



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2017

DELIVERED ON : 07.07.2017

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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

W.P(MD)No.3674 of 2011

and

M.P(MD)No.2 of 2013

S.Ganapathy

.. Petitioner

Vs.

- 1.The Chairman cum Managing Director,
Bank of Baroda, Baroda Corporate Centre,
No.C-26, G-Block, Bandra-Kurla Complex,
Mumbai - 400 051.
- 2.The Executive Director & Appellate Authority,
Bank of Baroda, No.C-26, G-Block,
Bandra-Kurla Complex, Mumbai - 400 051.
- 3.The General manager (SZ) & Disciplinary Authority,
Bank of Baroda, Zonal Office,
No.90, C.P.Ramasamy Road,
Alwarpet, Chennai - 600 018.
- 4.The Assistant General Manager/Regional Head,
Bank of Baroda, Regional Office (Tamil Nadu),
82, Bank Road, 3rd Floor, Coimbatore - 641 018.
- 5.The Deputy Regional Manager/Enquiry Officer,
Bank of Baroda, Regional Office (Tamil Nadu),
82, Bank Road, 3rd Floor, Coimbatore - 641 018. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus calling for the records relating to the order dated 25.08.2010 passed by the Executive Director and Appellate Authority, Bank of Baroda, Corporate Office, Mumbai, the second respondent herein confirming the SZ:VIG:T185:37:256 order dated 15.04.2010 passed by the General Manager (SZ) and Disciplinary Authority, Bank of Baroda, Zonal Office, Chennai and quash the same and consequently direct the respondents to restore the services of the petitioner with all attendant benefits.

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For Petitioner : Mr.A.V.Arun
For Respondents : Mr.Pala Ramasamy

**ORDER**

Challenge in this writ petition is to the order of punishment imposed in the disciplinary proceedings launched against the petitioner by the respondent bank.

2.(i) The petitioner joined the respondent bank as Scale I Agricultural Officer on 01.07.1978 and was promoted as a Scale II officer on 18.08.1990. He became a Scale III Officer/Senior Manager on 01.05.1995. On 14.08.2004, the petitioner was posted as a Senior Branch Manager at Tiruchirappalli Branch of the respondent bank. He worked in such capacity till he was transferred to Krishnagiri as Senior Branch Manager on 15.05.2007. On 12.11.2007, the petitioner was served with a show cause notice, calling for a written explanation making as many as eighteen charges against the petitioner.

(ii) The sum and substance of the charges is that the petitioner while granting housing loans to employees of Public Sector Undertakings, like Railways, Bharat Heavy Electricals Limited, Ordnance Factory and Government Teachers, has not devoted proper care and as a result of which, many of the housing loans had become non-performing assets. It was also found that the petitioner has not obtained proper salary slips from those employees and in three accounts, the borrowers had defrauded the bank by showing buildings in a sites other than the mortgaged property. In so far as, those three accounts are concerned, criminal proceedings were launched against Mr.G.Elangovan, Senior Manager and Mr.M.Vaikunthamurthy, Manager (Credit). The petitioner submitted his reply to the show cause notice on 13.12.2007 and the Disciplinary Authority placed the petitioner under suspension with effect from 16.07.2008. An Articles of charge was issued along with the statement of allegations on 02.03.2009. Then, the Deputy Regional Manager was appointed as an Enquiry Officer.

(iii) On completion of the enquiry, the Enquiry Officer submitted his Report to the Disciplinary Authority on 05.10.2009. Some of the charges were held to be not proved, while the petitioner was found to be guilty of certain charges. Based on the Enquiry Report, the Disciplinary Authority called for a further explanation from the petitioner and the same was submitted by the petitioner on 13.11.2009. By the order, dated 15.04.2010, the Disciplinary Authority, namely, the third respondent, imposed a punishment of reduction in rank by two stages, thereby the petitioner was reverted from Scale III to Scale I and his pay was also fixed at Rs.10,000/-. The said order also states that the suspension period is treated as period not spent on duty. On 15.04.2010, the suspension was also revoked. The petitioner was asked to attend duty immediately in the junior level. The petitioner preferred an appeal against the said punishment to the Executive Director, namely, the Appellate Authority. The Appellate Authority has confirmed the order of the Disciplinary Authority, on 25.08.2010. The petitioner also preferred a review to the Chairman cum Managing Director of the respondent bank, which also came to be dismissed by the respondent bank, by order dated 08.04.2011. Aggrieved by the same, the petitioner has



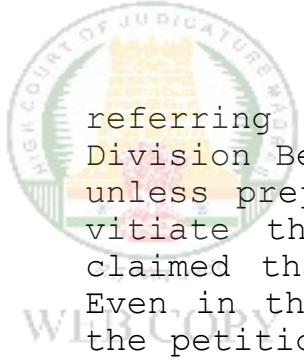
come forward with this writ petition.

3.The main grievance of the petitioner in the writ petition is that the Rules for conduct of the disciplinary enquiry framed by the respondent bank contemplates examination of the delinquent officer by the Enquiry Officer, if the delinquent does not examine himself as a witness. A specific reference is made to Rule 6(17) of the Bank of Baroda Officer Employees (Conduct) Rules, 1976. Apart from the above, the petitioner has also contended that the quantum of punishment imposed on him, is highly unreasonable and the co-delinquents, namely, Mr.G.Elangovan, Senior Manager (Credit) and Mr.M.Vaikunthamurthy, Manager (Credit) have been awarded punishments of stoppage of increment alone, whereas the petitioner has been awarded a major penalty of reduction in rank and he has been reverted to the entry level.

4.The respondent bank had filed a counter, contending that non-examination of the petitioner as per Rule 6(17) cannot be a ground for setting aside the order of punishment, unless it has resulted in prejudice to the petitioner. It is also further contended by the Management that the petitioner being a Senior Manager, handling public money, is more responsible and the quantum of punishment is in tune with the position of the petitioner and his responsibilities as a Senior Manager in charge of the Branch. The respondent bank would further contend that as a Senior Manager, the petitioner was required to maintain high standard of prudence and adhere to the guidelines of the bank while processing, sanctioning and disbursing of loans. According to the respondent bank, the punishment imposed is in tune with the responsibilities of the petitioner and the petitioner cannot seek equality in the matter of punishment. The respondent bank has also claimed that it has incurred a loss of Rs.37,99,967/- due to the improper verification of the credential of the borrowers by the petitioner.

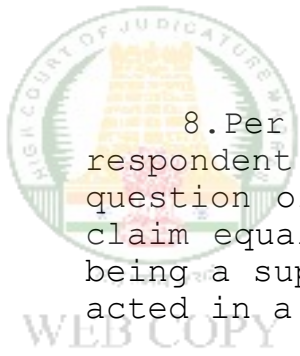
5.I have heard Mr.A.V.Arun, learned counsel for the petitioner and Mr.Pala Ramasamy, learned counsel for the respondents.

6.Mr.A.V.Arun, learned counsel for the petitioner, would contend that the non-examination of the delinquent official in terms of Rule 6(17) of the Bank of Baroda Officer Employees (Conduct) Rules, 1976, is an irregularity, which cannot be cured and therefore the entire enquiry is vitiated. Mr.A.V.Arun, learned counsel for the petitioner, would also rely upon the Judgment of the Karnataka High Court in **V.V.Kamath v. The Assistant General Manager, Bank of Baroda, Bangalore and Others** reported in [2006]6 Kar.L.J 696, wherein the learned Single Judge of the Karnataka High Court had ruled that the failure on the part of the Enquiry Officer in not confirming to the mandatory provision would result in enquiry being vitiated. But, unfortunately for the petitioner, the said Judgment of the learned Single Judge of the Karnataka High Court was overturned by the Division Bench of the Karnataka High Court in **Bank of Baroda v. V.V.Kamath [W.A.No.2244/2006]**. The Division Bench after



referring to the Rules as well as the decisions of the earlier Division Bench Judgments of the Karnataka High Court, had held that unless prejudice is shown, non-compliance with Rule 6(17) will not vitiate the proceedings of the enquiry. The petitioner has not claimed that he is in any way prejudiced by his non-examination. Even in the reply given by the petitioner to the Enquiry Officer, the petitioner has not denied the charges. He has only said that he relied upon the assessment given by his juniors, who were also charge-sheeted along with him. Even in the appeal filed by the petitioner before the second respondent, the petitioner has not specifically denied any of the charges framed against him. He would narrate his achievements as a Branch Manager and claim that he has put in more than 30 years of service with a good track record and he would contend that the charges were out of proportion to the allegations made. He would also claim that housing loans were given a thrust in the area of bank lending and he was working under tremendous pressure from the higher authorities for marketing housing loans. According to him, when lending on a mass scale is done consequent to the thrust given by the higher ups there is always a possibility of some of the accounts becoming non-performing assets and that cannot be put against him as a Branch Manager, who has taken *bona-fide* decisions. In the entire appeal, the petitioner has not contended that his non-examination under Rule 6(17) has caused any prejudice to him. The main thrust of the petitioner in the appeal itself was proportionality of the punishment and he has claimed that while his colleagues, who were also charge sheeted, had been let off with minor punishment he has been dealt with Iron hand. Therefore, I do not think that non-examination under Rule 6(17) has caused any prejudice to the petitioner and in the absence of any serious challenge to his non-examination in the appeal as well as review made by him, I do not think that the petitioner could be allowed to raise that issue in this writ petition.

7. The next contention of Mr.A.V.Arun, learned counsel for the petitioner, is regarding the proportionality of the punishment. The punishment imposed on the petitioner is one of reduction in rank by 2 stages i.e. to the entry level. The petitioner who was serving as a Scale III Officer was reverted as a Scale I Officer and his pay was fixed at Rs.10,000/-, which is the pay meant for a fresher. Mr.A.V.Arun, learned counsel for the petitioner, would vehemently contend that the punishment is disproportionate to the established delinquency on the part of the petitioner. He would draw a comparison with the other two officers, who were charged along with the petitioner, namely, Mr.G.Elangovan, Senior Manager (Credit) and Mr.M.Vaikunthamurthy, Manager (Credit), at the time, when the loans were issued by the Tiruchirappalli Branch of the respondent bank and contend that they have been let off with a very minor punishment of stoppage of increments. Drawing strength from the minor punishment which was imposed on the co-delinquents, Mr.A.V.Arun, learned counsel appearing for the petitioner, would submit that the punishment imposed on the petitioner is really harsh and out of proportion to the proved charges.

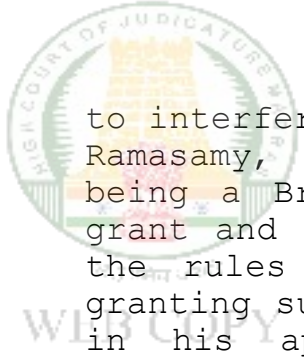


8. Per contra, Mr. Pala Ramasamy, learned counsel for the respondent bank, would contend that this Court cannot go into the question of proportionality of punishment and the petitioner cannot claim equality in the matter of punishment, because the petitioner, being a superior officer in charge of the entire branch, should have acted in a more responsible manner.

9. Mr. A.V. Arun, learned counsel for the petitioner, would rely upon the Judgment of the Hon'ble Supreme Court in **Raghubir Singh v. General Manager, Haryana Roadways, Hissar** reported in [2014]10 Supreme Court Cases 301, wherein the Hon'ble Supreme Court has held that the order of termination, even if justified, is disproportionate to the gravity of the misconduct. After reviewing the entire law relating to the proportionality of punishment, the Hon'ble Supreme Court on the facts of that case, held that the punishment of dismissal from service is really disproportionate to the proved charges. The charges leveled were that the petitioner, who was a conductor in the Corporation, was accused of misappropriation of the amounts collected for tickets and not having deposited the same with the Transport Corporation. He would also invite the attention of this Court to the Judgment in **Om Kumar and Others v. Union of India** reported in (2001)2 Supreme Court Cases, 386. The decision of the Hon'ble Supreme Court in **Om Kumar's case** was in fact referred to and followed by the Hon'ble Supreme Court in **Raghubir Singh's case** referred to supra. Mr. A.V. Arun, learned counsel for the petitioner, would also rely upon a Judgment of this Court in **N. Nadagopalan v. Secretary to Government, Personnel and Administration Reforms (Q) Department, Chennai - 9** reported in [2006]3 M.L.J. 191, wherein Hon'ble Mr. Justice N. Paul Vasanthakumar, as he then was, had set aside the punishment imposed on the ground that no action was taken against 28 other persons, who were involved in the same incident of misconduct. Invoking Article 14 of the Constitution of India, the learned counsel would also draw my attention to the Judgment of the Hon'ble Supreme Court in **Tata Engineering & Locomotive Co. Ltd. v. Jitendra Pd. Singh and Another** reported in [2001]10 Supreme Court Cases 530, wherein the Hon'ble Supreme Court held that when three employees were charged with almost identical charges and were found guilty of the same, punishment of dismissal imposed on one of them, while the two others were let off with the minor punishments of suspension, was held to be discriminatory. In **Kailash Nath Gupta v. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others** reported in (2003) 9 Supreme Court Cases 480, the power of the Court to deal with the quantum of punishment was considered by the Hon'ble Supreme Court and it was held that the punishment of dismissal from service was disproportionate to the charge of commission of procedural irregularity in advancing small loans, which became irrecoverable. The Hon'ble Supreme Court had held that proportionality of punishment has to be gone into in such case.

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10. Mr. Pala Ramasamy, learned counsel for the respondent bank, would contend that proportionality of punishment cannot be a ground

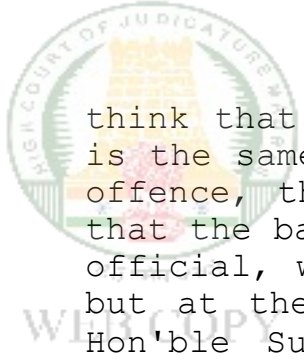


to interfere with the disciplinary proceedings. According to Mr.Pala Ramasamy, learned counsel for the respondent bank, the petitioner being a Branch Manager in a senior position having authority to grant and reject loans, was having more responsibility to see that the rules prescribed by the bank, were strictly followed while granting such loans. Pointing out the contentions of the petitioner in his appeal filed before the Appellate Authority/Executive Director, Mr.Pala Ramasamy, learned counsel for the respondent bank, would contend that the petitioner has in fact admitted that he has granted those loans without proper verification and he has claimed to have committed only procedural irregularities and therefore he should be let off with the minor punishment. This, according to the learned counsel, would amount to admission of guilt by the petitioner and therefore he cannot claim that punishment is disproportionate to the proved misconduct.

11.The fact that the other two officers were also charge-sheeted along with the petitioner and they were also let off with minor punishment, is not disputed. No doubt, it is true that the petitioner as a Branch Manager holds a more responsible position. But at the same time, the fact that the petitioner had relied upon the inputs given by the other two officers namely, Mr.G.Elangovan, Senior Manager (Credit) and Mr.M.Vaikunthamurthy, Manager (Credit) is also not in dispute.

12.Mr.Pala Ramasamy, learned counsel appearing for the respondents, has also produced the job role of the Branch Manager and job role of the Credit Officer. The job role of the Branch Manager includes due diligence in sanction, including all inspection and documentation verification before sanction of credit and due review of credit facilities extended including post sanction inspections for rectification of irregularities. This would show that the Branch Manager is responsible for processing the loans. The Credit Officer has to render assistance in pre-sanction of credit and ensure prevention of slippage and safe keeping of credit documents and assist the Manager in timely completion of all post sanction inspections, godown inspections, site inspection, stock inspection, etc. One of the charges that has been leveled against the petitioner as well as other two delinquent officers is that certain buildings shown to have been constructed on the mortgaged property, were not actually constructed on the mortgaged property. This is a flaw that had occurred during inspection. Of course, the petitioner is responsible for inspection also. But, as rightly pointed out by the petitioner, when a drive to enhance the housing loan business is taken up by the bank on a larger scale, the petitioner has to necessarily depend upon his subordinates and if they misguide him, the petitioner stands a chance of being punished for negligence of another person.

13.Though, Mr.Pala Ramasamy, learned counsel appearing for the respondents, would vehemently contend that it is not for this Court to go into the question of proportionality of punishment, I do not



think that there is an absolute bar. When the nature of misconduct is the same and all the delinquents have been charged with the same offence, the punishment should also be relatively the same. May be that the bank is empowered to impose a higher punishment on a higher official, who is actually responsible for the sanction of the loan, but at the same time, it cannot be totally disproportionate. The Hon'ble Supreme Court in **Kailash Nath Gupta's case** referred to above, has held that the Court has the power to interfere with the quantum of punishment, if it is found that the punishment is grossly disproportionate to the proved misconduct. In **Tata Engineering & Locomotive Co. Ltd. case**, the Hon'ble Supreme Court has held that when the officers or workers faced identical charges and found guilty of misconduct in connection with the same incident, the punishment should be relatively the same. Relying upon the Judgment in **Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut** reported in [1984]1 SCC 1, the Hon'ble Supreme Court held that a major punishment of dismissal imposed on one of the employees when another was punished with only one month's suspension and the third was ultimately reinstated, would amount to disproportionality and it would be denial of justice. The observations of the Hon'ble Supreme Court in the said Judgment are as follows:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service".

14. In the light of the above pronouncements of the Hon'ble Supreme Court, it is clear that there should be some nexus between the punishments imposed on various employees, who were charged with the same offence. Of course, the contention of the respondent Bank that an officer working in a senior position and having more responsibility, should suffer a larger punishment, cannot be completely brushed aside. At the same time, it is for the Court to ensure that the punishment so imposed is not so disproportionate to the proved misconduct. The Disciplinary Authority while imposing punishment of stoppage of increment for the other two officers, at least one of whom was in the same cadre as the petitioner, had chosen to impose a punishment of reduction in rank by two stages, thereby pushed the petitioner as an entry level officer after 32 years of service in the bank. This, in my considered opinion, definitely offends Article 14 of the Constitution of India. Of course, I would like to point out the fact that equality cannot be claimed in all spheres. A Division Bench of this Court in **M. Rajamanickam v. The Executive Director, Bharath Heavy Electricals Ltd. Tiruchirappalli - 14 and others** reported in 1997 Writ L.R. 536 has held that when the Management has chosen to impose punishment on one person while accepting an apology from the other and directed



his reinstatement, the appellant can claim equal privilege of tendering apology, as otherwise, it will amount to hostile discrimination. While holding so, the Division Bench has observed as follows:

"26. We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. The discrimination is writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action.

27. Further, we are also not inclined to remit the case to the Disciplinary Authority or the Appellate Authority as the case may be, since in our opinion the appellant was subjected to a hostile discrimination in regard to the award of punishment. Therefore it is still open to us in exercising the jurisdiction under Art. 226, to interfere with the order of punishment on the ground that the penalty imposed on the appellant is hostile discrimination, harsh and disproportionate to the proved misconduct".

15. In the light of above categorical pronouncement of the Division Bench, I find that the punishment imposed on the petitioner is disproportionate considering the punishment imposed on the other two delinquent officers. However, since the petitioner holds a more responsible position, he cannot insist that the same punishment should be imposed against him. Therefore, I deem it fit to modify the punishment and impose a lesser punishment of reduction in rank by one stage, instead of two stages.

16. It is stated that the petitioner has now retired from service. However, the petitioner would be deemed to have been reduced in rank as a Scale II Officer from Scale III Officer, instead of, Scale I Officer. Since the petitioner has retired from service, he will be entitled to monetary benefits on the basis of the modified punishment.

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



punishment stands modified as aforesaid. Considering the facts and circumstances of the case I make no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CO)

Sub Assistant Registrar

To

- 1.The Chairman cum Managing Director,
Bank of Baroda, Baroda Corporate Centre,
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+1cc to Mr.A.V.ARUN Advocate in SR. No.64272

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JS/KK/SAR.4/24.7.2017/9P-7C

ORDER MADE IN
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