IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 12365 of 2014

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Kaushal Kishore Thakur, S/o Late Braj Kishore Thakur, Resident of Flat No 202, Raj Kishori Apartment, Kavi Raman Path, Boring Road, Patna-800001.

... ... Petitioner/s

Versus

1. The Indian Bank through CMD, Head Office, Royapeeth, Chennai – 600 014
2. The Executive Director-cum-Appellate Authority, Indian Bank, Corporate Office, Vigilance Department, Post Box No 5555, 254-260, Avvai Shanmugam Salai, Royapeeth, Chennai – 600 014
3. The General Manager, Disciplinary Authority, Indian Bank, Corporate Office, Vigilance Department, Post Box No 5555., 254-260, Avvai Shanmugam Salai, Royapeeth, Chennai – 600 014

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr Ashhar Mustafa, Advocate

For the Respondent/s : Dr Binay Kr Singh, Mr Amit Singh, Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 26-04-2019

Heard learned counsel for the petitioner and the respondent-Bank.

2 The punishment of compulsory retirement has been imposed on the petitioner by an order dated 31.10.2011. The petitioner preferred an appeal against the same. Appeal was rejected by the Appellate Authority. The order of punishment and order of the Appellate Authority are dated 31.10.2011 and 02.06.2014 respectively. The petitioner was at that time posted as a Branch Manager in the Patna Main Branch and Circle Head of the Indian Bank. He was proceeded against on the basis of a charge memo communicated on 02.08.2010. The statements of misconduct were furnished to the petitioner. Irregularities were of period between September, 2006 and October, 2009. The petitioner, at that time, had functioned as Assistant General Manager/Branch Manager and Assistant General Manager/Circle Head of the Bank. Sum and substance of the allegations were in respect of 13 loan accounts. The petitioner was charged with reckless financing. The charges, prima facie, appear to have been based on the fact that some of the accounts had been sent into recovery mode and, as such, an inference was drawn that there must have been some irregularities in sanctioning the loans.

3 The entire issue was considered in the enquiry. Two Management Witnesses have deposed in the proceedings. MW 1 was the successor in office after the petitioner had relinquished his charge as Branch Manager. MW 2 was one of the officers who had investigated the issue at the stage of preliminary enquiry and had submitted his report at the preliminary enquiry stage. The Enquiry Officer, on 06.05.2011, submitted an enquiry report. Considering the same, the Disciplinary Authority proposed to impose the major punishment of compulsory retirement under Regulation 4h of the Indian Bank Officer Employees' (Discipline

& Appeal) Regulations, 1976 (for brevity *1976 Regulation*). After having obtained the opinion of the Central Vigilance Commission, the petitioner's response was sought on the issue. Petitioner submitted his representation in response thereto on 23.09.2011 and 21.10.2011. Thereafter, the Disciplinary Authority, after considering the issue, by order dated 31.10.2011, imposed the major punishment of compulsory retirement under Regulation 4h of the 1976 Regulations. The petitioner, being aggrieved by the Enquiry proceedings, challenged the order of punishment as well as the order rejecting his appeal by filing a writ petition. CWJC No 4148 of 2013 filed by the petitioner was allowed on 20.01.2014.

4 The order dated 20.01.2014 passed on the petitioner's earlier writ proceedings is very relevant for the instant case inasmuch as the issues, which were left open to be considered and which had already stood concluded in respect of the proceedings before the Enquiry Officer and Appellate Authority, can be concluded on the basis of the said order. Paragraph 5 of the order passed on the petitioner's earlier writ proceedings is conclusive to the extent that this Court has recorded a finding that there is no such infirmity in the proceedings so as to necessitate interference by this Court under Article 226 of the Constitution of India. The

Court, having recorded a finding that the proceedings before the Disciplinary Authority, did not come withing the scope of judicial review, has gone on to highlight infirmities of the Appellate Authority and found specific shortcomings in the consideration made by the Appellate Authority. This Court, in the said order, has formulated some points which he petitioner had raised in the writ proceedings and directed the Appellate Authority to specifically consider the said points raised by the petitioner. The issues were narrowed down by this Court in the earlier writ proceeding as follows:

> *"... ... ... The appellate authority, while passing the order afresh, must take into account the following points which have been raised by the petitioner in the present writ application:-*
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> *(a) Whether the copies of the documents figuring in the list of documents relied upon by the bank, while serving upon the petitioner the charge-sheet, were supplied to the petitioner or not as required under Regulation 6 (3) of the Indian Bank Officer Employees' (Discipline and Appeal) Regulations, 1976. If not, whether non supply of such documents would have caused any prejudice to the petitioner.*
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> *(b) The appellate authority shall specifically consider the petitioner's plea that many of the questioned accounts had already been closed and that there has been substantial recovery in the other accounts also and for subsisting liabilities also, there are sufficient sureties to cover those*

advances. The appellate authority shall consider the statement of M.W. 1 in his order as he said to have stated that all the advances were adequately covered with collateral and prospect of recovery is good. The appellate authority will be required to test the conduct of the petitioner on the basis of material on record, with reference to Clauses 10.2.2, 10.2.4 and 10.2.7 of the Manual of Instructions of the Bank which deals with Staff Accountability (for officers).

(c) The appellate authority shall be required to pass an order on the petitioner's appeal in the light of the observations/directions given herein above.

(d) The appellate authority shall also consider as to whether in the facts and circumstances of the case, a punishment of compulsory retirement can be substituted by any other suitable punishment in the facts and circumstances of the case.

21. The appellate authority will be required to pass order pursuant to present order in this case within three months from the date of receipt/production of a copy of this order.

22. This writ application is allowed, accordingly."

5 The order of the High Court is final and binding inter parties inasmuch neither petitioner nor respondent-Bank has ever challenged the order dated 20.01.2014 passed in the earlier writ proceedings at the instance of the petitioner arising out of CWJC No 4148 of 2013.

6 In the said circumstances, this Court would limit its consideration of the matter to the issues which this Court, in the earlier order, had directed the Appellate Authority to consider. In so far as the issue No a is concerned, admitted case is that petitioner, during the proceedings, did not object to or sought copies of the documents which were referred to in the charge memo served on him on 02.08.2010. However, having considered the same to be a fatal aspect and that the authorities could only deny copies of documents within the scope of Regulation 6.3 of the 1976 Regulations, this Court had directed the Appellate Authority to examine this aspect of the matter.

7 Upon remand to the Appellate Authority by this Court, findings, in this respect, have been recorded in the order passed by the Appellate Authority on 02.06.2014. The Appellate Authority has highlighted the fact that opportunity was granted to the petitioner as contemplated under Regulation 6.3 of 1976 Regulations to inspect the documents listed/enumerated in the charge memo. It is stated that he was additionally given opportunity of a second inspection along with his defence representative. At the same time, it is also submitted that in the departmental enquiry, copies of all listed documents were provided to him at the outset of the enquiry itself as part of the

Management's documentary evidence. The Appellate Authority has, therefore, concluded that no prejudice has been caused on account of point (a) formulated by this Court in its order dated 20.01.2014.

8 Rule 6.3 of the 1976 Regulations contemplates giving opportunity of inspecting documents instead of giving copies of documents referred to in the charge memo, but under particular circumstances. Though the requirement of giving copies of the documentary evidence is mandatory under Regulation 6.3 of the 1976 Regulations, proviso thereto creates an exception which is subject to a rider "wherever it is not possible to furnish the copies of documents". Bare perusal of Rule 6.3 along with its proviso makes it abundantly clear that it is only in specified circumstance that the documents can be denied to the delinquent and in its place, an opportunity of inspection can be granted whether such circumstance existed or not was to be recorded in the order whereby the petitioner was denied the copies of the documents relied upon in the charge memo. In all other cases where the condition contained in proviso to Regulation 6.3 of the 1976 Regulations does not exist, the authorities are enjoined with a responsibility to communicate the documentary evidence referred to in the charge memo.

9 Consideration of the Appellate Authority in respect of point (a), therefore, has to be viewed in the background of the provisions contained in Rule 6.3 of the 1976 Regulations and proviso thereto which makes it clear that in case of impossibility to provide the document, requirement to provide copies could be dispensed with. There is no such opinion or conclusion regarding impossibility in providing copies. There is no order on record regarding any circumstance or reason for not supplying the copies of the documents referred to in the charge. The authorities, therefore, could not have dispensed with supply of the documents which were listed as evidence in the charge memo dated 02.08.2010. The documents, which were being relied upon, run into hundreds of pages. Whether merely by inspecting hundreds of pages, it can be inferred that the petitioner has been granted due opportunity is to be seen in the facts of the instant proceedings.

10 As taken note of herein above, there was no evidence of the petitioner’s case falling under the exception provided in the proviso. Under normal circumstance, the copies of documents were required to be served on the petitioner. The Appellate Authority, however, being conscious of the requirement, has also concluded that copies of all listed documents were provided to the petitioner at the outset of the enquiry itself. From bare perusal of the initiation of the proceedings under charge memo dated 02.08.2010, it is apparent that no copies of documents have been served on the petitioner at the outset of the enquiry itself. Prior to the order dated 02.06.2014 passed by the Appellate Authority upon remand by the High Court, such stand has never been taken by the Bank. Even, in the earlier proceedings, Bank has not asserted that copies of the documents have been provided to the petitioner. These both findings/conclusions of the Appellate Authority are violative of Regulation 6.3 and the proviso thereto as also factually incorrect as per records.

11 The other aspect of the matter, which was required to be considered whether the actions of the petitioner in sanctioning the loans had been considered by the Bank with reference to Clauses 10.2.2, 10.2.4 and 10.2.7 of the Manual of Instructions of the Bank regarding Staff Accountability (for officers). Before this Court considers the same, the three Clauses are being quoted herein below

> *"2.2 Bona fide Commercial judgments of various authorities in the Bank should not be questioned later, unless mala fide intention is proved. A distinction should be brought out between accountability arising out of genuine business decisions, out of negligence or out of mala fide/.frauds.*
>
> *2.4 Deficiencies which can be rectified and the irregularities which are not*

likely to the enforceability of securities may be treated as procedural lapse and decision taken on that basis.

2.7 The bona fide actions and business risks taken by officials should be recognized and official involved in such actions should be protected and supported so that the decision making process in the Bank does not suffer for the reason 'Fear of Accountability'."

12 In this connection, the conclusion of the Appellate Authority is based on presumptions to say the least. The petitioner has brought to the notice of the Authority the fact that neither of the two Management Witnesses had supported the allegation against the petitioner that collateral securities had not been taken by him while sanctioning the loans or that there was any insufficiency in the collateral securities taken so that the adequate recovery in respect of the loans could be made. It was only in respect of one loan account, i e, under the Indian Bank Home Loan Accounts which were sanctioned in favour of the petitioner's wife. It is submitted by petitioner's counsel that the nature of loan being a Housing Loan, it is the standard norms and practice that the construction itself is taken to be a security for which additional security was not required. All other depositions of the Management Witnesses are to the extent that they are tagged by collateral security and were recoverable loans. The petitioner has drawn attention of the Court towards statement of the Management

Witnesses. On a question, regarding the various loan accounts forming the basis of charge memo, put to MW 1 whether documents are enforceable, the unequivocal and specific response of MW 1 was yes. In respect of the query whether the loan accounts forming basis of charge memo had been issued after obtaining collateral security, specific response was that except the IBHL Account, in all other accounts, collateral security is available besides the primary security. The only evidence in respect of the charge whether there was adequate security available on record in the proceedings is this deposition of MW 1. The same has been overlooked by the Appellate Authority in spite of specific remand to examine this issue under the earlier order of this Court. Appellate Authority has only relied upon the fact that some of the acounts were in the process of recovery and his opinion that in the recovery proceedings, the Bank was facing a huge financial loss of about Rs 11.93 crores. The fact of pendency of recovery proceedings for some loan accounts has been made the basis to presume that the loan accounts were sanctioned without obtaining collateral securities. There is no specific finding on the basis of any evidence in the proceedings that the petitioner had sanctioned the loans without obtaining collateral security as per requirement. The findings are based on presumption, based on the fact that accounts were in the mode of recovery and by submitting that the deposition of MW 1 was not credible in view of the subsequent circumstance of the loans having been sent for recovery. Such a finding based on presumption cannot be made the basis of visiting the petitioner with the severe punishment of compulsory retirement. Had the Appellate Authority examined the issue in its correct perspective then the Authority would not have been left with any alternative than to tone down the punishment in terms of the reference of this Court in the earlier proceedings under Clause (d) of the order and judgment dated 20.01.2014. Having failed to discharge their obligations in terms of Clauses (a) and (b) of the said order and in the fact and circumstances stated herein above, this Court would hold that the punishment of compulsory retirement, which has been imposed upon the petitioner, is grossly excessive, disproportionate and cannot be sustained in view of the above considered facts.

13 This Court would, therefore, set aside the punishment as being excessive and direct the Appellate Authority to substitute the punishment by a lesser punishment and grant the petitioner the consequential benefits of such toning down in the punishment. Being conscious of the limitations imposed by series of judgments, this Court will not substitute its own punishment in place of the punishment of compulsory retirement. However, having regard to the facts and circumstances, this Court has come to a finding that the punishment of compulsory retirement, which has been awarded, is unsustainable as being excessive and disproportionate. The final decision in respect of punishment shall be taken by the Appellate Authority within three months maintaining parity with punishment awarded to other officers in respect of these proceedings and consequential admissible dues thereof should be paid to the petitioner within the said period.

14 The writ application is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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