

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 29.09.2016

Delivered On: 03.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.23102 of 2001

V.Chandrasekaran ... Petitioner

vs.

1.The General Manager,
Personnel,
Vijaya Bank, Head Office,
41/2, M.G.Road,
Trinity Circle,
Bangalore-560 001.

2.Deputy General Manager,
Vijaya Bank,
Regional Office,
123, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the second respondent in his proceedings No.ROCH/IRS/637/99 dated 28.10.1999 which was confirmed by the first respondent in his proceedings No.PER/IRD/1963 dated 22.8.2000 and quash the same and further direct the respondents to give all monetary and other benefits from the date of compulsory retirement.

For Petitioner : Mr.G.Suryanarayanan

For Respondents : Mr.R.Sivakumar

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of compulsory retirement passed by the second respondent in his proceedings No.ROCH/IRS/637/99 dated 28.10.1999, which was confirmed by the

first respondent in his proceedings No.PER/IRD/1963 dated 22.8.2000 and consequently, direct the respondents to give all monetary and other benefits from the date of compulsory retirement.

2.The petitioner was appointed as Agricultural Officer under the respondent's bank on 24.03.1986 as a Probationary Agricultural Officer by way of direct recruitment and he worked as Agricultural Officer in various places like Erode, Udagamandalam, Kothagiri, Ramanaickenpatti, Thanjavur and in Chennai and for more than 13 years, he was discharging his duties to the satisfaction of his superiors. While so, to his shock and surprise, a charge memo was issued by the second respondent, vide proceedings dated 03.07.1998, framing 5 charges against the petitioner. The said charges relate to the period from 27.06.1994 to 23.09.1996 while the petitioner was working as Agricultural Officer at Thanjavur Branch. The petitioner submitted detailed explanation to the charge memo denying the charges. However, the second respondent appointed one Thiru.R.M.Krishna, Senior Manager, Regional Office, Vijaya Bank, Egmore, Chennai-8 as the Enquiry Officer, who, inspite of clear explanation submitted by the petitioner, without appreciating his defence, vide proceedings dated 30.06.1999 had given a finding holding that Charge Nos.1, 2, 3 and 5 were partly proved and the Charge No.4 was proved. The petitioner also gave his explanation dated 28.08.1999 to the Enquiry Officer's report. However, the second respondent, without properly appreciating the defence of the petitioner, has awarded the following punishments:

Charge No:1 - Withholding of two increments permanently

Charge Nos.2 to 4 - Reduction to a lower stage in the time scale of pay by two stages with cumulative effect.

Charge No.5:- Compulsory retirement.

Finally the second respondent has imposed the punishment of compulsory retirement, agreeing with the views of the Enquiry Officer. Aggrieved over the punishment imposed by the second respondent dated 28.10.1999, the petitioner preferred an appeal before the first respondent dated 09.12.1999. The Appellate Authority/first respondent, without appreciating the entire materials in proper perspective, has confirmed the order passed by the Disciplinary Authority/second respondent. Challenging the same, this Writ Petition has been filed.

3. Mr.G.Suryanarayanan, learned counsel appearing for the petitioner made the following submissions:

(i) Though as per the charge memo there are five charges against the petitioner, the charges have been split into 13 charges and almost all the charges are repetitive.

(ii) Charges 1 and 2 are same and so also Charges 3 and 5 (a). But different findings have been given in respect of the said charges and distinctive punishments have been given which is not in accordance with law.

(iii) The Authority has pre-determined and premeditated the issue and issued the charge memo accordingly. In support of the said submission he has relied upon the judgment of the Hon'ble Supreme Court in Siemens Ltd., v. State of Maharashtra and Others [(2006) 12 SCC 33], wherein it has been held that when the charge sheet or show cause notice has predetermined the issue, the same is liable to be set aside. For the same proposition, relied upon the decision in Orxy Fisheries Private Limited v. Union of India and Others [(2010) 13 SCC 427] wherein it has been held that when the respondent had not acted in open mind while issuing show cause notice, the entire proceedings are liable to be set aside. Thus relying upon the above judgments, the learned counsel appearing for the petitioner would submit that charges framed would clearly disclose that the respondent had predetermined the commission of those acts for which the charge had been framed and in view of that the charges framed are unsustainable in law.

(iv) There is a delay of two years in framing the charges and conducting the enquiry since the irregularities said to have been committed by the petitioner while he was working as Agricultural Officer at Thanjavur Branch during the period from 27.06.1994 to 23.09.1996, where as the charge memo was issued on 03.07.1998. Since there was an inordinate delay of 2 years in issuing the charge memo, the entire proceedings are liable to be vitiated. In support of the said submission relied upon the decision in Union of India, Rep by Secretary to Government of Pondicherry (Revenue Department), Pondicherry v. Central Administrative Tribunal [2005 (2) CTC 169].

(v) As per Regulation 10 of the Vijaya Bank Officer Employees (Conduct) Regulations, 1981 "Where two or more officer employees are concerned in a case, the authority competent to impose a major penalty on all such officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings". In the instant case, charge memo was issued against the petitioner as well as against the Senior Branch Officer, but separate proceedings/enquiry were conducted for the same set of allegations and different enquiry was conducted and in fact, the petitioner, in his reply to the findings of the Enquiry Officer as well as before the Appellate Authority, has raised the issue with regard to two separate enquiry conducted against the

petitioner as well as Senior Branch Manager, but the Appellate Authority had stated that it is only discretionary as the competent authority to punish the officers are different and therefore, common proceedings could not be conducted. Since no common proceeding/enquiry was conducted, on that ground alone, the impugned proceedings are liable to be set aside.

(vi) In Circular No.43/76 dated 2.04.1976 [Job Chart of Agricultural Officers'], the job and responsibility of an Agricultural Officer had been defined and the same does not disclose that the Agricultural Officer has to obtain those documents or look into the scale of finance, as has been alleged in the charge and in view of the that, the Enquiry Officer, Disciplinary Authority as well as the Appellate Authority had perversely came to a finding that the petitioner is guilty of the charge.

(vii) The charges were simply repeated to show as if a number of charges are framed for the same charges and thus, there is double jeopardy to harass the petitioner with an intention to victimize him.

(viii) Even though the case proceeded under major penalty for which enquiry is mandatory in normal circumstances, it was mentioned in the charge sheet that inquiry would be held only if the articles of charges are not admitted by the petitioner. The admission, if at all made is to be made only in the inquiry, but there was coercion on the petitioner by the Disciplinary Authority to express his admission before going through the petitioner's reply to the charge sheet, which clearly reveals the Disciplinary Authority's predetermined mind set to compel the petitioner to give reply as per his desire to go ahead with the major penalty proceedings.

(ix) Charge No.5(b) would show that while recommending for the loans/releasing the loans, the petitioner, by abusing his official position in the Bank, borrowed money from the customers and was also demanding/accepting illegal gratification from the customers for recommending/sanctioning/releasing the loans and thereby acted in a manner unbecoming of an officer of the Branch. The learned counsel appearing for the petitioner would submit that the charge itself alleges that the money was given only to Mr.A.Seralathan, the borrower of the branch and not to the petitioner, but still charge was framed just to show that there are as many charges against the petitioner.

(x) There had been a charge that the petitioner had sanctioned several loans in the absence of the officer, the Senior Branch Manager and therefore, the petitioner has

committed a grave irregularity. However, it was proved in the enquiry that in all the loan applications, the Senior Branch Manager has signed. Further, no documentary/oral evidence was produced to prove the connivance of the petitioner with one Mr.U.Nandakumaran, the then Branch Manager and Mr.A.Seralathan, the customer of the Branch.

(xi) With regard to Charge Nos.4(a) and 4(b), though the alleged charge was that the petitioner recommended the loans, the loan applications where the recommendations find place were not produced in the inquiry but only xerox copies of the ledger sheets (where recommendations are not recorded) were produced. This was accepted by the Inquiry Officer and without any application of mind and without any evidence, the Inquiry Officer held that charge No.4 is proved.

(xi) Though charge Nos.3 and 5(a) are the same, charge No.3 was held as partly proved and another charge namely charge No.5 (a) was held to be proved which clearly shows that the Inquiring Authority without any application of mind gave his findings in view of the predetermined charges. Thus the Inquiry Report submitted by the Inquiring Authority is perverse and based on surmises and assumptions and without considering the evidences/fact produced/placed in the inquiry.

(xii) The petitioner is only a recommending authority and not a sanctioning authority and the sanctioning authority has every right to accept or reject the recommendations of the petitioner.

The learned counsel appearing for the petitioner, by placing the above submissions, prays for setting aside the impugned orders.

4. Countering the submissions made by the learned counsel appearing for the petitioner, Mr.R.Sivakumar, learned counsel appearing for the respondents Bank made the following submissions:

(i) Charge No.1 pertains to sanctioning of loans to the parties and relatives of parties who were already having overdue loan liabilities and whose earlier liabilities were written off on earlier occasion. But charge No.2 pertains to sanctioning of many crop loan/production loan and other agricultural advance without properly accessing the Scale of Finance and sanctioning of more than one loan to the same person or members of the same family, which is contrary to the lending norms and rules of business of the bank. Thus, Charges 1 and 2 are distinct and not the same, as contended by the learned counsel appearing for the petitioner.

(ii) Similarly, Charge No.3 was that the petitioner during the leave period of the then Senior Branch Manager had unauthorisedly sanctioned/released 33 loans under the heads of production loan, VKC and Mortgage Loan and 18 loans under the head of Secured Loan. But Charge No.5(a) was that the petitioner during the leave period of the then Senior Branch Manager had unauthorisedly sanctioned several agricultural loans contrary to the rules of the business of the Bank. Further it was charged that while recommending for the loans/releasing the loans the petitioner, by abusing his official position in the bank, borrowed money from the customers and was also demanding/accepting illegal gratification from the customers for recommending/sanctioning/releasing the loans. Thus charges Nos.3 and 5(a) are distinct and separate.

(iii) The contentions of the petitioner that the charges are conclusive in nature and the respondent Bank had predetermined the issue are unsustainable and in fact for convenience and better understanding of parties, 13 issues were framed by the Enquiry Officer on the basis of the alleged charges and each issue was addressed by the parties separately and the perusal of each issue will clearly prove that the Enquiry Officer had approached each of the issue independently. Further the judgments reported in (2006) 12 SCC 33 and (2010) 13 SCC 427 (cited supra), relied on by the petitioner with regard to predetermining the issue, will not be applicable to the facts of this case, as facts of those cases are different.

(iv) It was alleged by the petitioner that there was a delay of 2 years in framing the charges and therefore, the disciplinary enquiry is vitiated. But in the present case, considering the voluminous nature of the documents and huge number of complaints involved, the charge sheet was issued within a period of 2 years from the date of transfer of the petitioner from the branch and the same cannot be said to be a delay, so as to vitiate the disciplinary proceedings.

(v) As regards the contention of the petitioner that as per Regulation No.10 of the Vijaya Bank Officer Employees' (Discipline and Appeal) Regulation 1981, a common enquiry proceedings ought to have been held, but the Disciplinary Authority as well as the Appellate Authority had replied that the said clause is not a mandatory one and it is only for administrative convenience. Common enquiry has to be ordered only when the transactions are so interlinked that it is impossible to find out the truth unless common proceedings are held, whereas in the present case, there was no compelling requirement to order for common proceedings. Further in the present case, both the persons belong to different category of service and by the time the enquiry commenced, the then Senior

Branch Manager was already transferred to a different region at Thiruvandrum, Kerala and ordering a common enquiry for the officers at two different regions and at far away places will unnecessarily delay the enquiry proceedings and therefore, considering the administrative convenience, separate enquiry was ordered against both of them.

(vi) After completion of enquiry, Senior Branch Manager was also awarded the punishment of compulsory retirement and he challenged the same before the Kerala High Court in O.P.No.12650 of 2001 and the said writ petition was dismissed, vide order dated 05.04.2004 and the appeal filed against the said order was also dismissed.

(vii) It is the contention of the petitioner that the Circular dated 02.04.1976 does not disclose that Agricultural Officer has to obtain documents or look into the Scale of Finance of an applicant. However, as per Clause (4) of the very same circular, it is the primary responsibility of an Agricultural Officer to assist the Branch Manager in appraising the technical aspects of agriculture loan proposals and the petitioner having admitted the above as his primary duty and responsibility, cannot contend that he need not look into the necessary document or assess the Scale of Finance of an applicant.

(viii) The report of the Enquiry Officer is well considered and elaborate, containing 211 pages and in fact the Hon'ble Supreme Court of India and various other High Courts, in a catena of decisions, had held that the power of the High Court under Article 226 of the Constitution of India is limited with regard to judicial review of findings of the Enquiry Office and interference can be made in the findings of the Enquiry Officer only when there is perversity.

In support of the aforesaid contentions, the learned counsel appearing for the respondent relied upon the following judgments:

- (i) Hrishikesh Bhattacharjee v. Indian Bank [2014-II-LLJ-744]
- (ii) Sanat Kumar Vijjan v. UCO Bank and Others [2011-II-LLJ 74 (Uttar)]
- (iii) Union of India and Others v. Alok Kumar [(2010) 5 SCC 349]
- (iv) Chairman and Managing Director, United Commercial Bank and Others v. P.C.Kakkar [(2003) 4 SCC 364]
- (v) Canara Bank v. V.K.Awasthy [(2005) 6 SCC 321]
- (vi) Apparel Export Promotion Council v. A.K.Chopra [1999-I-LLJ 962]

- (vii) Saini R.S. v. State of Punjab and Others [1999-II-LLJ-1415]
(viii) Judgment of the High Court of Kerala in O.P.No.12650 of 2001 dated 05.04.2004.

5. Keeping the submissions made by the learned counsel on either side, I have carefully gone through the entire materials available on record.

6. The only question that arises for consideration is whether the petitioner has made out any case warranting this Court to interfere in the findings rendered by the Enquiry Officer as well as the consequential impugned orders passed by the respondents?

7. The submission of the learned counsel appearing for the petitioner are on the following lines:

- (a) The charges are repetitive in nature.
- (b) The respondent Bank had pre-determined the issue.
- (c) There was a delay in issuing the charge memo.
- (d) The Circular dated 02.04.1976 does not disclose that the Agricultural Officer has to obtain documents or look into the Scale of Finance of an applicant.

In my considered opinion, none of the above grounds will serve as a ground for interference by this Court in the findings rendered by the Enquiry Officer. In fact, as contended by the learned counsel appearing for the respondent Bank, only for the purpose of convenience to decide the issue and in order to have a better understanding of parties, 5 charges were split into 13 issues.

8. Charge No.1 pertains to sanctioning of loans to the parties and relatives of parties who were already having overdue loan liabilities and whose earlier liabilities were written off on earlier occasion. Charge No.2 pertains to sanctioning of many crop loan/production loan and other agricultural advance without properly accessing the Scale of Finance and sanctioning of more than one loan to the same person or members of the same family, which is contrary to the lending norms and rules of business of the bank. Thus, it is clear that Charges 1 and 2 are distinct. Similarly, Charge No.3 was that the petitioner during the leave period of the then Senior Branch Manager had unauthorisedly sanctioned/released 33 loans under the heads of production loan, VKC and Mortgage Loan and 18 loans under the head of Secured Loan. But Charge No.5(a) was that the petitioner during the leave period of the then Senior Branch Manager had unauthorisedly sanctioned several agricultural loans contrary to the rules of the business of the Bank. Further it was charged that while recommending for the loans/releasing the loans the petitioner, by abusing his official position in the bank, borrowed money from the customers and was also

demanding/accepting illegal gratification from the customers for recommending/sanctioning/releasing the loans. Thus charges Nos.3 and 5(a) are totally distinct and separate and therefore, the submission of the learned counsel appearing for the petitioner that the charges are repetitive in nature, cannot be accepted.

9. The next contention of the learned counsel appearing for the petitioner is that the respondent Bank had predetermined the issue. However, the petitioner was unable to point out as to how the said charges were issued with predetermined mind. Therefore, this Court is not inclined to accept the contention that the charges were issued with predetermined mind.

10. As regards the next contention that there was a delay of 2 years in framing the charges, I find that the respondent Bank has given proper explanation by stating that considering the voluminous nature of the documents and number of complaints involved, the charge sheet was issued within a period of two years from the date of transfer of the petitioner from the branch and as such, the same cannot be said to be an inordinate delay so as to vitiate the disciplinary proceedings. In this regard, the learned counsel appearing for the respondent relied on the judgment in [1996 (I) L.L.J. 355], wherein it has been held that the Courts could not exonerate a person solely because of lapse of time and it is for the delinquent officer to show as to how he has been prejudiced or deprived of fair trial on account of delay and if defence is found to have been denied due to delay.

11. It is the contention of the learned counsel appearing for the petitioner that as per Regulation No.10 of the Vijaya Bank Officer Employee's (Discipline and Appeal) Regulation, 1981, a common enquiry proceeding ought to have been conducted, whereas two separate enquiry proceedings were conducted, one in respect of the petitioner and another in respect of Senior Branch Manager. But it is the reply of the learned counsel appearing for the respondent that Clause 10 is not a mandatory one and it is only for administrative reasons. On perusal of the entire materials I find that the petitioner has not pleaded this point either before the Enquiry Officer or before this Court about the prejudice caused because of the separate enquiry conducted.

12. It is the submission of the learned counsel appearing for the petitioner that Circular dated 02.04.1976 [Job chart of Agricultural Officers] does not disclose that the Agriculture Officer has to obtain documents or look into the Scale of Finance of an applicant. But the learned counsel appearing for the respondent contended that as per Clause (4) of the said

Circular, it is the primary duty and responsibility of an Agricultural Officer to assist the Branch Manager in appraising the technical aspects of agriculture loan proposals and hence the Enquiry Officer has rejected the plea taken by the petitioner in this regard. In my considered opinion, there is no perversity in the findings rendered by the Enquiry Officer in this regard.

13. On the whole, I am of the opinion that, as observed earlier, none of the grounds raised by the petitioner will serve as a ground to interfere in the findings rendered by the Enquiry Officer as well as in the impugned orders. In fact, in identical situation when the Senior Branch Manager approached the Kerala High Court challenging the punishment of compulsory retirement, it was dismissed vide order dated 05.04.2004 in O.P.No.12650 of 2001 by observing as follows:

"14... I do not propose to examine the correctness of the findings by reappraising evidence and materials on record. It is well settled that the Writ Court will not sit in appeal over the findings of the Disciplinary Authority or reappraise the evidence. The petitioner can succeed in these proceeding only if he establishes that there is no evidence against him in the Enquiry Proceedings. He has to establish that the evidence available on the record is such that no reasonable and prudent man will ever come to the impugned findings on the basis of the materials available on the record. Having examined the materials in the light of above principles of law, I am not satisfied that it is a case of "no evidence" as pleaded by the petitioner".

I do not find any reason to take a different view from the judgment delivered by the Kerala High Court.

14. In Apparel Export Promotion Council v. A.K.Chopra [1999 I (LLJ) 962] the Hon'ble Supreme Court held that the High Court does not sit as an Appellate Authority over the factual findings recorded during the departmental proceedings, while exercising the power of Judicial Review and the High Court cannot normally substitute its own conclusion with regard to the guilt of the delinquent for that of the Departmental Authority. The relevant portion of the judgment is extracted hereunder:

"16.The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate

Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Halton in *Chief Constable of the North Wales Police v. Evans*, (1982) 3 All ER 141, observed :

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court".

15. In Krishikesh Bhattacharjee, S/o (L) Hemendra Natha Bhattacharjee, C/o Shri, Shibu Paul "Snehalaya" Rilbong, Shillong-739004, East Khasi Hills District, Meghalaya v. Indian Bank a nationalized Bank, represented by its Chairman and Managing Director, Chennai [2014-II (LLJ) 744], the learned Single Judge of Meghalaya High Court, by referring to various judgments of the Hon'ble Supreme Court and High Courts, held that the jurisdiction of the High Court under Article 226 of the Constitution of India for judicial review of findings of the Enquiry Officer is limited and this Court is not sitting as an Appellate Court on the findings of the Enquiry Officer and this Court is not re-appreciating the evidence to come to a different findings. It is relevant to extract the relevant portion of the said judgment:

"21.Keeping in view of the decisions of the Apex Court discussed above and also the settled principle of law regarding the limited jurisdiction for judicial review of the findings of the Enquiry Officer, this Court has given anxious consideration to the findings of the Enquiry Officer dated 31.10.2007 as to whether the findings of the Enquiry Officer are based on no evidence or perverse and after such consideration, this Court is of the considered view that the findings of the Enquiry Officer by giving reasons which comprises of 13 pages are based on evidence and not perverse. This Court is not sitting as appellate Court of the findings of the Enquiry Officer and accordingly, this Court is not re-appreciating the evidence to come to the different findings. Hence, this Court is of the view that ground No.1 for assailing the Enquiry Report dated 31.10.2007 and the impugned order dated 31.03.2008 basing on the enquiry report as well as the impugned order of the appellate authority dated 22.05.2009 is not sustainable."

The dictum laid down in the above cited judgments would clearly indicate that only when the findings rendered by the Enquiry Officer, Disciplinary Authority and Appellate Authority are wholly perverse, this Court can interfere. In the case on hand, the petitioner herein has failed to establish that the findings of the Enquiry Officer are perverse. Therefore, this Court cannot make inference by re-appreciating the evidence since this Court is not sitting as an Appellate Authority over the findings rendered in the departmental proceedings. I do not find any reason to interfere in the impugned orders and accordingly, this Writ Petition deserves dismissal.

17.In the result, this Writ Petition is dismissed. No costs.
Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The General Manager,
Personnel,
Vijaya Bank, Head Office,
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- 2.Deputy General Manager,
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+1cc to M/S.R.Sivakumar, Advocate Sr.63155

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