IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 301 OF 2004

Virendra Mohan Bhardwaj,
Adult Indian Inhabitant,
Residing (at the time of the filing
of the said suit) at 21, Band Stand
Building "A", Kane Road, Band Stand,
Bandra (W), Bombay – 400 050.

Now residing at A-2/607, Bhakti,
"B' Wing, Vidyadaini Society,
Om Nagar, Andheri (E),
Bombay – 400 099. ... Appellant

Vs.

State Bank of India,
Incorporated under the
State Bank of India Act, 1955,
and having its Office at
Madame Cama Road,
Bombay – 400 021. …Respondent

a/w
FIRST APPEAL NO.1869 OF 2003

State Bank of India … Appellant

Vs.

Virendra Mohan Bhardwaj … Respondent

Mr.Bipin Joshi for the Appellant in FA/301/2004 and for Respondent in FA/1869/2003

Mr.R.R. Lanjekar for Respondent in FA/301/2004 and for Appellant in FA/1869/2003

CORAM: Mrs.MRIDULA BHATKAR, J.
RESERVED ON: JUNE 28, 2018
PRONOUNCED ON: AUGUST 10, 2018

JUDGMENT:

1. The plaintiff (respondent in Appeal No.301 of 2004) was in the employment of Appellant Bank. The S.C. Suit No.2348 of 1983 was filed for declaration by the respondent (original plaintiff) in First Appeal No.301 of 2004, that the dismissal order dated 3.11.1979 passed by Disciplinary Authority is illegal and unenforceable against the respondent/original plaintiff. So also, consequential declarations in respect of continuation of employment and financial benefits vested in the job were also sought. The appellants i.e., the State Bank of India (the original defendants), filed written statement in which dates and events stated by the respondent/plaintiff were not disputed. (For the sake of convenience, as two appeals are filed, the parties shall hereinafter be referred to by their original status as 'plaintiff' and 'defendant'.) However, the defendant challenged the suit on different grounds like *res judicata*, delay and laches, limitation, valuation and mainly on the point of procedure followed by the enquiry officer conducting the enquiry. The Enquiry Officer has submitted the report in which plaintiff was held guilty for violation of SBI Service

Rules as alleged. The disciplinary authority relying on the enquiry report has rightly issued the order of dismissal of major penalty. The trial Judge framed nearly 7 issues initially and thereafter 2 additional issues. The plaintiff (PW1) examined himself and the defendant examined one Bhaskar Ramchandra Pandit (DW1) and one Mr.K.Arvindakshan (DW2). Both the parties tendered the evidence and the trial Court after considering the documentary as well as oral evidence, decreed the suit and held that the dismissal order and the order of the appellate authority dated 9.4.1980 are illegal, bad in law and therefore, quashed and set aside the same. It also held that the plaintiff is entitled to backwages and other benefits from 4.11.1979, till the date of his superannuation i.e., till 16.5.1998. Being aggrieved with the impugned judgment and order, both the parties challenged the said judgment and order. The plaintiff challenged the order in First Appeal No.301 of 2004 for other left out reliefs, such as all the emoluments together with increases due to upper revision in payscales; for other perks and benefits and all retirement benefits, which he had claimed in the said suit in addition to the reliefs granted and the defendant / SBI filed First Appeal No.1869 of 2003 challenging the said judgment and decree of setting aside the order of dismissal.

2. In order to get clear picture of the litigation, it is necessary to summarise the chargesheet and to reproduce the relevant rules framed on 21.2.1978, which are claimed to be violated by the plaintiff – the delinquent. The plaintiff was tried for various acts of misconduct under total 9 heads, out of which charge Nos.7, 8, 9 and 2(ii) were not proved. So, I will not refer to those unproved charges at all. The report concluded that when the plaintiff was transferred to Juhu Tara branch in May, 1975 as Branch manager of SBI, during his tenure of nearly 2½ years, he had breached many rules of SBI, and hence, was subjected to departmental enquiry. Out of the charges, charge No.1, 3 and 5(part) were admitted. However, the plaintiff has challenged the admission as the requisite procedure is not followed by the Enquiry Officer and therefore, the conviction is bad in law. Charges 2 (part), 4 and 5 (part) and 6 are proved against the respondent. The enquiry was concluded on 16.2.1979. As per charge 1, the plaintiff has contravened Service Rule 41(i) of the Service Rules when he borrowed large amounts disproportionate to his means from the Bank and incurred liability by standing guarantor to Rs.25,000/- which he was not supposed to.

GIST OF CHARGES:

3. In charge 1, nearly 8 incidents of borrowings were quoted. Charge No.2 is in three parts, which discloses that as per Service Rules, overdrafts or advance facilities were not to be permitted to the persons connected with film industry. However, he allowed those overdraft facilities and did not take appropriate steps to recover unpaid money. Charge No.2 quoted 7 such instances.

Under Charge No.3, he has issued cheques many times for large amounts on the savings bank account with Juhu Tara branch without maintaining sufficient balance in the account and thus, violated Rule 42(2) of the Service rules.

Under Charge 4, he has wrongfully granted overdrafts on two accounts through which he was under pecuniary obligations.

Under Charge No.5, he granted clean overdrafts in favour of some other persons and it was alleged that he had dealings with the firm of another unbecoming of bank official and thus, violated Rule No.32(4) in which nearly 7 incidents were quoted.

Under charge No.6, his car which was hypothecated with the SBI, without obtaining permission of the branch, he transferred it to some other persons.

The relevant Rules i.e., Rule 32(4), 41 and 42 read as follows:

> 32(4). Every 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 a bank official.
>
> 41. No employee shall, in his individual capacity:
> (i). borrow money or permit any member of his family to borrow money or otherwise place himself or a member of his family under a pecuniary obligation to a broker or a money lender or a subordinate employee of the Bank or any person, association of persons, firm, company or institution, whether incorporated or not, having dealings with the Bank;
> 42.(1) No employee shall draw his salary in advance of the date on which it is payable without the previous sanction of the Appropriate Authority.
>
> (2) No employee shall discount or negotiate or cause to be discounted or negotiated cheque or other instruments drawn on his account without sufficient balance therein.

4. The learned Counsel for the appellant / plaintiff has submitted that the order passed by the trial Court is illegal and the learned Judge of the trial Court has failed to appreciate the charges proved against the respondent. Out of the nine charges, charge nos. 2, 4, 5 (part) and 6 were proved against the respondent and he has admitted charge nos. 1, 3 and 5 (part). In

the inquiry, the respondent has been held guilty and the Disciplinary Authority's findings are not contrary to the findings of the Inquiry Officer. Hence, no detailed reasoning is required in the order of the Disciplinary Authority as no contrary view is expressed. He relied on the relevant rules of the State Bank of India Service Rules. For charge no. 1, he relied on the Service Rule 41(1) of the SBI Service Rules. He has further submitted that the respondent has violated Service Rule 41 (1) due to the borrowings from the account holders and hence, charge no. 1 was framed. Under charge no. 3, the respondent has issued cheques without sufficient balance in the account and thus, violated Rule 42 (2) of the SBI Service rules. He has also relied on the Service Rule 32 (4) of the SBI Service Rules, which mentions that 'every 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 a bank official'. Thus, the charge which is mentioned in charge no. 5 (part) of the chargesheet is proved. He has further submitted that these all charges i.e., charge no. 1, 3 and 5 (part) are admitted by the respondent. The respondent has also allowed overdraft facility to the persons by violating the

Service Rule 50 (3) (ii) and that has been proved. He has further submitted that the order dated 09.04.1980 passed by the Appellate Authority is not challenged before the Civil Court. He has also relied on the evidence of the two witnesses of the SBI i.e.,Bhaskar Pandit (DW-1) and Mr. K. Arvindakshan (DW-2), Dy. General Manager of SBI.

5. Mr. Bipin Joshi, the learned Counsel has submitted that the Appellate Authority did not give reasons while passing the order of penalty against the respondent. He has further submitted that the Rule 50 (2) (viii) (c) is not followed. It is mandatory for the Inquiry Officer to follow the rule of inquiry and in the event of deviation from such rule, no major penalty can be imposed as per the Rule 50 (2) of the SBI Services Rules. He has further submitted that the respondent has raised point of non-observance of the procedure laid down in the Writ Petition No. 720 of 1980, filed by the appellant. The said Writ Petition was dismissed on 15.07.1980. In the said Writ Petition, ground (e) of para 18, the challenge to the order of the Inquiry Officer in respect of failure to follow the procedure was raised first time. Subsequently, it was also raised before the trial Court, which was not taken into account by the trial Court. He has further submitted that the respondent had filed RCS

No. 2348 of 1983 for declaration. At that time, the appellant raised an objection on maintainability of the suit. However, it was turned down and the suit was decreed. He has further submitted that as per the case of the appellant, the penalty is given not only to the proved charges i.e., charge nos. 2, 4, 5 (part) and 6, but also charge nos. 1, 3 and 5 (part), which were admitted by the respondent. In the event of admission of the charges, it is obligatory on the part of the Inquiry Officer to follow Rule 50 (2) of the SBI Service Rules. The admission is required to be recorded in the proceeding book. Non-compliance of this Rule will vitiate the enquiry and it will take away the effect of admission of the respondent entirely.

6. In reply, Mr.Lanjekar has argued that the ground of non-compliance of Rule 50 (2) Sub Rule (viii) (c) of the SBI Service Rules was not raised either in the suit or in appeal before any Authority or Court below. He has argued that the ground is very technical. He has submitted that the inquiry was conducted in the year 1979 and the objection was raised first time in the year 1983 by the respondent and, therefore, it will not affect the legality of the proceedings.

7. The main bone of the contention raised by the appellant is failure of the proper application of the procedure as per SBI Service Rules. In order to have a clear grasp of the matter, it is necessary to reproduce the relevant Rule 50 (2) Sub Rule (viii) (c) of the SBI Service Rules.

8. The facts of the employment of the plaintiff with the respondent / bank and the enquiry conducted against him in respect of the charges mentioned above, are not disputed. There were in all 9 charges and as charge Nos.7, 8 and 9 are not proved, as per the Enquiry Officer, they are not to be dealt with and the charge Nos.1 to 6 and the findings given therein in respect of those charges by the Enquiry Officer by the Disciplinary Authority and the learned trial Judge is the subject matter of challenge before this Court. Charge No.1, 3 and part 2 of charge No.5 are as per the case of the bank, were admitted by the plaintiff during the enquiry. However, Mr.Joshi, the learned Counsel has pointed out that the plaintiff thereafter in his memo of appeal and also before this Court withdrew his admission. The learned Counsel Mr.Lanjekar denied such withdrawal of admission of charges and mainly on the ground that such withdrawal is afterthought and was not done at the earliest opportunity when it was available for the

plaintiff. It is true that during the course of the enquiry, or even after the communication of the decision of dismissal on 3.11.1979 and further order refusing revision of the said order dated 3.11.1979 on 9.4.1980, the plaintiff had an opportunity to put up his withdrawal of admission of charge Nos.1, 3 and part 2 of charge No.5, in writing before the officer of the defendant Bank. But it was not done.

9. A departmental enquiry demands strict observance of all the rules of the defendant bank, which is to be tested on the basis of the principles of natural justice. In the present case, under the Rules, Rule 50 (2)(viii) of the SBI (Supervising Staff) Service Rules, wherein the procedure of the working of the Disciplinary Authority while conducting enquiry is laid down in detail.

10. Under Rule 50(2)(viii), it is necessary for the Enquiry Officer to give notice in writing specifying the date on which the employee shall appear in person. The material clause (viii)(c) of Rule 50(2) states as follows:

> "(c) The Inquiring Authority shall ask the employee whether he pleads guilty or has any defence to make and if he pleads guilty to all or any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee thereon."

11. The Enquiry Officer shall ask the employee whether he pleads guilty or has any defence to make and if he pleads guilty to all or any of the articles of the charge, the Enquiry Officer shall record the plea, sign the record and obtain the signatures of the employee thereon. The learned Counsel for the defendant/bank was called upon to show whether the procedure under sub-Rule (viii)(c) of Rule 50(2) was followed or not? Though he argued that the procedure was followed, bare words are not sufficient for the compliance of this rule, especially when the delinquent officer has denied and challenged the procedure. Sub-Clause (c) of Clause (viii) demands maintainance of record in writing in respect of admission of plea which is to be signed by the Enquiry Officer and also by the delinquent employee. In the present case, nothing is shown to that effect and hence, the submissions of Mr.Joshi, the learned Counsel, and finding of the learned trial Judge that the Enquiry Officer did not follow the requisite procedure, are correct and hence, accepted. Thus, the learned trial Judge has also taken a note of this failure of observance of procedure. So, the charges which are shown to be admitted i.e., charge Nos.1, 3 and part 2 of charge No.5, in fact, cannot be said to be admitted and hence, not proved, and the plaintiff is not guilty of these charges.

12. However, the Enquiry Officer held him guilty not only on charge Nos.1, 3 and part 2 of charge No.5 (part), which were admitted but also held that the other charges i.e., charge Nos.4 and 6 and part 1 and 3 of charge No.2 are proved. So also, part 1 of charge 5 is held to be proved. In respect of charge No.2, the Enquiry Officer has held that part 2 of charge No.2 is not proved. However, as pointed out by the learned Counsel Mr.Joshi in the order dated 3.11.1979 passed by the Disciplinary Authority, in para 2 the wordings of part2 of charge No.2 are incorporated. Part 2 states as follows: “You have resorted to discounting cheques for large amounts from Shri Roshanlal Oberoi, without establishing any limit in his favour”. In the order passed by the Disciplinary Authority, it is mentioned that cheque discounting facilities of a kite flying nature.

13. Though it is true that charge No.2 states about the connection of the plaintiff with the film industry, who allowed overdrafts by a person from the film industry and cheques returned unpaid were not promptly recovered from him; the charge of allowing cheque discounting facility was not proved. Adopting the same phrase with ditto words of the said charge in the dismissal

order, is not legal and therefore, the order of the Disciplinary Authority to that extent is inconsistent with the findings of the Enquiry Officer. The learned trial Judge has discussed this issue at length. The findings given by the learned trial Judge in respect of the admitted charges and the inconsistency in the order passed by the Disciplinary Authority with the findings of the Enquiry Officer to the extent of part 2 charge 2, is correct and, therefore, the order of the Disciplinary Authority in respect of the entire charge No.2 is to be set aside.

14. The trial Court has taken a view that as there is inconsistent finding, when the Disciplinary Authority was not in agreement with the findings given by the Enquiry Officer, then, it was binding on the Disciplinary Authority to give opportunity to the delinquent officer to given him audience, however, it was not given. I am of the view that the order passed by the Disciplinary Authority cannot be considered illegal or bad in law as a whole because it has given inconsistent finding in respect of proof of part 2 of charge 2. The finding cannot be said to be contradictory though there is some consistency. Besides these admitted charges, but now held that for want of proper procedure not proved, other charges i.e., 4, 6 part 2 (5) are proved and discussed by the Enquiry Officer.

15. No proper explanation has come forward from the plaintiff during the enquiry on these charges. Charge No.4 states that the officer has wrongfully granted clean overdrafts on two accounts of Bentax India Corporation, to whom the officer was under pecuniary obligation. The instances of such clean overdrafts are mentioned in charge and they are proved during the enquiry. Similarly, charge No.5 is in respect of clean overdrafts on the account of one M/s.Toyesh Garg & Co. though their accounts were not satisfactory. The facilities were granted without making proper assessment or formal application from the firm.

16. Thereafter, charge No.6 is about his car No.MRG 7866 which was hypothecated with the bank for loan from Vile Parle branch. However, without the knowledge of the bank, the officer transferred the same to one Shri Garg and Mr.Sharma, without satisfying the outstanding dues. These charges are as per the findings given by the Enquiry Officer, are not proved and no satisfactory explanation was put forth by the plaintiff, the delinquent officer. Surprisingly, the learned trial Judge has not taken into account and discussed the finding given by the Enquiry Officer on these proved charges.

17. The learned trial Judge's view about inconsistent finding given by the Disciplinary Authority in respect of part 2 of charge 2, shows non-application of mind by the Disciplinary Authority and an opportunity ought to have been given to the delinquent officer is correct and hence, part 2 of charge 2 is held not proved. Further, no proper procedure is followed as per the rules and procedure after admission of charge No.1, 3 and part 2 of charge No.5 is also correct and hence, part 2 of charge No.5, charges 1 and 3 – are held not proved. However, the entire enquiry and the order of dismissal is bad in law, is not correct or legal and not acceptable. Unless there is a satisfactory explanation or there is evidence or rebuttal of the proved charge Nos.4, 6 and part 2 of charge No.5, the trial Court ought not to have disregarded these proved charges which were discussed and held proved by the Enquiry Officer. I hold that the findings given by the Enquiry Officer in respect of these charges are correct and officer is rightly held guilty for the part 1 and 3 of charge 2, charge Nos.4, part 1 of charge No.5 and charge No.6.

18. While considering the proportionality of the penalty, it is necessary to see the gravity and effect of the charges. These

charges are in respect of allowing overdraft facilities to some account holders; issuing of cheques of larger amounts from his own savings account without maintaining sufficient balance in the account and transferring his car to other parties when the car is hypothecated with the bank and the loan taken by the officer is outstanding. Undoubtedly, there is a violation of the service rules of the bank. However, the Disciplinary Authority ought to have considered the nature and the consequences of the charges in the administration, functioning and reputation of the bank. It is not a case of fraud or cheating. The bank has not actually suffered any monetary loss because of the misconduct or the breach of the rules on the part of the delinquent officer. There is no evidence to show that the losses which were shown by the bank were not paid either by the delinquent officer or by the other persons to whom he advanced loans or gave overdraft facilities. The bank has not suffered any financial losses. So also, there is no case that any account holder of the bank was put in any inconvenience bringing the bank to disrepute. Under such circumstances, the major penalty given by the Disciplinary Authority of dismissal is very harsh and cannot be justified. It is a case wherein Wednesbury's principles of proportionality alongwith the doctrine of reasonableness is to be applied. This dismissal cannot be justified. Similarly, the order passed by the learned Judge exonerating the present delinquent officer is also not a legal order in view of proof of charge No.2 (part 1 and 3), charge No.4, 5 (part 1) and charge No.6.

19. The learned Counsel for the delinquent officer submits that if his order of dismissal is set aside, then, he is ready to give an undertaking that he will not claim any pensionary benefits and hereby waives off the said benefit.

20. Thus, both the First Appeals are party allowed with the following order:

i) The undertaking as mentioned above, given by the delinquent officer, is accepted and taken on record. It is marked 'exhibit 1'.

ii) The order of the learned District Judge setting aside the entire order of the Enquiry Officer and exonerating the delinquent officer from all the charges, is hereby set aside and substituted with the following order:

a) The order passed by the Enquiry Officer of dismissal is hereby set aside.

b) The delinquent officer is held guilty of charges 2 (part 1 and 3), charge Nos.4, 5 (Part) and charge No.6, for which minor penalty of withholding of the increments and promotions as on 3.11.1979 is imposed in the place of major penalty of dismissal.

ii) The delinquent officer is entitled to backwages and applicable allowances from November 1979 till the date of his retirement, as calculated by the State Bank of India, with interest at the rate of 2% per annum.

iii) The above payment shall be made on or before 15th September, 2018.

20. First Appeals are disposed of in the above terms.

(MRIDULA BHATKAR, J.)

Vishwanath Satyanarayana Sherla

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