HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4808 OF 2001

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in imposing the punishment of removal on the petitioner, as arbitrary and illegal, and consequently, to set aside the orders dated 8.6.1998, 10.4.1999 and 2.9.2000 passed by the respondents respectively, and to grant all consequential benefits.

2. Heard Sri K.S. Murthy, learned Counsel for the petitioner and Sri P. Suresh, learned Standing Counsel for the respondents.

3. The case of the petitioner in brief is as follows:

(i) The petitioner was initially appointed as clerk-cum-typist on 1.4.1972 and thereafter, he was promoted as Manager and he has been discharging his duties from 1972 to the satisfaction of the Management. While so, he was placed under suspension on 29.3.1992 on certain allegations and thereafter, a charge memo was issued to him on 12.8.1993 after lapse of 17 months. Thereafter, preliminary enquiry was conducted during 1994 and enquiry officer was appointed on 13.12.1994 and thereafter, the enquiry authority was changed due to administrative reasons and another enquiry officer was appointed on 3.5.1994. While the enquiry was in progress, the petitioner submitted a representation to the disciplinary authority on 10.11.1994 to the effect that enquiry officer is acting in a biased manner. At the instance of the petitioner, the disciplinary authority ordered de novo enquiry on 13.12.1994 while appointing another enquiry officer. The de novo enquiry was conducted by the new enquiry officer. After completing the enquiry, the enquiry officer submitted a report dated 29.2.1996.

(ii) It is the case of the petitioner that a fresh enquiry was completed on 7.7.1995 whereas the enquiry officer submitted his report on 29.2.1996 holding that the charge is proved. The grievance of the petitioner is that no subsistence allowance was paid during suspension period and in those set of circumstances, he filed W.P.No.33252 of 1998. After service of notice in the said writ petition, the disciplinary authority passed final orders on 8.6.1998 imposing punishment of dismissal from service. Thereafter, the petitioner filed appeal before the appellate authority. But the appellate authority without appreciating any of the contentions raised by the petitioner rejected the appeal on 10.4.1999. Challenging the same, the petitioner filed a review before the reviewing authority and the said review was also rejected on 2.9.2000. Challenging the same, the present writ petition is filed.

4. It has been contended by the learned Counsel for the petitioner that in the charge memo dated 12.8.1993 only two documents were listed whereas the enquiry officer relied upon 61 documents at the instance of the presenting officer, and all those 61 documents were not furnished to the petitioner. Further, it has been contended that the vigilance report and other documents relied upon by the disciplinary authority as well as the enquiry officer were not furnished to the petitioner and on that ground itself, the entire disciplinary proceedings initiated against the petitioner are liable to be set aside. It has also been contended that the imposition of punishment of dismissal from service is shockingly disproportionate to the charges levelled against the petitioner and on that ground also, the punishment of dismissal is liable to be set aside.

5. Learned Standing Counsel for the respondents contended that the disciplinary authority as well as the enquiry officer had given opportunity to the petitioner at every stage of the enquiry and in respect of non-supplying of documents is concerned, those documents were marked in the presence of the petitioner by the enquiry officer and that the petitioner has never sought for copies of those documents and while the enquiry was in progress, at least, the petitioner had not taken any such plea or had not raised any objection.

6. Perusal of the dismissal order would disclose that the petitioner had not even submitted any explanation to the charge memo. While the enquiry was in progress, the enquiry officer was changed and de novo enquiry was ordered due to administrative reasons. Insofar as the contention that the vigilance report which was relied upon by the disciplinary authority as well as the enquiry officer was not furnished to the petitioner is concerned, it has been clearly explained in the counter that no vigilance report was obtained from the Vigilance Commission and as per Regulation 19 of the Indian Bank Officer Employees' (Discipline and Appeal) Regulations 1976, the bank has to consult Central Vigilance Commission (CVC) for all disciplinary cases involving vigilance angle but any order of the Central Vigilance Commission is not binding on the bank and it was not mandatory to send the report to the petitioner as on that date, and after getting the advice of CVC, the disciplinary authority after careful consideration of all the documents and after applying its mind imposed the punishment of dismissal and therefore, no prejudice is caused to the petitioner by non-supply of those documents. In fact, no such request was made by the petitioner when the enquiry was in progress before the enquiry officer and even after completion of enquiry before the disciplinary authority.

7. The charges levelled against the petitioner are as follows:

STATEMENT OF IMPUTATIONS OF MISCONDUCT BASED ON WHICH THE ARTICLES OF CHARGES ARE FRAMED AGAINST SRI P. UMA SHANKAR, SR NO.6124, FORMER MANAGER OF GANDHI NAGAR BRANCH (NOW UNDER SUSPENSION)

Shri P. Uma Shankar, while functioning as Manager of Gandhi Nagar branch during the period from 15.4.'85 to 21.2.'92, had committed certain serious irregularities in the grant of loans/advances as detailed below:

I.A/c. SMITHA REAL ESTATES:

A term loan of Rs.220 lakhs was sanctioned to the above firm by Housing Finance Cell, Central Office on 14.3.91 for the purpose to acquire and develop into buildable sites, 58.17 acres of land at Tadigadappa at a total cost of Rs.275.01 lakhs, as approved in principle by National Housing Bank vide their letter NHB/ND/Tech/90 dated 17.9.90 addressed to our regional manager Vijayawada. The balance outstanding as on 9.2.92 was Rs.220.13 lakhs.

The following defects are reported in the disbursement of the loan and in the documentation done by the officer:

1. While the sanction ticket has stipulated the disbursement as Term Loan, he had allowed the facility as Secured Overdraft and the firm was allowed to withdraw the entire loan amount on various dates from 6.4.91 to 9.1.92 without ascertaining whether the funds were utilised for the purpose for which the limit was sanctioned.

2. He has obtained sale deeds favouring various individuals measuring a total extent of 34.94 11/14 acres of lands for which EM was created. The total sale consideration in respect of the above sale deeds come to Rs.40.37 lakhs only. But he has disbursed the full loan amount of Rs.220 lakhs without ascertaining whether the firm had acquired the total 58.17 acres incurring a total of Rs.275.01 lakhs inclusive of development expenses.

3. He has obtained interim legal opinion from our approved lawyer before creation of EM for twelve properties measuring a total extent of 13.33 acres for sale consideration of Rs.16,78,600 only. He has not obtained legal opinion for creation of EM in respect of sixteen properties measuring total extent of 21.61 11/14 acres for sale consideration of Rs.23, 58,500.

4. He has not claimed refinance from National Housing Bank.

5.EMs created in respect of the loans were not entered in the register of equitable mortgage by him.

6.Central Office sanction had directed the branch to extend the EM created over the properties mortgaged for the secured OD of Rs.25 lakhs sanctioned earlier by Zonal Office on 01.08.90. ZO had in their sanction directed to extend the EM of an earlier mortgage created for the earlier sanction of Rs.4 lakhs by RM office, Vijayawada to M/s. Smitha Rural Industries. He had failed to obtain the extension of EM advised in the sanctions of Zonal Office as well as Central Office.

7. He has also failed to adhere to the terms and conditions of sanction ticket dated 14.03.91 in pages 3 & 4 of the sanction. (Copy of the sanction ticket enclosed for reference).

8. He has allowed excess of Rs.3.40 lakhs on 2.2.'92 and the account showed a debit balance of Rs.223.40 lakhs on that date. He did not report the excess to the higher authorities.

<u>The Following defects are reported in the documentation</u>:

a.He has obtained DPN signed by Smt M.V. Subhashini in her personal capacity only. Other partners have not executed the DPN. Hence the available DPN is not enforceable against the firm and the other partners. He has thereby jeopardised the legal cover which will otherwise be available to the bank, if he had followed the instructions in the sanction ticket in this regard.

b.D4, Letter of continuity has also been signed by only one partner without the firm seal. The document has not been affixed with non-judicial stamp.

c.He has not obtained MTL agreement suitably drafted in consultation with Bank's lawyer and approved by our Legal Department as required in the sanction ticket.

d.He has not obtained D 57 signed by promoter and guarantors thereby diluting the recourse available to the bank. Here too he has deviated from the sanction terms.

II.A/c. SMITHA RURAL INDUSTRIES:

Sole proprietrix – Smt M.V. Subhashini.

Regional Manager, Vijayawada sanctioned on 21.4.90 an OCG limit of Rs.4 lakhs. The activity of the unit was manufacturing of bricks. Balance as on 7.2.'92 was Rs.4.94 lakhs. The following irregularities have been committed by Shri Umashankar.

1.He has not submitted any renewal proposal after sanction i.e. since 21.4.'90.

2.As per the sanction ticket, the branch has to ensure that the amount is brought into credit once the klin operation is completed by crediting the sale proceeds into the a/c. This was not ensured by him.

3.The account was showing credit balance of Rs.5347.30 on 18.1.'92. On the same day, a self-cheque (cash withdrawal) for Rs.1,50,000 and on 31.1.'92 a self-cheque (cash withdrawal) for Rs.3,50,000 were allowed by Shri Umashankar, thus increasing the balance to Rs.4,94,652.70. This excess of Rs.94,652/70 was caused by these transactions. This excess was not reported by him to the sanctioned authority.

4.In respect of documentation, the following defects are noticed:

a.Property is not marked in any of the loan documents.
<u>b.Equitable Mortgage: </u>Out of three EM's stipulated in the sanction for a total of 4.90 acres he has not obtained the title deeds, legal opinion, valuation certificate and letter acknowledging deposit of title deeds (D 32) relating to EM of 0.69 acres.

5.No record is available at the branch to indicate periodical inspection of stocks by Shri Umashankar or other officials.

<u>III.A/c. SMITHA REAL ESTATES:</u>

ZM, Hyderabad sanction dated 1.8.90, Sec. OD Limit of 25.00 lakhs. The purpose of the loan was to build flats and sell. Drawing limit as on 19.12.92 Rs.6.25 lakhs. Balance as on 19.2.92 Rs.28.70 lakhs. Excess Rs.18.45 lakhs. Margin 50%. Date of first availment 19.8.90. The following irregularities are found in the account.

1.The account was brought to credit on 14.12.91. Thereafter he had allowed the firm to avail the entire limit and the balance outstanding as on 19.2.92 was Rs.28.70 lakhs. He had not ensured that the drawals are restricted to the drawing limit. These excesses were not passed through funds book and reported by him in AUD-1 or AUF-1 thereby suppressing the facts from the higher authorities.

2.The following sanction ticket terms and conditions are not adhered to by him.

a.Loan amount towards construction cost should be released only after approval of VGT Urban Development Authority and Municipal Corporation in respect of building Plan.
b.The estimates are to be certified by our approved engineer before release of the loan.
c.The branch to inspect the site and after ensuring the completion of the work for each quarter stipulated in the cash flow, further release of the funds to be considered, after obtention of our approved engineer's certificate. At each stage branch has to ensure 50% margin is maintained. This has not been done.
d.Quarterly interest and other charges debited to the a/c has to be paid as and when debited. He has not recovered interest/charges debited and also interest for the quarter ended 30.9.90 have not been debited.
e.Branch to consult the legal advisor in respect of properties worth Rs.9.83 lakhs and explore the possibilities of creating EM of the above properties also in addition to the securities/additional securities stipulated.
f.Branch to obtain the acceptance of the firm/partners/guarantors for the terms and conditions containing in the sanctioning ticket in writing, on the copy of the sanction ticket. Only the Managing Partner on behalf of the firm has conveyed the acceptance. Hence the acceptance as stipulated was not obtained by him.
g.He had not obtained a "No Objection Certificate" from the employer of Sri M Ramachandra Rao, permitting him to stand as guarantor to this loan facility since he is reported to be an employee of Endowment Dept., AP State Govt.
3.The following defects in the documentation are reported:

a.The partners have not signed in their individual capacity in the execution of DPN, depriving the bank of their joint and several liability. The DPN is signed only by the Managing Partner.
b.One of the partners, Ms. K Madhavi was a minor at the time of execution of documents with the bank. Documents were not obtained from Ms. K Madhavi on her attaining majority confirming her liability with the bank.
c.He had obtained unstamped agreements of guarantee dated 18.8.90 from Ms. C Anasuya, G Vijaya Rani, MV Subhashini, M/s. G Satya narayana, C Subba Rao and G Ramakoteswara Rao.
d.OD Agreement as stipulated in the sanction ticket is not obtained by him.

The following irregularities are reported in the creation of equitable mortgage.

a.In all the Ems created, he has obtained only the sale deed in favour of the partners/guarantors. Other documents required to be deposited as per interim legal opinion of Shri V K Avadhani dated 20.3.91 and the latest encumbrance certificate are not obtained by him.

b.EM of 1.00 acre of property situated at Poranki reportedly worth Rs.5.00 lakhs belonging to Sri G Ramakoteswara Rao is not created as per sanction ticket terms.

> c.No legal opinion is obtained by him for creation of EM of properties belonging to Sri M Ramachandra Rao and Shri M Thandava Krishna Rao reportedly worth Rs.2.57 lakhs and Rs.1.18 lakhs respectively.
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> IV.He had allowed excess to the tune of Rs.102.28 lakhs in various accounts as on 07.02.92 as per annexure. He had not reported such excesses to higher authorities.
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> By the commissions and omissions of Shri Umashankar, the bank is facing the possible loss of the amounts due, in respect of the loans and advances referred to above.

8. The above charges are very severe in nature. The enquiry officer held that the charges are proved. In view of the fact that the documents were marked by the enquiry officer in the presence of the petitioner, the contention of the petitioner that the copies of the documents marked during the course of enquiry were not furnished to him, cannot be sustained. If at all the petitioner wanted to peruse and have a copy of those documents, he ought to have requested the enquiry officer or presenting officer, to furnish copies of the same during the course of enquiry. The learned Counsel appearing for the petitioner could not demonstrate before this Court that the petitioner requested for furnishing copies of those documents either during the course of enquiry or after submitting the enquiry report by the enquiry officer. The petitioner submitted his objections to the enquiry officer's report on 21.9.1996. But no copy of such objections was placed before this Court so as to cull out that the petitioner requested for supply of the documents or he raised objection as to non-supplying of documents. In the absence of the same, this Court cannot come to

a conclusion that the petitioner has sought copies of the documents marked by the enquiry officer either during the course of enquiry or even after submission of enquiry report.

9. Apart from the above issue of non-supply of documents, the petitioner must demonstrate before this Court that prejudice has been caused to the petitioner due to non-supply of those documents. The petitioner at the first instance could not place any material before this Court to demonstrate that he had asked for supply of the documents, which were marked, during the course of enquiry and after submission of enquiry report. He also failed to demonstrate as to what prejudice caused to him by non-supplying of those documents. Therefore, the contention of the learned Counsel for the petitioner that non-supply of the documents to the petitioner would vitiate the enquiry proceedings cannot be sustained.

10. The next contention of the learned Counsel for the petitioner is that the punishment of dismissal is shockingly disproportionate to the charges levelled against the petitioner. As the charges proved against the petitioner are serious in nature, the punishment of dismissal imposed on the petitioner is not shockingly disproportionate and it is commensurate to the charges levelled against the petitioner.

11. In view of the above circumstances, this Court is not inclined to interfere with the orders impugned.

12. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

ABHINAND KUMAR SHAVILI, J

Dated: 10.09.2018

Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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