

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2163 of 2004

T.S.Ananthanarayanan

.. Petitioner

Vs

1.The Managing Director,
State Bank of India,
Corporate Centre,
Madame Cama Road,
Mumbai-400 021.

2.The Disciplinary Authority and
Deputy General Manager,
State Bank of India, Zonal Office,
Coimbatore District.

3.The Appointing Authority &
General Manager (D & PB),
State Bank of India,
Local Head Office
P.B.No.737, Aparna Complex,
16, College Lane,
Chennai-600 006.

4.The Appellate Authority and
Chief General Manager,
State Bank of India,
Local Head Office,
P.B.No.737, Aparna Complex,
16, College Lane,
Chennai-600 006.

5.The Review Committee,
Disciplinary Proceedings Department,
State Bank of India,
Corporate Centre,
Post Box No.12,
Mumbai-400 021.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the third respondent dated 23.11.2001 conveyed by the Deputy General Manager, Zonal Office, Coimbatore, vide his letter No.VIG/CON/233 dated 26.11.2001, the order of the fourth respondent dated 04.10.2002 under cover of his letter A and R/40 dated 10.10.2002 and the order of the fifth respondent dated 21.03.2003 under cover of the letter bearing No.A and R/CHE/208 of the Deputy General Manager (Appeals and Review) dated 22.03.2003 and quash the same and directing the third respondent to reinstate the petitioner with all attendant benefits.

For Petitioner : Mrs.Rita Chandrasekar for
M/s.Aiyar & Dolia

For Respondents : Mr.K.Sankaran

ORDER

The petitioner was employed in the first respondent Bank as Assistant Manager (Advances). He was issued with a charge memo on 31.07.2000 levelling 11 charges against him on the allegation that he has committed various irregularities / lapses while serving in the said post. Most of the charges are demand and acceptance of bribe amounts from the borrowers in order to disburse the loan amounts in favour of the borrowers. An enquiry officer was appointed to enquire into the charges made against the petitioner and the enquiry officer submitted his report on 31.03.2001 holding that out of 11 charges, 7 charges were proved, 3 charges were partly proved and one charge not proved. After conducting full-fledged enquiry, the Department had marked 33 documents and 3 witnesses were examined. Ultimately, the original authority passed an order of dismissal under Rule 67(i) of the State Bank of India Officers Service Rules. Challenging the same, the petitioner preferred an appeal before the fourth respondent. After hearing the petitioner, the fourth respondent passed an order on 04.10.2002 confirming the order of dismissal, against which a review was filed before the fifth respondent and the fifth respondent confirmed the order passed by the original authority, against which the present writ petition is filed.

2.The learned counsel for the petitioner submitted that the authority relied very much on inadmissible documents and the conclusion arrived at by the authority is without corroborating the evidence properly. The learned counsel for the petitioner submitted that it was alleged that the petitioner had accepted / demanded a sum of Rs.13,500/- from the borrowers as under:

	A/c No. SUME	<i>Demanded & Accepted Rs.</i>	<i>Demanded Rs.</i>
Smt.E.Vijayalakshmi	71/94	3,100/-	-
Smt.S.Lakshmi	70/94	2,100/-	-
Shri.P.Mani	74/95	2,000/-	-
Shri.K.Thangaraj	75/95	100/-	-
Smt.G.Mallika	76/95	-	3,100/-
Selvi.R.Bagyalakshmi		-	3,100/-
		7,300/-	6,200/-

3.The learned counsel for the petitioner further submitted that the respondent bank ought to have seen that all the transactions allegedly relate to the year 1995 and after a delay of five years, the petitioner was charge sheeted, ie., on 31.07.2000. Such a delay, which is unexplained at any point of time during the proceedings has prejudiced the petitioner especially as the records are not available as PW3 himself admits and no party witness could speak of them. It is also submitted that none of the complainants who were the alleged borrowers were examined in the enquiry. Besides, there was no evidence in the enquiry to show that the complainants were compensated or paid back with whatever monies allegedly given by them to the petitioner. Hence there was no legal evidence except uncorroborated deposition of PW1, an interested witness, in support of which interrogation purportedly conducted by Mr.T.G.Perumal was relied upon.

4.Hence the impugned order has to be set aside, according to the learned counsel for the petitioner on the ground that it is violative of the principles of natural justice. She further submitted that the manner in which the said conclusion has been arrived at, creates many doubts and that the charges held against the petitioner are without any basis and hence the same are unsustainable.

5.Per contra, the learned counsel for the respondents has submitted that in the brief submitted by the presenting officer, it is mentioned that from Ex.P14-extracts from inspection register, there is not even a single recording in respect of inspection carried out by the petitioner. Further in Ex.P15 inspection register, there is no mention with regard to post-sanction inspection carried out by the petitioner individually or along with Branch Manager. It is also pointed out that the defence had not produced any record of inspection carried out after February 1995 till the date of relieving of the petitioner from the branch on 26.06.1995. It is observed from Exs.P7 and P5 that the branch had sanctioned at least 29 SUME loans from December 1993 to end of March 1995. In respect of Charge No.2,

it is found in Ex.P16 that the Loan Applications Received and Disposed Register does not carry details of SUME loans. Regarding Charge No.3, Ex.P32 points out that no control returns on SUME loans were made by the petitioner. The next charge is relating to the failure to ensure that correct addresses of the borrowers were recorded in the Branch records. It is pointed out that in the loan granted to Sumathy SUME 56/94 the address recorded as 23, Union Mills Road, Tiruppur is incorrect in as much as the borrower never lived in the said address. The another borrower Chitra was staying in the address mentioned for Sumathy. It is also pointed out that in the loan granted to Nachammal, the name has been changed by the petitioner as Muthammal as evidenced by the credit challans dated 26.03.1995, 26.06.1995 and 28.11.1994 which are in the name of Nachammal. All these challans were admittedly prepared by the petitioner and posted in the MTL Register. In respect of the charge relating to the failure to affix the composite loan agreement of Shri K.Thangaraj A/c.No.7595 dated 04.03.1995, Ex.P31 was produced to prove the imputation and in Ex.P13-extract of stamp account ledger, there is no credit for Rs.10. With regard to the charge relating to the demanding and accepting of money from the borrowers, Ex.P30 the interrogation statement of the petitioner, shows that the petitioner had admitted the demand and acceptance. It is relevant to point out that during that period, the petitioner was constructing his house. The statements given by the borrower E.Vijayalakshmi on 08.03.1995 and 14.03.1995 marked as Ex.P33 shows that the petitioner demanded Rs.3,000/- on 07.01.1995 and again a sum of Rs.110/- on 08.01.1995 and that she was granted loan of Rs.20000/- on 09.01.1995. In the statement dated 14.03.1995, the borrower had stated that the petitioner returned Rs.3000/- in the presence of the Branch Manager. Another borrower Bagyalakshmi confirmed the demand of Rs.3,110/- for entertaining loan to her. The interrogation report Ex.P28 proves the corrupt practice of the petitioner. 11 charges were framed against the petitioner and after enquiry, 7 charges were proved, 3 charges were partly proved and one charge not proved. The learned counsel for the respondents relied on the complaints made by the borrowers and in one of the complaints, it has been categorically stated that the petitioner had demanded Rs.3,000/- for disbursing the loan amount in favour of the complainant. That apart, a sum of Rs.110/- was received by the petitioner for processing the application. The other complaints are also similar in nature. Thus, the learned counsel for the respondents prayed for dismissing this writ petition.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The main contention raised by the learned counsel for the petitioner is that none of the complainants were produced before the enquiry officer for cross-examination. However, all the materials

were marked as documents in the enquiry and the same was not rebutted by the petitioner in order to disprove the Department's evidence. Particularly, the petitioner had accepted the charge regarding demanding and acceptance of money from the borrowers and the same has been clearly established through Ex.P30.

8. In the decision of the Hon'ble Supreme Court in Indian Council of Medical Research v. Dr. Anil Kumar Ghosh, reported in (1998) 7 SCC 97, it has been held that omission to mark the exhibits during the course of enquiry did not vitiate the enquiry. The relevant portion of the said order is extracted hereunder:

"11. The second objection is equally meaningless. The documents were taken on file during the course of the enquiry and the first respondent perused everyone of them before the conclusion of the enquiry. Copies were also furnished to him and as requested by him he was given seven days' time for presenting his defence after the receipt of copies of documents though under the rules only three days' time was permitted. Instead of giving numbers to the exhibits as and when the documents were taken on file, the Enquiry officer would appear to have given serial numbers to the exhibits at the conclusion of the enquiry on 21.7.77. The adoption of such procedure by the Enquiry officer was not violative of the principles of natural justice."

9. While exercising jurisdiction under Article 226 of the Constitution of India, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest justice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. This principle has been observed by the Hon'ble Supreme Court in Lalit Popli v. Canara Bank and others, reported in (2003) 3 SCC 583. The relevant portion of the said decision is extracted hereunder:

"17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

18. In B.C. Chaturvedi v. Union of India and Ors. (1995 (6) SCC 749) the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

19.As observed in R.S.Saini v. State of Punjab and Ors.(1999 (8) SCC 90) in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows:

"16.Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17.A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."

20.As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action.

10.The initiation of departmental proceeding is only on the basis of preponderance of probabilities. It is for the petitioner to disprove the charges. It is seen that the petitioner had not denied the charges. The points raised by the learned counsel for the petitioner are only based on technicalities. In view of the principles enunciated in the above judgments of the Hon'ble Supreme Court and also the discussions made supra, the impugned order does not require any interference by this Court. Accordingly, the writ petition is dismissed. No costs.

Sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

- 1.The Managing Director,
State Bank of India,
Corporate Centre,
Madame Cama Road,
Mumbai-400 021.
- 2.The Disciplinary Authority and
Deputy General Manager,
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Chennai-600 006.
- 5.The Review Committee,
Disciplinary Proceedings Department,
State Bank of India,
Corporate Centre,
Post Box No.12,
Mumbai-400 021.

+1 CC to Mr.K.SANKARAN, Advocate Sr.No.65012

+1 CC to Mr.AIYAR AND DOLIA, Advocate Sr.No.65557

MP (CO)
TA-11/10/2017

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