

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.27440 of 2003

ORDER:

This Writ Petition is filed by the petitioner for issuance of writ of Certiorari to call for the records and quash the impugned order dated 04.07.2002 of the 4th respondent as confirmed by the 5th respondent by order dated 21.02.2003 as illegal, arbitrary and violative of Articles 14 and 16 of Constitution of India and consequently direct the respondents to reinstate the petitioner with all consequential service benefits.

2) The factual matrix of the case is thus:

a) The petitioner who is a Scheduled Tribe candidate was appointed as Clerk in the respondent Bank on 03.06.1980 at Malkapur, Warangal and thereafter he was promoted from time to time and while he was working as Branch Manager, Indian Bank in Machavaram Branch, he was issued with charge sheet dated 22.02.1999 by the 2nd respondent with 10 charges directing him to submit his explanation. Accordingly, the petitioner submitted his explanation on 24.04.1999. While so, the 2nd respondent issued amended charge sheet dated 11.05.1999 asking the petitioner to submit his explanation within seven days. The petitioner submitted his explanation. Being not satisfied with the explanation submitted by the petitioner, the 2nd respondent appointed 3rd respondent as Inquiry Authority to conduct the departmental enquiry who after conducting inquiry submitted his report dated 20.10.2001 holding that charges 1 and 9 were not proved and charges 2, 3, 5, 7 and 10 were proved and charges 4, 6 and 8

were partly proved. Basing on the said report, the 4th respondent—Disciplinary Authority imposed a major penalty of *compulsory retirement* from the services of the Bank in terms of Regulation 4(h) of Indian Bank officer Employees (Discipline and Appeal) Regulations, 1976. Aggrieved, the petitioner carried the matter in appeal. The Appellate Authority after perusing the entire material on record observed that the charges levelled against the delinquent employee were very serious in nature which clearly established the lack of honesty and integrity on the part of the officer and concluded that punishment awarded by the Disciplinary Authority was not disproportionate to the gravity of the charges proved and accordingly rejected the appeal. Questioning the same the present writ petition is filed.

b) The 1st respondent filed counter on behalf of respondents contending that petitioner while working as Branch Manager of Machavaram Branch, Indian Bank (Vijayawada Circle) had committed various irregularities and therefore he was placed under suspension on 06.08.1998 and issued charge sheet dated 22.02.1999 and amended charge sheet dated 11.05.1999 by the Zonal Manager, Hyderabad and ordered for departmental inquiry. The Inquiry Authority submitted its findings on 20.01.2001 holding that except Charge No.1 the other charges were proved. Basing on the said report, the Disciplinary Authority by a speaking order dated 04.07.2002 imposed major penalty of *compulsory retirement* from the services of the Bank in terms of Regulation 4(h) of Indian Bank Officer Employees (Discipline and Appeal) Regulations, 1976. Aggrieved, the petitioner filed appeal to the General Manager—Appellate Authority who after considering the case of

the petitioner confirmed the punishment imposed by the Disciplinary Authority and rejected the appeal. It is submitted that delinquent officer has not preferred any review against rejection of appeal. He thus prayed to dismiss the writ petition.

3) Heard arguments of Sri M.S.R.Subrahmanyam, learned counsel for petitioner and Mrs.P.Bala Rani and Sri K.Bhaskar Mohan, learned counsel for respondents.

It is pertinent to note that Writ petition was dismissed for default against R3 as per Court Order dated 29.12.2010.

4) The main plank of argument of learned counsel for petitioner is that of the 10 charges framed against him, Charge No.1 is relating to misappropriation and hence the same is grave one but the Inquiry Authority held said charge was not proved because the six complainants/borrowers from whom the petitioner allegedly collected amounts and failed to deposit in their loan accounts, did not attend the enquiry to substantiate their allegations. However, on wrong assumption the Disciplinary Authority held the said charge was proved. Learned counsel would vehemently argue that the finding of the Disciplinary Authority disagreeing with Inquiry Authority is nothing but perverse and without there being any legal evidence on record and if the said charge is omitted, the remaining charges even assumed to have been established are only minor charges and thereby no major penalty of dismissal from service could be visited with. He placed

reliance on the judgments of the Apex Court in *Kuldeep Singh vs. Commissioner of Police and others*¹ and *Roop Singh Negi vs. Punjab National Bank and others*².

5) Per contra, learned counsel for respondents while supporting the impugned order would submit that the petitioner committed several acts of misconduct during his tenure as Branch Manager and caused grave financial loss to the Indian Bank and therefore, the respondent authorities were constrained to frame as many as 10 charges against him and since his explanation was found quite unsatisfactory they appointed 3rd respondent as Inquiring Authority who conducted departmental enquiry by strictly following the norms and principles of natural justice and ultimately held that except Charge Nos.1 and 9 others were proved and submitted his report. Thereafter, the Disciplinary Authority not agreeing with the finding of the Inquiry Authority in respect of Charge No.1 arrived at the conclusion basing on the material available on record to the effect that said charge was also established. Since the substance of proved charges was grave and amounting to misconduct on the part of petitioner for misappropriation of money received from borrowers, the Disciplinary Authority imposed a major penalty of compulsory retirement from the services of the Bank in terms of Regulation 4(h) of Indian Bank Officer Employees' (Discipline and Appeal) Regulations, 1976. Learned counsel would vehemently argue that the departmental inquiry proceedings and the order of Disciplinary Authority imposing punishment of compulsory retirement were all in

¹ (1999) 2 SCC 10

² (2009) 2 SCC 570

accordance with due process and the appeal filed by the petitioner was also dismissed and therefore, this Court in its power under Article 226 of the Constitution may not interfere with the impugned order. He relied upon the decision of the Apex Court in *Union of India and others vs. P.Gunasekaran*³

6) The point for determination is:

“Whether there are merits in the Writ Petition to allow?”

7) **POINT**: Admittedly, the petitioner worked as Branch Manager, Machavaram Branch and Assistant Manager Anakapalli Branch. It is alleged that during the above said tenure he committed certain serious irregularities of misappropriation of the amounts remitted by the borrowers and also in sanction of loans. He was thus placed under suspension on 06.08.1998. Following charges were framed against him:

At Machavaram:

1. *He had collected money amounting to Rs.54,650/- from six borrowers during his visit to their villages and issued counterfoils of the pay-in-slips for having received the money from them for credit of their respective loan accounts. But he did not account for the same in the books of accounts of the Branch and misappropriated the amount causing financial loss/damage to the image of the Bank.*
2. *He had sanctioned fresh loans to 3 defaulted borrowers when they were already having overdue loan accounts with the branch. Thus he had violated the lending norms and exceeded his discretionary powers.*
3. *He had sanctioned loans to 3 borrowers when they were having liabilities with PACS and also existing overdue loan accounts with the*

³ (2015) 2 SCC 610

branch. Thus he had flouted the lending norms and exceeded his discretionary powers.

- 4. He had suppressed the factual information about the subsisting liabilities of 6 borrowers in their loan accounts while recommending for write-off. Thereby he had furnished false information to the higher authority and obtained permission for write off/transfer of the liability.*
- 5. He had sanctioned SIPL of Rs.13,000/- on 31.07.1995 under Kisan Gold Card Scheme to Shri P.Sankara Rao when an IRDP and an Ag.MTL sanctioned to him earlier were subsisting with over dues amounting to Rs.14,978/- and Rs.19,229/- respectively.*
- 6. He had allowed 34 DPNS to get time barred involving a total amount of Rs.2,88,161/- including MOI of Rs.1,03,117/-.*
- 7. He had sanctioned STPL of Rs.10,000/- on 02.09.1995 to one Shri J.Kevia Nayak of Gopalapuram village which is a non-service area village of the branch. The loan account becomes PA. Thus he had violated the lending norms.*
- 8. He had sanctioned jewel loans to 2 borrowers in excess of their eligibility. Thus he had exceeded his discretionary powers in sanctioning jewel loans over and above the ceiling fixed by H.O.*
- 9. He had sanctioned a loan of Rs.95,000/- under PMR Scheme to Shri T.Radhakrishna for Fertilizer and Pesticides shop on 27.01.1995. He did not conduct post sanction follow up to ensure the existence of the assets charged to the bank. The unit is not existing and the Bank is finding it difficult to recover the dues.*

At Anakapalli Branch:

10. He had unauthorisedly taken away two of his original National Savings Certificates (NSCs) amounting to Rs.15,000/- from the branch records, without the permission from the Branch Manager which were pledged to the bank, for the loan availed by him, on 24.03.1998. He had not returned the NSCs to the branch.”

- 8) The 3rd respondent was appointed as Inquiry Authority who gave his findings as:

Charge Nos. 1 and 9 not proved.

Charges 2, 3, 5, 7 and 10 proved.

Charges 4, 6, 8 as partly proved.

9) Charge No.1 is concerned, it relates to misappropriation of amounts collected from the borrowers Hence, it is a grave charge. The Inquiry Authority found that the six complainants/borrowers did not appear before him in spite of issuing summons. The sixth complainant—Umma Gurava Reddy though attended enquiry on 20.04.2000 but left without deposing anything. He further observed that the original counter foils said to be sent by the complainants by which the amounts were collected by the petitioner from them were not produced as management exhibits. The Inquiry Authority by extending benefit of doubt held the charge was not proved.

10) However, the Disciplinary Authority disagreed with the finding of Inquiry Authority. The Disciplinary Authority observed that all the six borrowers gave their complaint letters to the Branch Manager (MW1) in person and after seeing the original loan pay-in-slip counter foils signed by the CSO, Xerox copies were taken and attested. MW1 who had seen the original pay in slip counter foils and having the knowledge of it identified the Xerox copies of the counter foils and deposed in the enquiry. Further, two complainants sent reminder letters to the Branch which confirm the original complaints. Five complainants withdrew the complaints under flimsy grounds which letters were undated and produced by the defence in the inquiry though they were addressed to the Branch Manager. The two complainants in their withdrawal letters have stated as if they got loan counter foils signed by the CSO but did not pay money to CSO or intend to

pay at a later date. From the said letters, it is clear CSO had given receipt/counter foils to the complainants. Therefore, the statements of the two complainants that after taking receipts, one of the complainants forgotten to give the amount and the other complainant could not mobilize the amounts to give to the petitioner are only afterthought statements because no Bank official will issue counter foils under his signatures without receiving consideration. The Disciplinary Authority thus differed with Inquiring Authority and held that Charge No.1 was proved. The said finding of the Disciplinary Authority is severely remonstrated by the petitioner.

11) I Find force in the contention of the petitioner. As already stated, charge is a grave one relating to misappropriation. The principle is that when the charge is grave proof must be stringent. The management for whatever reasons could not examine the complainants nor it produced the original counter foils. Hence, the evidence is slopy. Therefore, the Inquiry Authority rightly gave benefit of doubt in respect of Charge No.1. However, the Disciplinary Authority interpreted the letters of two complainants to the advantage of Management and held that the petitioner issued them counter foils only after receiving money as no bank officer will issue counter foils without receiving consideration. Such an inference is impermissible without examining the complainants. Had they been examined, the petitioner would have got an opportunity to cross-examine them to establish his stand. Hence, the conclusion of the Disciplinary Authority in respect of Charge No.1 is without proper evidence and hence unacceptable. My view is fortified by the decision of the Apex Court in

Kuldeep Singh's case (1 supra) submitted by the petitioner wherein it is observed:

“Para-8. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of Andhra Pradesh v. Sree Rama Rao, MANU/SC/0222/1963 : (1964)IILLJ150SC, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India v. Prakash Chand Jam. MANU/SC/0416/1968 : (1969)IILLJ377SC and Bharat Iron Works v. Bhagubhai Balubhai Patel, MANU/SC/0345/1975 : [1976]2SCR280. In Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour), MANU/SC/0285/1984 : (1984)IILLJ517SC, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse.”

12) Coming to the other charges, a close scrutiny of inquiry report would depict the Inquiry Authority after giving an opportunity to the petitioner discussed the charges and held on cogent evidence that except Charge No.9 others were established. So, in my view, the petitioner cannot express any grievance in respect of proved charges. The petitioner could not show any valid reason as to how the finding of the Inquiry Authority suffered perversity or illegality. The Disciplinary Authority approved the findings of the Inquiry Authority in that regard. I see no reason to differ with the same.

13) Coming to the punishment, when these charges are perused, they are no less grave as Charge No.1 since they involved serious irregularities in sanction and disbursement of loans. One of the charges relates to petitioner allowing 34 DP notes to get time barred without taking proper action. In my considered view, even if Charge No.1 is omitted, still the action of the Disciplinary Authority in imposing major penalty of *compulsory retirement* cannot be said to be illegal or shockingly disproportionate to the charge of misconduct.

14) In *P.Gunasekaran's* case (3 supra) cited by the counsel for respondent the Apex Court observed thus:

“Para—12:The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

Para-13: *Under Article 226/227 of the Constitution of India, the High Court shall not:*

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

15) When the above principle is applied to the instant case, it is obvious that the Disciplinary Authority has rightly imposed the punishment proportionate to the misconduct proved. Therefore, the intervention of this Court is unwarranted.

16) Accordingly, this Writ Petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.06.2018
Murthy