IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18103 of 2014

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Rajesh Prasad Gupta Son of late Saryug Prasad Gupta, resident of Block No. 7, Flat No. 41, Road No. 10, Rajendra Nagar, P.S. – Kadamkuan, District Patan.

.... Petitioner

Versus

1. The Chairman & Managing Director Canara Bank, Head Office, Bangalore.
2. The Executive Director, Canara Bank, Head Office, Bangalore.
3. The General Manager, Personnel Wing, Canara Bank, Head Office, Bangalore.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-01-2016

Heard learned counsel for the petitioner as well as learned counsel appearing for the respondent Bank.

1. The petitioner seeks quashing of order, dated 20.11.2006, contained in Annexure-19 page 216, whereby he has been awarded punishment of reduction to a lower grade from SMG Scale-IV to MMG Scale-III in basic pay of Rs.20480/- also rendering him ineligible for promotion for a period of three years from the date of the order. He further seeks quashing of order, dated 16.07.2007, contained in Annexure-21 of Appellate Authority dismissing the appeal and the order dated 07.12.2013 of the Chairman-cum-Managing Director rejecting his Review application.

2. The facts relevant for disposal of the case in short is that the petitioner was appointed as Probationary Officer, Scale-I in

Canara Bank in the year 1981. He was promoted to scale II in the year 1991 and to scale III and scale IV in the year 1997 and 2003 respectively. In the year 2000, he was posted as Senior Manager in Small Scale Industries Branch, Ludhiana where he remained till 22.05.2004. While he was posted at Ludhiana, the Circle Office of the Bank at Chandigarh sanctioned working capital and two terms loan for a total amount of Rs.145 lakhs and Rs.92.17 lakhs respectively vide sanction order, dated 09.12.2012.

3. According to the petitioner, the turn over of the Bank was Rs.1200 lakhs with a projection of sales limit of Rs.1800 lakhs in the year 2003-04. The Bank was maintaining open cash credit account (for short OCC) for its working capital besides two term loans account. The Bank had permitted the Company to transfer some amount from the OCC Account to meet the requirement of payment of installment and interest of the term loan account. Keeping in view the good past track record of the Company, the petitioner made recommendations for enhancing of limit of working capital. For instance, the petitioner vide letter dated 07.11. 2013 recommended for enhancement of higher limit to Rs.120 lakhs. Again vide letter dated 28.12.2003, the petitioner made a request for enhancement upto Rs.180 lakhs. On 17.03.2004, the petitioner recommended for enhancement of loan upto Rs.240

lakhs. According to him, enhancement to the extent of 20% of the annual projected turnover of the company was permissible under the circular of Nationalized Bank. As the proposal was neither rejected nor ratified, he permitted the Company to utilize the enhanced limit for which he had sent recommendations to Circle Office time and again.

4. The petitioner was transferred on 22.05.2004 and was posted in the Rohtas Nagar Branch at Delhi. While at Rohtas Nagar, he received show-cause, dated 08.12.2004, whereby he was asked to explain the circumstances under which he permitted the Company to draw amount while he was posted in the Branch Office at Ludhiana. The petitioner submitted his detailed reply vide his representations, dated 08.01.2005 and 26.02.2005 contained in Annexure-12 and 13. Not being satisfied with the explanation of the petitioner, the Respondents initiated departmental proceeding against the petitioner. Eleven charges were framed against him vide charge memo dated 24.11.2005. Denying the charges, the petitioner, in his reply, stated that quite a number of charges are of the period when he was no more posted at Ludhiana. In nutshell, the charge against the petitioner was of allowing transmission of cash credit limit without sanction and approval of the Circle Officer at Chandigarh. On conclusion of the departmental enquiry, the

Conducting Officer, recorded finding of guilt. The petitioner was provided an opportunity to make his response with respect to adverse findings recorded in the inquiry report. Again not being satisfied with the representation of the petitioner, the disciplinary authority awarded punishment of reduction to a lower grade i.e. from SMG Scale IV to MMG Scale III fixing basic pay of Rs.20480/- and also rendering him ineligible for promotion for three years period. The petitioner filed appeal and review application, which too were rejected.

5. The petitioner submits that he acted in the best interest of the Company as well as of the Bank. The enhancement of cash credit limit was done in terms of guidelines provided in Circular No. 68 of 2002, dated 05.04.2001 and Circular, dated 06.12.2010 contained in Annexure-26 and 27 of the writ application.

6. The petitioner has referred para 3 and 4 of the Circular No. 68 of 2002 which is quoted hereinbelow:-

> *"In view of the above, the branches are requested to review all non LPD NPA accounts and the accounts showing the incipient sickness and decide on the strategies to review them. It is suggested that where the integrity of the borrower is not in doubt and the irregularity is temporary in nature, as a first step, a detailed discussion with the borrower may be held. An action plan which would be mutually beneficial be drawn and strictly implemented.*
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> *Where the overdues and the irregularities are very serious in nature, "holding on operations" can be contemplated with the approval of the appropriate*

authorities. This, however, has to be done strictly on merits. In case of "holding on operations" the liability should normally exceed the level that existed at the time of permitting the same. In case a cut back on credits to regularize the overdues in contemplated, the same should be examined without affecting the required cash flow for carrying on the operations."

7. He has also placed reliance upon para 3 and 4 of circular, dated 06.12.2010 which is also quoted hereinbelow:-

"We have come across several instances wherein it is observed that bank officials, after exercising the powers of higher authority, promptly reported such instyances to such higher authority for ratification/ confirmation of such action. However, despite lapse of considerable time, the concerned higher authority neither ratify the action of the said bank official nor deny the ratification. Due to non-receipt of such ratification/ confirmation from the appropriate authority, the official who had exceeded his powers had to come under the scanner of accountability issues.

In view of the above, we advise all the circles to comply with the guidelines communicated to the CVC as mentioned above without fail. In case the controlling authority/ appropriate authority fails to give his decision of ratification or otherwise, in such cases within a month of receipt of original report from the bank official who had exercised powers of such authority, the same shall, however, be deemed to have been ratified as such and the concerned authority will be held accountable for the lapses, if any, in such action."

8. He next submits that the circular permits a Banker to allow cash credit facilities if the recommendation made is neither rejected nor ratified. The Bank in the year 2012 had come out with a policy

that if the recommendation sent by a Branch was neither ratified nor rejected, the same would be deemed as ratified, if there is no direction to the contrary. He next submits that within one month of his transfer, the G.M. further enhanced the limit which vindicate his action that the enhancement of limit of the loan was in order. Furthermore, the Company's request to allow restructuring of loan was also allowed on 28.02.2005.

9. In alternative, learned counsel submits that punishment awarded to him, are disproportionate to his acts of omission and commission, if any, as he acted in the best interest of the Bank. His action had not resulted in any loss to the Bank.

10. On the other hand, learned counsel for the respondent Bank submits that the appeal of the petitioner was rejected in the year 2007 and he filed review belatedly in the year 2011 and as such, his case should have been rejected on the ground of latches and delay. He next submits that proceeding was conducted in accordance with Canara Bank Officer Employee's (Discipline and Appeal) Regulation, 1976 (for short "the Regulation, 1976) and the petitioner was provided full opportunity to place his defence. He further submits that the punishment was granted in consonance with regulation 4(g) read with regulation 18 of the Regulation, 1976. He submits that 2002 circular would not be applicable in the

case of the petitioner, as the circular does not permit him to enhance the limit without specific approval of the superior authority.

11. I have heard learned counsel for the parties. The scope of judicial review in the matter of disciplinary proceeding is limited to the review of procedure and error of law and the court would not go into the sufficiency or otherwise of the materials on which the Enquiry Officer or the disciplinary authority has recorded its findings. Reliance can be placed on the judgment reported in the case of Union of India and Another Vrs. K.G. Soni, reported in 2006 (6) SCC 794 and in the case of State Bank of Bikaner and Jaipur Vrs. Nemi Chand Nalwaya, reported in 2011 (4) SCC 584.

12. It is not a case, where findings recorded by the authorities is based on no materials or it has taken into consideration materials which are not relevant and germane in the matter. I find that the principles of natural justice has been duly complied with and I do not find that the proceeding suffers from any infirmity.

13. However, the submission of the petitioner that the punishment is disproportionate to the offence committed by him, deserves due considerations. It appears from the materials on record that the petitioner has acted in a bonafide manner and in the best interest of Bank and the entrepreneur. He recommended and

allowed the limit of loan under the belief that 2002 Circular vested such jurisdiction on him. There is no material on record to suggest that the petitioner acted with ulterior motive.

14. In this view of the matter, the punishment of demotion to the lower post is too harsh and excessive and the impugned orders of punishment by the different authorities are set aside. The matter is remitted to the Appellate Authority to take a fresh decision with respect to quantum of punishment.

The writ application is disposed of accordingly.

(Samarendra Pratap Singh, J)

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