IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 5998 of 2013 (O&M)
Date of decision : March 04, 2016

Satish Kumar Kapoor .....Petitioner

Versus

Punjab National Bank and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Parvinder Singh, Advocate and
Mr. Akshay Rawal, Advocate
for the petitioner.

Mr. Saurav Verma, Advocate
for the respondents.

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LISA GILL, J.

Prayer in this writ petition is for quashing of order dated 20.04.2012 (Annexure P-13) whereby major penalty of compulsory retirement has been imposed upon the petitioner, period of suspension was not treated as period of service and petitioner was not held entitled to any salary/wages for the said period. Challenge is also to order dated 10.10.2012 (Annexure P-15) whereby the petitioner's appeal has been dismissed, order dated 31.12.2012 (Annexure P-18) supplied on 09.01.2013 (Annexure P-19) dismissing his review as well.

Facts of the case are that petitioner remained posted as Branch Manager in Tibbi Khurd Branch of Punjab National Bank in very February, 2006 till 17.06.2009. Charge sheet dated 23.02.2011 was served upon him with following charges:-

Article I

He did not ensure proper pre-sanction appraisal and also failed to conduct post sanction supervision/follow up in various KCC accounts and sanctioned KCC limits in contravention of the prescribed guidelines of the bank, thereby putting huge bank's funds to jeopardy, which are proving difficult to recover.

Charge No. I(A)

A) He sanctioned and disbursed various KCC loan accounts without verifying the genuineness of land revenue records submitted by the borrowers which were subsequently found to be fake/fabricated.

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Charge No. I(B)

a) He facilitated to adjust five KCC amounts sanctioned by him earlier in which land revenue record were fake/fabricated by sanctioning fresh loan to the other family members/wards of the following borrower.

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Article II

He adopted unethical practice to inflate the business figures of the branch.

Charge No. II

He allowed unauthorized debits during his incumbency in various KCC accounts on different dates.

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Article III

He concealed the facts of quick mortality cases in loan accounts.

Charge No. III

There are large no. of loan accounts which became quick mortality case but were not reported.

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Departmental inquiry was instituted to look into the truth of imputation of charges. As per inquiry report dated 12.03.2012 (Annexure P-10) charge No. 1(A) was held to be proved and charge No. 3 partly proved whereas charge No. 1 (B) and 2 were not proved against the petitioner.

Disciplinary authority, however, did not agree with views of the Inquiry Officer and felt that all the charges were proved against the petitioner. Dissent note dated 28.03.2012 alongwith copy of report of the inquiry officer was sent to the petitioner. Reply was submitted by petitioner but not finding favour with the authorities, the above said punishment as detailed above was imposed upon the petitioner vide order dated 20.04.2012 holding him guilty of the charge No. 1 (a) at Article I and Article III. He was not found guilty of the charge at Article II and charge 1(b) at Article I. Petitioner's appeal as well as review were dismissed vide orders dated 10.10.2012 (Annexure P-15) and 31.12.2012 (Annexure P-18). Hence, aggrieved the petitioner has preferred the present writ petition challenging the said orders.

One of the primary contentions raised by the petitioner is that in respect to Charge/Article I, petitioner cannot be held guilty in any manner as the revenue record of the Patwari was duly verified by an official of the bank as well as by the counsel, who was on the panel of the Bank. Prescribed procedure was meticulously followed by the petitioner. Reference is made to Regulation 4.2.4 of the Punjab National Bank Staff Accountability Policy (hereinafter referred to as an 'policy').

In respect to Article III, learned senior counsel for the petitioner refers to Regulation 9.4 of the said policy to submit that account cannot be classified as quick mortality case merely on the ground that interest or instalment could not be deposited and furthermore it is not disputed that proper securities were in place and in respect to two of the three cases, recoveries had been effected. All the loans in question were of ₹1,00,000/- or less. Reference is made to Circular dated 03.12.2008 (Annexure P-13A), which provides for dispensing with the requirement of No Due Certificate for small loans up to ₹1,00,000/-, and instead obtain a self declaration from the borrower. It is further submitted that loans had been sanctioned not only after verification by the counsel on panel but by appraisal by an officer of bank, namely Mr. Subhash Bajaj. No action has been taken against him and the petitioner has been victimised because it is the petitioner, who reported that documents submitted by one of loanee Dalip Singh were not genuine. It is when the said Dalip Singh approached the petitioner for enhancement of the loan limit from ₹50,000/- to ₹1 lac with revenue record which was different from the earlier record submitted by him, that the fraud came to light. It is the petitioner, who re-opened all the loans, which he had sanctioned at Tibbi Khurd. On personal verification of the documents, he learnt that two sets of records had been made regarding the documents prepared by the Patwari, Vijay Kumar. Petitioner, who himself sent communication dated 17.06.2009 (Annexure P-2) to the Deputy Commissioner, Ferozepur in this regard, has unnecessarily been victimised for blowing the whistle in this matter. It is submitted that the concerned counsel, who had verified the documents, was removed from the panel of lawyers of the Bank and the Patwari was also dismissed from Government service. Furthermore, proceedings are vitiated by the fact that once disciplinary authority chose to disagree with the report of the inquiry officer, no show cause notice with the proposal of major penalty was issued to the petitioner. No personal hearing was afforded to the petitioner. It is vehemently argued that reference is made to the alleged past blemished record of the petitioner in the impugned order imposing penalty, though there is no such charge against him. Still further, such an observation is factually incorrect as the petitioner during his entire career with the Bank since 1972 was awarded one censure and stoppage of one increment. By no stretch of imagination can it be considered to be a blemished service, which would invite major penalty of compulsory retirement and that too on 20.04.2012 just ten days prior to the petitioner's retirement on 30.04.2012.

Learned counsel for the respondents while supporting the impugned orders submits that the petitioner had illegally entered into a criminal conspiracy to cheat and defraud the respondent-bank. Proper procedure, as required for verification of the records, was not followed by him. Loans were sanctioned by him on the basis of forged revenue record. Petitioner was hand in glove with other officials of the bank. Being the Branch Manager, it was the petitioner's responsibility to have personally verified the documents and conduct spot verification as well, before sanctioning of the loan. Due and proper opportunity of hearing was afforded to the petitioner. Dissent note alongwith copy of the inquiry report was sent to the petitioner for submitting his reply and it is only after consideration of his submissions that order of punishment was passed. There is no provision for affording personal hearing to the delinquent officer in the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, therefore, no fault can be found in the procedure adopted by the Bank. Thus, it is prayed that the impugned orders be upheld.

I have heard learned counsel for the parties and gone through the file. Controversy in question, revolves around sanction and disbursement of loans to various persons, without verifying genuineness of the revenue records submitted by the borrowers which were subsequently found to be fake. Petitioner is further alleged to have concealed the fact of quick mortality cases in loan accounts.

It is a matter of record that the inquiry officer found Charge No.1(A) of Article I to be proved against the petitioner. Charge No.1(B) of Article I and charge at Article II were not proved against the petitioner. In view of the fact that punishment has not been imposed upon the petitioner on the basis of the said charges at

No.1(B) and II as the same were not proved against him, they are not the subject matter of any deliberation. In respect to the third charge of concealment of quick mortality cases, the inquiry officer has observed as under:-

> "There are large number of loans 20 accounts, which became quick mortality cases which were not reported in the branch. These are in NPA Category in the books of the bank on account of Non Payment of Bank dues, out of which a/c's at Sr.No.16,17,18 & 19 are doubly mentioned at Sr.No.6,8,9,11. So actual cases are 15. Account at sr.no.1, AG-10655 Gurmeet and Account at sr.no.19, AG-100902 Surjit Kaur are written off accounts and the balance outstanding in both these accounts is Rs.100.00.
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> Loan a/c's from Sr.No.1 to 19 are Govt agency sponsored cases and account at Sr.No.20 is below 1 Lac and as per bank guidelines an a/c may not be classified as quick mortality cases merely on the ground that interest/installment could not be deposited. Controlling office should get satisfied with mortality of the a/c keeping in view the position of available securities, level of activities & prospectus of regularization." as such it is for the administrative office to form a view to categorize it as quick mortality cases and to initiate action/investigation.
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> In the cases referred from Sr.No.1 to Sr.No.15 & Sr.No.20 (16 to 19 being repeated accounts) the recoveries are not forthcoming and prospects of regularization is dim but the record with the branch does not show that securities are missing and the lending is reckless.
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> Hence the charge is partly proved."

While being conscious of the fact that this Court does not sit in appeal over the findings of fact returned by the authorities but in case such findings are not supported by cogent evidence/documents on record, intervention is clearly called for. Reference to the judgment of the Hon'ble Supreme Court in ***Union of India and others versus P.Gunasekaran 2015 (1) S.C.T. 5*** by learned counsel for the respondents to urge that this Court should not re-appreciate the evidence is of no avail, for the reason that the Hon'ble Supreme Court in this case itself has held that in exercise of jurisdiction under Article 226/227 of the Constitution of India, the High Court can see whether;

> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
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> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> i. the finding of fact is based on no evidence.

The petitioner has been subjected to punishment of compulsory retirement vide the impugned order dated 20.04.2012, being held guilty of the charges of Article I Charge 1 (A) and III. The charge No. 1 (B) at Article I and charges at Article II were not proved against him. Circular dated 03.12.2008 (Annexure P-13A) is an extremely relevant document which has not been denied by the respondents. As per this circular dated 03.12.2008, it has been decided by the respondent-bank to dispense with the requirement of No Due Certificate for small loans upto ₹1,00,000/- and instead obtain a self declaration from the borrower. It is not disputed that none of the loans sanctioned and disbursed by the petitioner are above the limit of ₹1,00,000/-.

Furthermore, Regulation 4.2.4 of the Policy reads as under:-

> Loan/Security documents, obtained & executed should be on proper/prescribe formal complete, valid, enforceable, having all convenants duly incorporated and duly vetted in the eligible cases. For the deficiencies, if detected subsequently the officials assigned the duty of execution of loan documents or in whose presence documents are executed and incumbent in charge shall be responsible. However, in cases where documents have been got vetted from the approved advocate/firm of solicitors, concerned/charged/ responsible officials will not be liable for any subsequent defect observed, except in cases where qualifying remarks of advocate have not been attended to.

It is specifically mentioned in Regulation 4.2.4 of the Policy that in case the relevant loan/security documents had been vetted by the approved Advocate/Firm of Solicitors then the responsible officers will not be liable for any subsequent defect observed. Though it is vehemently argued that petitioner in conspiracy with Advocate and other officials was responsible for the loss caused to the Bank, learned counsel for the respondent-Bank is unable to deny that apart from there being no such charge against the petitioner, there is no such evidence as well to indicate the same. Once the charge of conspiracy with other officials is not revealed by the Bank against the petitioner, it is not open for the respondent - Bank to raise such an argument at this stage. It is also not denied that the appraising officer, Subhash Bajaj i.e. an employee of the bank himself has verified the said documents. It is only thereafter that the petitioner in his capacity as a Branch Manager sanctioned the said loans. No action is shown to have been taken against the said Mr. Subhash Bajaj.

Contention on behalf of the Bank that petitioner being the Branch Manager should have personally conducted the spot verification before sanctioning the loans is misconceived and unacceptable for the reason that firstly there is no such rule, which mandates the Branch Manager to conduct such spot verification in addition to and despite verification of documents by the Advocate and other officials of the Bank. Secondly, once a policy has been put in place by the Bank, it cannot seek to wriggle out of the provisions of Rule 4.2.4 of the policy, which has not been withdrawn. It is also not disputed that the petitioner had himself written to the Deputy Commissioner about the status and veracity of the said loan documents. Reference to FIR No. 163/2009 dated 09.03.2009 in connection with the account of Mukhtiar Singh and others is not relevant as it is not denied by learned counsel for the respondent that Mukhtiar Singh in the said FIR is different from the persons involved in the present case. Petitioner was called in the said case to record his statement, which he dutifully did, thus, it can possibly have no bearing on the present matter.

In respect to the concealment of quick mortality cases, disciplinary authority has itself observed that out of three cases in question, the entire amount in case of one Panja Singh stands recovered though amount seems to be unrecoverable in the other two cases. It on this count that punishment has been imposed while observing as under:-

> " After looking into the facts/circumstances of the case, the Article-I stands proved to the extent that the charged officer did not ensure proper pre-sanction in sanctioning KCC limits in contravention of prescribed guidelines of the bank on the basis of fake and fabricated land revenue record thereby putting the bank's funds to jeopardy which are proving difficult of recovery and Article -III also stands proved to this extent that he concealed the facts of quick mortality cases, during the course of enquiry/dissent note and keeping in view of past blemished service record. I hold Sh.S.K.Kapoor guilty of misconduct of proven Articles of charges."

In this respect Regulation 9.4 of the policy specifically provides as under:-

> IDENTIFICATION OF QUICK MORTALITY ACCOUNT
>
> The loan accounts where 'mortality' takes place within one year of sanction/take over/disbursement whichever is

later be treated as Quick Mortality Cases.

In the above perspective, while reporting of accounts as Quick Mortality case an administrative view be taken if 'mortality' has taken place within one year of sanction/take over/disbursement. An account may not be classified as Quick Mortality cases merely on the ground that interest/installment could not be deposited. Controlling office should get satisfied with regard to 'Mortality' of the account, keeping in view the position of available securities, level of activity prospects of regularisation.

Perusal of the detail of loans disbursed reveals that when the petitioner was transferred from the Branch at Tibbi Khurd on 17.06.2009, period of one year had not elapsed. Learned counsel for the respondents is unable to point out any evidence that the security was missing or the loan was reckless and is also unable to point out any rule, provision or guideline which envisages a loan account to be declared a quick mortality case even in a situation when the due instalment has not been deposited within a period of one year. It is specifically observed in report of the inquiry officer that all accounts mentioned are either *government sponsored* and all but one are below ₹1,00,000/-, therefore, it cannot be treated to be a quick mortality case merely on the basis of non-payment of interest and instalments as securities were available with the Bank even after the petitioner's transfer. Dissent note by the disciplinary authority does not point out or delineate anything which would substantiate or sustain such a dissent.

Neither the appellate authority nor reviewing authority considered, much less dealt with the contentions raised by the petitioner. It has simply been observed that it was the petitioner's primary responsibility to verify or get verified the revenue record as part of pre-sanction appraisal while admittedly there was no charge of conspiracy against the petitioner. It is not denied that documents in question were verified by the counsel on the Bank's panel and by another officer of the Bank itself before sanction was afforded. As noted earlier, there is no rule or regulation obliging the petitioner in his capacity as a Branch Manager to have conducted a spot verification subsequent to appraisal and verification of the documents by the counsel and another official of the Bank. Similarly, charge of not reporting of quick mortality case is sought to be proved on the ground that recoveries have not been made till the passing of the impugned orders. Reporting of such a case has to be considered on the relevant date. It is not denied that at the time of his transfer in the year 2009, a period of one year had not elapsed since the sanction of the loans. Learned counsel for the respondents is unable to point out any infirmity in the finding of the inquiry officer in this regard, to the effect that the accounts in question cannot be treated to be quick mortality cases merely on the basis of non-payment of interest and instalments, as the securities were available with the Bank even after the petitioner's transfer.

Furthermore, there being no charge of past service record of the petitioner being blemished, the disciplinary authority clearly erred in referring to the same while passing the impugned order. Petitioner was denied an opportunity of showing that his past service record was not such which may invite major penalty of compulsory retirement. It has been held by the Hon'ble Supreme Court in ***Mohd. Yunus Khan versus State of U.P. and others 2010 (10) SCC 539*** that if a disciplinary authority wishes to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment. Learned counsel for the respondent is also unable to refute the petitioner's assertion that no other punishment except a censure and stoppage of one increment have been imposed upon him during his entire career in the bank before the passing of the impugned order dated 20.04.2012 on the eve of the petitioner's retirement on 30.04.2012.

Thus, the impugned orders are clearly unsustainable in view of the peculiar facts and circumstances of the case as discussed above. The writ petition is allowed and the impugned order dated 20.04.2012 (Annexure P-13) imposing major penalty of compulsory retirement, as well as appellate and revisional orders dated 10.10.2012 (Annexure P-15) and 31.12.2012 (Annexure P-18) respectively, are set aside.

(Lisa Gill)
March 04, 2016 **Judge**
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