

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.19493 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the order of the disciplinary authority dated 22.9.2005 imposing major penalty of compulsory retirement; order of the appellate authority/2nd respondent dated 1.4.2006, whereunder the order of the disciplinary authority was confirmed, and the order passed by the 1st respondent rejecting the review application on 4.4.2007, as illegal and arbitrary, and consequently, to direct the respondents to reinstate the petitioner into service with all consequential benefits including arrears of salary.

2. Heard Sri P.S. Rajasekhar, learned Counsel for the petitioner and Sri P. Bhaskara Mohan, learned Counsel for the respondents.

3. Brief facts of the case are as follows:

The petitioner was appointed as Rural Development Officer in Indian Bank, on 1.9.1987. From May, 1997 to September, 2001 he worked as Assistant Manager, Agriculture at Regional Office, Vijayawada. On 6.9.2001, he was transferred and posted as Branch Manager, Movva, Krishna District and he worked in that capacity upto 8.4.2002 and

thereafter, he was transferred to Machavaram Branch of Guntur District as Assistant Manager and he reported at Machavaram Branch on 9.4.2002. While so, vide proceedings dated 10.8.2002, he was placed under suspension on the ground that certain irregularities were noticed during his tenure in Movva. A memo dated 16.9.2002 was issued to him alleging that he sanctioned short term production loans (STPL) to six persons without making any pre-sanction survey, without recording the same in the loan applications and without obtaining proper land records, and thereby, he violated the prescribed norms and procedure for sanction and disbursement of STPL. Further, it was alleged that he collected processing charges from one Krishna Rao and others. Some other allegations were also made against him. The petitioner submitted his explanation on 7.10.2002 denying the allegations and thereafter, another memo was issued on 5.5.2003 with regard to sanction of IBCL/GMSS loans and loans for purchase of consumer durables during his tenure in Movva. Charge memo dated 3.2.2004 was issued to the petitioner. On 1.3.2004, he submitted his explanation denying the charges. Being not satisfied with the same, enquiry was ordered. The enquiry Officer after conducting enquiry submitted report dated 29.11.2004. The disciplinary authority after considering the said report, vide proceedings dated 22.9.2005 imposed major penalty of compulsory retirement while treating the period of

suspension undergone by the petitioner as suspension only. Aggrieved by the same, the petitioner filed appeal and the appellate authority vide order dated 1.4.2006 rejected the appeal. The review filed by the petitioner was also rejected. Hence, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner contended that the disciplinary authority without considering the objections of the petitioner to the enquiry report passed the order of punishment, without furnishing reasons contrary to Regulation 7(3) of the Indian Bank Officer employees' (Discipline & Appeal) Regulations 1976. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court in ***S.N. Mukherjee Vs. Union of India***¹.

5. Further, the learned Counsel for the petitioner contended that the appellate authority failed to give reasons and passed the order rejecting the appeal contrary to Regulation 17(4) of the Regulations. In support of this contention, he relied upon the judgment of the Hon'ble Apex Court in ***Divisional Forest Officer, Kothagudem and others Vs. Madhusudhan Rao***².

6. The learned Counsel for the petitioner further contended that there is no evidence to connect the petitioner with the

¹ (1990) 4 SCC 594

² (2008) 3 SCC 469

charges and that the allegations made in the charges do not amount to misconduct within the meaning of the regulations and that the punishment is disproportionate to the charges as there is no financial loss to the employer. In support of these contentions, the learned Counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in **Union of India and others Vs. Dwaraka Prasad Tiwari**³. He also relied upon the judgment of this Court in **A. Venkat Reddy Vs. District & Sessions Judge, Chittoor and others**⁴.

7. The learned Counsel for the respondents contended that even though there is no financial loss to the Bank as the LOAN has been liquidated, but the petitioner violated the procedure laid down. He further contended that after consideration of all the related material of the case, the disciplinary authority concurred with the findings of the enquiry officer and imposed punishment on the petitioner, and that the appellate authority and the reviewing authority considered the grounds raised by the petitioner and only after due application of mind, they confirmed the punishment order and that there are no merits in this writ petition and the writ petition is liable to be dismissed.

³ (2006) 10 SCC 388

⁴ 2008(6) ALT 606(D.B.)

8. This Court having considered the rival submissions made by the parties and the material available on record, is of the view that the disciplinary authority has not considered the objections raised by the petitioner during the course of the enquiry and passed the impugned punishment order without any reasons. The appellate authority has not given any reasons for justifying its decision and the reviewing authority has also not considered the case of the petitioner except rejecting the review without any application of mind.

9. It is the contention of the learned Counsel for the petitioner that punishment of compulsory retirement is shockingly disproportionate to the charges levelled against the petitioner as no loss has been caused to the bank. It is not disputed by the respondents that no loss has been caused to the Bank. In those circumstances, the disciplinary authority, appellate authority and the reviewing authority ought to have considered this aspect and imposed any other lesser punishment than that of compulsory retirement by applying **Wednesbury's** principle.

10. Since the disciplinary authority, appellate authority and the reviewing authority have not passed detailed speaking orders except reiterating the facts and circumstances, this Court is of the considered view that the order of compulsory retirement is passed without application of mind. Therefore, the

orders of the disciplinary authority, appellate authority and the reviewing authority are liable to be set aside.

11. Accordingly, the Writ Petition is allowed setting aside the order dated 22.9.2005 passed by the disciplinary authority imposing penalty of compulsory retirement and also the order of the appellate authority/2nd respondent dated 1.4.2006 and the order of the 1st respondent dated 4.4.2007, wherein the disciplinary authority's order was confirmed. The matter is remanded to the disciplinary authority to take into consideration the objections raised by the petitioner and also the enquiry officer's report and pass appropriate speaking orders and to impose any other lesser punishment than that of compulsory retirement by applying **Wednesbury** principle i.e., proportionality theory. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 31.12.2018.

Nn.

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