IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 28-02-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 18013 of 2013

K.B. Muraleedharan .. Petitioner

Versus

1. The Assistant General Manager
Canara Bank
Circle Office, HRM Section
No.196, T.V. Swamy Road
R.S. Puram (W)
Coimbatore - 640 002

2. The General Manager
Disciplinary Authority
Canara Bank, Head Office
Industrial Relation Section
Personal Wing, 112, J.C. Road
Bangalore - 2 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records culminating the impugned order of the disciplinary authority/second respndent dated 20.08.2009 in Proceedings No.IRS/DP/LC/CBE/2473/09 and quash the Findings dated 04.03.2009 submitted by the Inquiry Authority and the order dated 20.08.2009 passed by the Disciplinary Authority and consequently direct the second respondent to order reinstatement of the petitioner with all attendant

For Petitioner : Mr. K. Sridhar
For Respondents : Mr. P. Amirtraj for RR1 & RR2
M/s. Sree and Associates

ORDER

The petitioner calls in question the order dated 20.08.2009 passed by the second respondent in so far as it relates to the findings dated 04.03.2009 submitted by the Inquiry Authority and consequently direct the second respondent to order reinstatement of the petitioner with all attendant benefits.

2. The petitioner joined as a Clerk in the respondent bank on 16.06.1983 at Kasaragod Branch. Subsequently, on and from 01.04.1996, he was promoted as Officer. On 01.04.2004, he was promoted as Manager in Scale II and transferred and posted at Lucknow Branch. On 21.07.2007, the petitioner was promoted as Manager and transferred to R.S. Puram Branch, Coimbatore. While working as such, the second respondent issued a charge sheet dated 17.09.2008 to the petitioner for having allegedly committed certain irregularities in discharge of his duties in operating his Overdraft Account maintained at Nirpura Branch and also for demanding and accepting illegal gratification from borrowers for sanction of loans. On the basis of such allegations, pending enquiry, the petitioner was placed under suspension by an order dated 13.03.2009. An inquiry officer was appointed to conduct an enquiry, who, after completing the inquiry, submitted a report holding that the charges levelled against the petitioner were partly proved. The second respondent, who is the disciplinary authority, accepted the report of the inquiry officer imposed the punishm ent of removal from service on 20.08.2009 in terms of Regulation 4 (1) of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976.

3. Aggrieved by the order dated 20.08.2009, the petitioner filed an appeal in terms of Regulation 17 of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 before the Appellate Authority, who, on consideration of the appeal preferred by the petitioner, modified the punishment of removal from service into one of 'compulsory retirement' in terms of Regulation 4 (h) of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976. Contending that the punishment of compulsory retirement is harsh inasmuch as it was passed at the age of 46 years, the petitioner preferrred a Review Petition before the Reviewing Authority and claimed for reinstatement in service. However, the reviewing authority rejected the Review Application on 02.12.2010. Thereafter, on 18.08.2010, the petitioner has submitted a representation to the Chairman and Managing Director of the respondent bank to re-consider the entire matter and to reinstate him in service, but such representation was turned down. Thereafter, on 01.08.2012, the petitioner preferred a Mercy Petition to the Chairman and Managing Director of the Bank, but the mercy petition was rejected on 03.10.2012.

4. The learned counsel for the petitioner would contend that the inquirying authority came to an erroneous conclusion with regard to linking of cash transaction in his account on the

basis of rumor. The charge in so far as it relates to demand and acceptance of illegal gratification has not been proved in a manner known to law. The complainants, who have given the complaint against the petitioner, have not been examined before the inquiring authority and therefore, the entire inquiry proceedings are vitiated. The inquiry officer has merely accepted the statement of investigating officer and the Branch Manager without examining the complainants who have given the complaints especially when the complainants have given statement disowning the complaints given by them. Further, out of ten complainants, three complainants have appeared during the inquiry and stated that they have not paid any money to the petitioner and inspite of such statement, the inquirying authority has given a report as if the charges against the petitioner are partially proved. The disciplinary authority also, without considering the defence of the petitioner has imposed the punishment of removal from service, of course, it was modified by the appellate authority in the appeal into one of compulsory retirement. According to the learned counsel for the petitioner, there are absolutely no evidence made available against the petitioner to prove the charges levelled against him. The complainants were not examined and it deprived the petitioner an opportunity to cross-examine them. The inquirying authority accepted the statement of borrowers without subjecting them to enquiry and largely based his conclusion on the statement given by the investigating officer who obtained the statement of the borrowers. The manner in which the inquiry was conducted is contrary to the well established principles of natural justice and therefore, the punishment imposed on the petitioner is without any basis.

5. Above all, the learned counsel for the petitioner would vehemently contend that the petitioner has filed a Mercy Petition before the Chairman and Managing Director of the Bank seeking mercy. The Mercy Petition was summarily rejected on the ground that the petitioner has exhausted the remedy of appeal and review besides that there is no provision for entertaining a Mercy Petition. The learned counsel for the petitioner would only contend that the Chairman and Managing Director of the Bank ought to have atleast considered the Mercy Petition sympathetically instead of rejecting it on the ground that there is no provision to file a Mercy Petition. The mercy petition was preferred on the hope that the authority will consider the claim of the petitioner especially when he was deprived of his employment at the age of 46 years. It is also brought to the notice of this Court that the petitioner was given Certificate of Merit and conferred with 'Milestone Award' by the Bank for having successfully completed 25 years of service in the bank. The said aspect was also not considered by the authority while rejecting the Mercy Petition.

6. It is also submitted by the learned counsel for the petitioner that as per the Regulations of the Bank namely Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, the Assistant General Manager or the Deputy General Manager is the disciplinary authority and the Deputy General Manager or General Manager is the Reviewing Authority. In the present case, the second respondent, who is the General Manager and designated as Reviewing Authority, has taken the role of the disciplinary authority and has passed the order of removal. Further, the Executive Director of the Bank has modified the punishment while sitting as an appellate Authority. Therefore, the impugned order passed by the disciplinary authority is contrary to the Regulations of the Bank.

7. On the other hand, the learned standing counsel appearing for the respondents, relying on the counter affidavit of the respondents would contend that during regular inspection, the inspecting officer observed certain irregularities relating to disproportionate cash transaction amounting to Rs.2,12,870/- in the accounts of the petitioner maintained at the branch. The subsequent investigations revealed that the petitioner did not withdraw any amount from his salary accounts for about 17 months. Further, there were complaints from the borrower that the petitioner demanded and accepted illegal gratification from the borrowers of the bank for sanctioning loans. On the basis of observations made by the investigating officer and on the basis of statements made by borrowers, a charge sheet dated 17.09.2008 was issued to the petitioner for indulging in disproportionate cash transaction beyond the known source of income and for not reporting cash transaction exceeding Rs.25,000/- in accordance with the Regulations of the Bank. Therefore, an inquiry was ordered to be conducted in which the petitioner participated and he was also assisted by a defence assistance of his choice. A detailed inquiry was conducted in accordance with principles of natural justice in which the petitioner was given due opportunity to defend his case. During the course of inquiry, 65 documents were marked by the bank and 19 documents marked by the petitioner besides 5 witnesses were examined. As regards the examination of the complainants, the investigation officer has recorded the statement of complainants in the presence of another officer and they were filed as document in the inquiry. The findings rendered by the inquiring authority was accepted by the disciplinary authority, who imposed the punishment of removal from service and such punishment was modified into one of compulsory retirement by the appellate authority by taking a lenient view.

8. The learned standing counsel for the respondents mainly contend that during the course of inquiry, the petitioner

indulged in very same irregularity in sanctioning loan for which charge sheets dated 13.06.2009 and 19.08.2009 were issued to him. Therefore, according to the learned standing counsel for the respondents, the charge for which the petitioner was ordered to be retired compulsorily is not an isolated charge. As the subsequent charge sheets were issued during the pendency of the earlier charge for which the petitioner was proceeded with, no action was taken against the petitioner on the basis of the subsequent charge sheets. Therefore, the learned standing counsel for the respondents justified the imposition of punishment on the petitioner. Above all, it is submitted that on the basis of the order of compulsory retirement, the petitioner was sanctioned pension and he is receiving Rs.13,412/- as pension from September 2013. The petitioner also received commutation of pension, gratuity and employees contribution to Provident Fund. It is stated that the inquiry was conducted by the respondents in which the petitioner fully participated. During the course of inquiry, documents were marked and witnesses were examined. The petitioner also availed all the remedy such as appeal and review which were duly considered by the officials of the respondents Bank. In any event, according to the learned standing counsel for the respondents, the order of compulsory retirement is in consonance with the nature of delinquency committed by the petitioner and it calls for no interference by this Court.

9. I heard the leanred counsel for both sides and perused the materials placed on record. The whole case against the petitioner rests on the fact that the petitioner has not withdrawn money from his salary account even for his day-to-day expenses. According to the learned counsel for the petitioner, such an allegation cannot form the basis for passing the order of punishment against the petitioner especially when there is no sufficient proof for the same. The second limb of the argument is that the entire orders of punishment are vitiated inasmuch as they are not passed by the competent authority as per the Regulations of the Bank. Thirdly, the petitioner was a recepient of several certificates of merit and in such event, the Mercy Petition filed by the petitioner could have been considered by the authority while rejecting the Mercy Petition on 03.10.2012.

10. On careful consideration of the submission of the counsel for both sides and on perusal of the material records made available, it is clear that the respondents have appointed an inquiry officer, who has conducted an inquiry against the petitioner. The petitioner subjected himself in the inquiry proceedings and he was also assisted by a defence assistance during the course of such inquiry. In the inquiry, the petitioner has also marked 5 documents in support of his defence. The petitioner was also allowed to cross-examine the

witnesses during the course of such inquiry. Therefore, I am satisfied that the inquiry was conducted in a manner known to law and it cannot be said that the inquiry was conducted in violation of principles of natural justice.

11. The disciplinary authority on receipt of the report of the inquiry authority, furnished a copy of the report to the petitioner and also received an explanation from the petitioner. The disciplinary authority considered the fact that the petitioner has not withdrawn his salary for several months but still maintained his household expenses. In response to this charge, the petitioner has stated he was assisted by his brother in the day to day expenses who is also working in a Bank. The disciplinary authority, on consideration of the material evidence, accepted the findings of the inquiry authority, has passed an order of removal from service.

12. On appeal, the appellate authority has given an opportunity of hearing. The petitioner has contended the non-examination of the complainants who have given complaints would render the inquiry vitiated. The appellate authority pointed out that out of 10 complainants, three have turned down for inquirying and the statements obtained by the investigating officer in the presence of another officer was duly exhibited as document in the inquiry. The appellate authority also pointed out that even though the petitioner claimed that he was assisted by his brother for his day to day house hold expenses, the petitioner, except producing DW6 Manikandan has not produced any other witness or document. The appellate authority has also taken note of the fact that the petitioner did not withdraw the salary for 17 months. However, the appellate authority, by taking a lenient view, modified the order of removal passed by the disciplinary authority into one of compulsory retirement on 25.05.2010. Thereafter, on the basis of the above order, the petitioner was sanctioned and paid pension and all other monetary benefits arising therefrom.

13. As regards the competence of the disciplinary authority and or appellate authority to pass the orders of punishment, as per the Regulations of the bank, for scale I to III officers, the disciplinary authority is the Assistant General Manager or in his absence Deputy General Manager. The appellate authority is the Deputy General Manager or in his absence the General Manager. The reviewing authority is the General Manager or the Executive Director. According to the petitioner, in this case, the General Manager of the Bank has taken the role of the disciplinary authority to impose the punishment of removal from service which is contrary to the Regulation. The General Manager, as per the Regulation of the Bank is designated as appellate authority, but he has passed the order of removal in

his capacity as disciplinary authority and thereby the petitioner was deprived of an appeal remedy before the competent authority. Further, the Reviewing Authority has taken the role of Appellate Authority and therefore also, the orders of punishment passed against the petitioner are legally not sustainable and they are contrary to the Regulations of the Bank.

14. It is true that as per the Regulations of the bank, the disciplinary authority is the Assistant General Manager or the Deputy General Manager, but the General Manager of the Bank has taken the role of disciplinary authority and imposed the removal of punishment. It is further seen that in the order of the appellate authority modifying the punishment of removal from service in to compulsory retirement, it is clearly stated that the petitioner was given an opportunity of hearing. The petitioner appeared before the Executive Director of the Bank, who has passed the order in the appeal preferred by the petitioner. Such an order was passed after taking note of all the attendant circumstances, including the deposition of the petitioner and other witnesses during the course of inquiry. After considering all the material evidence, the appellate authority has only taken a lenient view and passed the order of compulsory retirement from service. The petitioner may not have any qualm or grievance over the modified order passed by the appellate authority (though he is the reviewing authority as per the Regulations). In any event, at this stage, this Court is not inclined to set aside the orders of punishment imposed against the petitioner by the disciplinary authority or the appellate authority in contravention of the Regulations of the Bank. This is more so that as against the order of the appellate authority, the petitioner has also unsuccessfully preferred a review petition and ultimately a mercy petition.

15. It is seen from the records that before the Reviewing Authority, the petiitoner has pleaded to reinstate him in service on the ground that the punishment imposed on him causes a stigma in his career and he could not get any other employment especially when he was imposed the punishment at the age of 46 years. But the reviewing authority summarily rejected such a plea without assigning any reason. In other words, the order of the reviewing authority is a cryptic order and it lacks reasons. The order passed by the Chairman and Managing Director in the review petition has been communicated to the petitioner only by the General Manager of the Bank. Notwithstanding the same, the petitioner filed a Mercy Petition to the Chairman and Managing Director belatedly after 2 1/2 years with the hope that his claim will be considered favourably with compassion. In the mercy petition, it was pleaded by the petitioner that he has sincerely served the respondents bank for 25 years and was a

recepient of several certificates of merit. It was also pleaded that the petitioner's daughter is styding Class XI and he finds it very difficult to meet her educational expenses. The Mercy Petition was summarily rejected by the Reviewing Authority on the ground that there is no provision to submit a Mercy Petition and therefore it cannot be entertained.

16. To summarise, the petitioner participated in the inquiry in which he was given adequate opportunity to defend himself in consonance with the principles of natural justice. The findings of the inquiry officer have been accepted by the disciplinary authority to impose the punishment of removal from service. Such order of removal from service was modified into one of compulsory retirement by the appellate authority by taking a lenient view. Pursuant to the same, the petitioner was sanctioned and disbursed pension and all other monetary benefits. Further, the petitioner filed a Review Application to review the order of punishment but it was rejected. Thereafter, as a last resort, the petitioner preferred a Mercy Petition with an unexplained delay of 2 1/2 years. The Mercy Petition was filed on the ground that the petitioner has rendered meritorious service and the punishment imposed on him operates as a social stigma. The mercy Petition was summarily rejected without assigning any reason. This according to the learned counsel for the petitioner is in violation of principles of natural justice as the Mercy Petition has been summarily rejected without assigning any valid reasons. I find considerable force in such submission of the learned counsel for the petitioner. The Mercy Petition is a last resort availed by the petitioner. It is an internal administrative discretion to be exercised by the respondents to consider the plight of their own employee with compassion and sympathy. The mercy petition was filed not as a matter of right but to invoke the sympathy of the authority who is competent to deal with the same. Merely because there is no provision for entertaining a Mercy Petition, the authority ought not to have summarily rejected the same. Therefore, only on this ground, this Court is inclined to interfere. In ohter words, this Court is not substituting it's opinion as regards the merits of the claim made by the petitioner in the Mercy Petition. It is also made clear that the orders passed by the disciplinary authority, appellate authority and the Reviewing Authority does not call for any interference by this Court. This Court is only of the view that the authority who is competent to entertain the Mercy Petition of the petitioner can entertain it and consider the claim of the petitioner with sympathy and compassion taking into account the fact that the petitioner was imposed the punishment at the age of 46 years and other facts pleaded by him.

17. In the result, the writ petition is partly allowed. The

order dated 20.08.2009 of the disciplinary authority, the order dated 25.05.2010 of the appellate authority and the order dated 01.06.2012 of the reviewing authority are confirmed. The order dated 03.10.2012 rejecting the Mercy Petition of the petitioner alone is set aside with a direction to the authority, who is competent to deal with such Mercy Petition, to consider the Mercy Petition of the petitioner and to pass appropriate orders on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant General Manager
   Canara Bank
   Circle Office, HRM Section
   No.196, T.V. Swamy Road
   R.S. Puram (W)
   Coimbatore - 640 002

2. The General Manager
   Disciplinary Authority
   Canara Bank, Head Office
   Industrial Relation Section
   Personal Wing, 112, J.C. Road
   Bangalore - 2

+1cc to Mr.S.R. Sumathy, Advocate, S.R.No.13437
+1cc to Mr.Sree and Associates, Advocate, S.R.No.13226
+1cc to the Government Pleader, S.R.No.

lrs(CO)
md(12/04/2017)