THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.33657 OF 2010

Dated:03.07.2017

Between:

P. Kalyana Chakravarthy,
S/o. Late sri P.V.R. Sarma,
R/o.49-36-45, Akkayya Palem,
Visakhapatnam .. Petitioner

AND

Andhra Bank, (A Govt. of India
Undertaking), Head Office,
Saifabad, Hyderabad, rep., by its
Chairman and Managing Director
And others .. Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

<u>WRIT PETITION No.33657 OF 2011</u>

<u>ORDER</u>:

Heard Sri D. Ravishankar Rao, learned counsel for the petitioner, and Sri B. Kiran Kumar, learned counsel representing Dr. K. Lakshmi Narasimha, learned standing counsel for the respondent – Bank.

2. Petitioner challenges the order of dismissal from service confirmed by the appellate and revisional authorities.

3. At the relevant point of time, petitioner was working as Assistant Manager in Junior Management (Scale – I) cadre. On 16.08.2006, charge memo was drawn containing four charges. The sum and substance of the first charge is, petitioner honoured certain cheques issued by him and presented for clearing by raising debits to Sundry Debtors and he himself accommodated by delaying the recovery of the amounts for considerable days. The sum and substance of the second charge is, he had issued several cheques without ensuring maintenance of sufficient balance in his savings bank account No.2663 for honouring the cheques. The sum and substance of the third charge is, he was in unauthorised possession of cheque leaves issued to a constituent and made improper use of some of them. Sum and substance of the fourth charge is, he has taken seven savings bank cheque books of 25 leaves each without entering the same in the system and utilised the cheques. It was also alleged that above allegations constitute

breach of Regulation 10 (3) of the Andhra Bank Officer Employees' (Conduct) Regulations, 1982 (for short, 'the Regulations') and the same would constitute misconduct as per Regulation 24 of the said Regulations. Detailed enquiry was conducted. Enquiry officer held charges 1 to 3 as proved fully and with reference to charge No.4, he held it as partly proved. Accepting the findings of the enquiry officer, petitioner was served show cause notice and on consideration of the explanation submitted by the petitioner to the show cause notice, disciplinary authority passed orders on 30.04.2007 imposing punishment of dismissal from service, confirmed by the appellate authority vide his order dated 20.07.2007 and by the reviewing authority vide his order dated 07.12.2007.

4. Learned counsel for the petitioner made the following submissions:

(1) The Regulations referred to in the charge memo are not attracted to the case on hand and therefore the charges levelled against the petitioner are not valid. The allegations are covered by Regulation 3(1) and consequently Regulation 24 and the entire premise of initiation of disciplinary action falls to the ground and on that ground alone the disciplinary action is liable to be set aside.

(2) The findings recorded by the enquiry officer and accepted by the disciplinary authority are perverse.

(3) Even assuming that the allegations levelled against the petitioner are valid and the charges are proved, the punishment

imposed is disproportionate to the delinquency alleged and proved and therefore on that ground also punishment is liable to be set aside. At the most less severe punishment ought to be imposed.

5. Elaborating first submission, learned counsel for the petitioner referred to the provision in Regulation 3 (1) of the Regulations. According to him, what is alleged against the petitioner does not amount to failure in protecting interest of the bank, does not amount to discharging his duties without integrity, honesty, devotion and diligence and what is contended by him does not amount to unbecoming of an officer. According to learned counsel, as can be seen from the charges, all the transactions relate to his savings bank account, that there was no complaint by anybody with regard to loss being caused by the petitioner by virtue of his conduct and that he exposed the bank to loss by his conduct and therefore Regulation 3 (1) of the Regulations is not attracted. He further submits that since Regulation 3 (1) of the Regulations is not attracted, Regulation 24 thereof is also not attracted. There is no other Regulation which governs the allegations levelled against the petitioner and therefore entire disciplinary action should fall to ground.

6. By extensively referring to the discussion and the findings recorded by the enquiry officer, learned counsel for the petitioner sought to contend that whatever was done by the petitioner is within the knowledge of the Manager of the respondent – Bank and the said fact was also accepted by the enquiry officer in his findings. Sundry Debtors accounts are directly under the control

of the Manager. With reference to various charges, there is evidence on record to show that the Manager has authenticated his signature or issue was within his knowledge and therefore it is not a case where the petitioner was indulging in some illegal activities to make such grave allegation and to take disciplinary action on that ground. According to learned counsel, the findings recorded by the enquiry officer are not based on material on record and in fact contrary to the material available on record. He therefore submits that the disciplinary authority ought not to have affirmed the findings recorded by the enquiry officer and ought to have appreciated the contentions urged by him in his explanation to the show cause notice after the report of the enquiry officer. Learned counsel therefore submits that neither the enquiry officer nor the disciplinary authority have appreciated his contentions and mechanically rejected the plea raised by him.

7. He further submits that even assuming what is alleged against the petitioner is proved, punishment of dismissal from service is excessive and disproportionate. The allegations levelled against petitioner do not lead to financial impropriety, resulting in financial loss to the bank or exposing bank's finances to risk. All the transactions concern his own account vis-à-vis the persons in whose favour he issued cheques. There were no allegations made by any of those persons of not making payments for which purpose the concerned cheques were issued. There was no misuse of cheques which were not meant for the petitioner or which were from any other account. Thus, by his conduct, by even assuming

the charges are proved, no loss is caused to the bank and the bank was not exposed to any risk also.

8. In support of his contention that punishment imposed is excessive and disproportionate, he placed reliance on a decision of the Supreme Court in **Ishwar Chandra Jayaswal v. Union of India**[1] and a decision of learned Single Judge of this Court in **A. Muralikrishna v. Assistant General Manager and Disciplinary Authority, Region-2, State Bank of India, Sripuram, Visakhapatnam**[2].

9. Learned counsel submits that in the case decided by this Court the employee was working in a bank and charges relate to his own account. This Court held that punishment of dismissal imposed is disproportionate and substituted the punishment. In the case of **Ishwar Chandra Jayaswal,** the allegation made was demand and acceptance of certain amounts. However, the Court having regard to the fact that the petitioner therein rendered long service in Indian railways substituted punishment of dismissal from service. He therefore submits that the case on hand also requires similar treatment.

10. Sri B. Kiran Kumar, learned counsel representing Dr. K. Lakshmi Narasimha, learned standing counsel for the respondent – Bank, submits that the allegations levelled against the petitioner are grave and after following the due process only punishment was imposed. There was no illegality or impropriety in

---

[1] (2014) 2 SCC 748
[2] 2012 (1) ALD 740

conducting the disciplinary proceedings. The charges levelled against the petitioner cannot be treated as minor allegations or less grave allegations in imposing less severe punishment. In banking sector, trust and confidence plays a vital role as it is required to deal with the finances of itself and its customers and any manner of improper conduct by the employee would seriously affect the bank. In view of the nature of allegations made and proved, it cannot be said that what was done by the petitioner was only a minor misconduct and therefore disciplinary action was validly taken against the petitioner.

11. In support of the contention that trust and confidence of employees is more important than actual financial loss caused to the bank, the respondent – Bank placed reliance on the decision of the Supreme Court in **Regional Manager, UPSRTC v. Hoti Lal[3].**

12. I have given my anxious consideration to the rival contentions.

13. At the relevant point of time, petitioner was the officer working in the clearing department of the bank. As evident from the first charge, petitioner issued cheques. The cheques pertain to his own account and were processed by him. He was aware that there was no sufficient balance in his account to clear those cheques. As per the procedure evolved by the bank, whenever the cheque cannot be honoured due to insufficiency of funds, the cheque has to be returned on the next day of processing. It is not

---

[3] AIR (2003) SC 1462

in dispute that petitioner did not return the cheques and delayed for a considerable period, which according to the bank would amount to misappropriation and abusing his official position. He has not only issued large number of cheques to various persons from his account, though there was no sufficient balance, delayed the clearing process of the cheques knowingfully well that there was no sufficient balance in his account. In the second charge what was alleged was petitioner issued cheques without maintaining sufficient funds. These were the cheques which were delayed in processing and returning. The allegation in third charge is, he was in possession of four cheque leaves issued to another customer and those cheque leaves were utilised for drawing of money from his account payable to others. This utilisation was also during the period when the large number of cheques were issued in excess of funds available in his account. At the same time, as seen from the fourth charge, he has drawn five cheque books; accounted only for three cheque books.

14. Thus, all the charges relate to misusing of his official position as officer working in the bank having savings bank account, issuing cheques, obtaining large number of cheque books, not accounting few of them, issuing cheques for amounts in excess of the balance in his account, not processing those cheques immediately for returning whenever there is no balance in the account to honour the cheques and during the same time utilising four cheque leaves from the cheque book of another customer.

15. Regulation 3(1) of the Regulations mandates that every officer employee shall, at all times take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee. As noted above and as seen from the findings of the enquiry officer and considered by the disciplinary authority, in the facts of the present case, all the attributes prescribed in Regulation 3(1) of the Regulations are violated by the petitioner. It cannot be said that the petitioner being an officer in the bank having an account in the same branch can resort to taking so many cheque books, issuing cheques to so many people even without there being sufficient balance and utilising the balance available by illegally taking four cheque leaves of another account holder and not returning the cheques when he was found that there was no sufficient funds available, has maintained the conduct required by Regulation 3(1). Thus, Regulation 3(1) is attracted fully on the charges levelled against the petitioner and therefore Regulation 24 is also attracted.

16. As seen from the material on record, these actions of the petitioner would amount to grave misconduct inasmuch as an officer cannot resort to such practices himself, misusing the position enjoyed by him in the bank, in particular, while working in the concerned section during the relevant time and indulging in misuse of large number of cheques.

17. Learned counsel for the petitioner, by placing reliance on two precedent decisions, sought to contend that what is alleged only

concern his account and that there was no financial loss caused to the bank and therefore the punishment is excessive and disproportionate. I have carefully considered the judgments relied upon by the petitioner. Having regard to the allegations levelled against the petitioner and the material on record, it cannot be said that the allegation levelled against the petitioner can be called as minor lapses to show indulgence as sought to be emphasised by the learned counsel for petitioner. These decisions do not come to the aid of petitioner.

18. As held by the Supreme Court in the decision in **Regional Manager**, trust and confidence of employee is paramount whenever finances of the employer are involved. Supreme Court observed that if an employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Standard of such trust and confidence is far higher when it comes to the officers working in the banking sector. Thus, in the facts of this case and having regard to the charges alleged and proved, it cannot be said that punishment of dismissal is grave and therefore the contention of learned counsel for the petitioner that less severe punishment ought to have been imposed is stated to be rejected.

19. It is seen from record that the very issue of disproportionality of punishment was raised by the petitioner before all the three authorities and all of them have considered the said aspect and having regard to the nature of charges levelled against the

petitioner and proved, they have not agreed with the contention of the petitioner that the charges levelled against him are not grave and less severe punishment should be imposed. In view of the same, I do not see any error committed by the authorities of the respondent bank in rejecting the contention of the petitioner on gravity of punishment.

20. The Court does not find any discrepancy and procedural irregularity in conducting of disciplinary proceedings.

21. The Writ Petition merits no consideration and is liable to be dismissed. It is accordingly dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:03.07.2017
KH