishment is shockingly disproportionate inasmuch as in the facts of the said case High Court interfered with the penalty orders in spite of the fact that the charge-sheeted officer was found guilty of the allegations of tampering with the premium position and other records pertaining to 17 insurance policies which resulted in settlement of surrender value payments though the policies had not acquired surrender value. Clearly therefore the judgment relied in the case of *S. Vasanthi (supra)* does not help the respondent no. 1/Bank because in the present case there are no grave charges against the petitioner of tampering with the record resulting in financial loss to the employer by payment of monies to third party.

11. Learned counsel for the respondent no. 1/Bank also argued that the writ petition is not maintainable in this Court inasmuch as petitioner should

W.P.(C) 3942/1999 & W.P.(C) 3061/2000 *Page 10 of 12*

have approached the competent authority under the Industrial Disputes Act, 1947 but considering the facts that this writ petition is very old of the year 1999, I refuse to relegate the petitioner to the Industrial Tribunal, and this is even assuming that argument of the respondent no. 1/Bank is correct with respect to the existence of an alternative efficacious remedy.

12. In view of the above, the writ petition is allowed. The Enquiry Report dated 3.2.1999 and the order of the Disciplinary Authority dated 19.7.1999 are quashed. Petitioner will be held as was not dismissed from the service pursuant to the impugned charge-sheet and the impugned departmental proceedings. This writ petition in view of the facts stated above is allowed with costs of Rs. 25,000.

W.P.(C) 3061/2000

13. By this writ petition, petitioner has prayed for release of his terminal benefits and which were withheld by the respondent no. 1/Bank only on account of the order of the Disciplinary Authority dated 19.7.1999 and since the departmental proceedings against the petitioner have been quashed by allowing the W.P. (C) No. 3942/1999, this writ petition will also stand allowed and it is directed that respondent no. 1/Bank will release all retirement dues of the petitioner within a period of two months from today along with interest @ 6% per annum simple payable one month after the W.P.(C) 3942/1999 & W.P.(C) 3061/2000

date of the retirement of the petitioner and till the petitioner is paid the requisite amount. In case, petitioner is not paid the amounts due within a period of two months from today, thereafter the petitioner will be entitled to interest @ 9% per annum simple.

14. This writ petition is accordingly allowed leaving the parties to bear their own costs.

APRIL 24 , 2015
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VALMIKI J. MEHTA, J