IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.12475 & 12571 of 2004
and
WMP No.43879 of 2005

1.M.Eganathan ...Petitioner in W.P.No.12475/2004

2.R.Govindarajan ...Petitioner in W.P.No.12571/2004

V.

1.Indian Overseas Bank
rep. by its Chairman and
Managing Director,
Central Office,
763, Anna Salai,
Chennai-600 002.

2.The Appellate Authority,
General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai-600 002.

3.The Deputy Chief Officer,
Disciplinary Authority,
Vigilance Department,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai-600 002. ...Respondents in both W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 15.12.2000 bearing number DO:GM:(ALC)/AA:121:2000 and DO:GM:(ALC)/AA:120:2000 passed by the second respondent herein, confirming the order dated 29.04.1999 bearing No.VIG:335 and DO:DA (NRV): VIG: 333:99 passed by the third respondent herein respectively and to quash the same and to direct the first respondent bank to pay all back wages and other perks to the petitioner by declaring that the petitioner is deemed to be in the service of the first respondent bank.

For Petitioners in both Wps	: Mr.Perumbulavil Radhakrishnan
For Respondents 1 to 3 in both Wps	: Mr.K.Srinivasamurthy for Mr.NGR Prasad

COMMON ORDER

The petitioners, while working at the Tiruppur Branch of the respondent Bank, along with two other persons, namely, V.Sankar, the Chief Manager and Yuvaraja Bhoopathy, officer were charge sheeted for certain acts of commission and omission in collusion with M/s. BPR Exports, thereby causing wrongful loss to the Bank by detaining 5 cheques purchased on account of the above parties without sending them for collection and had also destroyed 12 cheques purchased for that parties and thereby facilitated the parties to get undue pecuniary gain. The employees of the respondent Bank are governed by Bi-Partite Settlements under Section 18(1) and 2(p) of the Industrial Dispute Act, 1947 (hereinafter referred to as 'ID Act') and accordingly, the charges dated 24.05.1995 was laid under Para 17.5 (d) and 17.5 (j) of the Bipartite Settlement for wilful damage or attempt to cause damage to the property of the Bank and doing any act prejudicial to the interests of the Bank causing serious loss, respectively. An enquiry came to be conducted and pursuant to the Enquiry Officer's report, the Disciplinary Authority had issued a show cause notice proposing the punishment of dismissal from the Bank's services to both the petitioners herein. After considering the objections in the personal hearing granted pursuant to the show cause notice, the Disciplinary Authority had awarded the punishment of dismissal through his order dated 29.04.1999 to both the petitioners. The appeals filed by both these petitioners herein came to be rejected, thereby confirming the original order of dismissal. Hence the present Writ Petitions.

2. Insofar as the other two delinquents, namely, V.Sankar, the Chief Manager of Tiruppur Branch and Yuvaraja Bhoopathy are concerned, they were imposed with a very minor punishment. In the meantime, the said delinquents have also remitted the alleged loss amount to the Bank.

3. Heard Mr.Perumbulavil Radhakrishnan, learned counsel for the petitioners and Mr.K.Srinivasamurthy, learned counsel appearing on behalf of the respondents.

4. The learned counsel for the petitioners submitted that the dismissal orders were passed against the petitioners at the behest of the Central Vigilance Commission's (CVC) advice and inspite of the petitioners' specific request for supply of the reports, it was not provided and thereby, the order itself is in violation of principles of natural justice. The learned counsel further submitted that there were violation of the terms of the Bipartite Settlement and violation of the provisions of the ID Act and though such grounds were specifically raised during the disciplinary proceedings, the same has not been addressed. It is his further submission that though the Chief Manager, who was also levelled with the similar charges and such charges were held to be proved, was imposed with a very minor punishment, whereas on the same set of facts where the charges against these petitioners were not clearly proved before the Enquiry Officer, the third respondent had imposed a major punishment of dismissal from the services and therefore the punishment itself is not in conformity with the levelled charges.

5. The learned Standing counsel for the respondents, on the other hand submitted that, the entire disciplinary proceedings culminating into the order of dismissal was done by following the principles of natural justice. The learned counsel submitted that the reports of the CVC are only advisory in nature and therefore, non- furnishing of the same will not amount to violation of the principles of natural justice. Insofar as the punishment imposed to the Chief Manager is concerned, the learned counsel would submit that the overt acts established during the course of disciplinary proceedings insofar as the petitioners are concerned, were serious in nature and therefore the major penalty was resorted to, which was not the same insofar as the Chief Manager is concerned.

6. I have given careful consideration to the submissions made by the respective counsels.

7. At the very inception of initiating the action, it is seen that, during the first stage of advice of the CVC, the Bank had not consulted the CVC insofar as these two petitioners are concerned, but had chosen to consult, insofar as the other two delinquents are concerned. Nevertheless, the Bank had initiated disciplinary action against these petitioners alone without the CVC's approval, which is reflected in the order of the CVC dated 03.02.1998, wherein, the Commissioner had observed that the Bank had initiated action against these petitioners without consulting the Commission which is against instructions. The Bank were also advised not to repeat the said lapse in future in the said letter. Since the entire action emanates from the CVC's report, the petitioners had sought for copies of the CVC's

report which were never furnished during the course of the disciplinary proceedings. The Hon'ble Apex Court in a decision reported in 1993 (1) SCC 13 in the case of State Bank of India and others V. D.C. Aggarwal and another had held that the Disciplinary Authority, while imposing punishment, cannot act on any material which is neither supplied nor shown to the delinquents and the consequent action taken thereon, cannot be countenanced. The relevant portion of the said order reads as follows:

> "4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment, in writ jurisdiction, but we propose to confine only to the question of effect of non-supply of CVC recommendations as if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settle for series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself."

8. The only objection raised by the Bank for non furnishing of the CVC's report is that they are only instructions and does not have a binding effect. I am not in agreement with such an objection. When the CVC is of the view that the charges are serious in nature and that the major punishment of dismissal from services is required to be imposed on all the four delinquents, including the two petitioners herein and when the Bank had chosen to impose the major punishment of dismissal only on the petitioners herein, this CVC's report gains significance.

9. This Court is unable to find the prejudice that could be caused to the Bank on furnishing the CVC's report to the petitioners. In view of the decision of the Hon'ble Apex Court in the case of D.C. Aggarwal, I am of the view that the order itself would be violative of the principle of natural justice and hence vitiated.

10. It is further seen that after the enquiry, the Disciplinary Authority had considered the merits of the case and had initially proposed to award the punishment of reduction of the basic pay in "3 stages" insofar as the Chief Manager is concerned and reduction of basic pay by "5 stages with cumulative effect" insofar as the other three delinquents including the petitioners herein are concerned and such a proposal was forwarded to the CVC on 29.02.1997. On consideration of such a proposal, the CVC in their letter dated 03.02.1998, had observed that the lapses of the four officials had resulted in exploiting the Bank funds to the tune of 82.38 lakhs and therefore advised to impose penalty of dismissal of the services of the four delinquents.

11. As stated earlier, in connection with the same set of charges, all the four delinquents were proceeded together with. However, there was no common enquiry but the Chief Manager was proceeded separately. Even though, the Disciplinary Authority initially was of the view that punishment of reduction of basic pay was proportionate to the extent of the proven charges, the CVC had taken a view that the dismissal of the services would be an appropriate punishment in view of the huge amount involved in the incident. The CVC's recommendations for imposing punishment of dismissal was on the four delinquents. Nevertheless, the subsequent Disciplinary Authority, as well as the Appellate Authority had taken a contrary view for the Chief Manager by imposing him with a very minor punishment, but whereas, it had adhered to the CVC's recommendations of major punishment, insofar as the petitioners herein are concerned. I am unable to appreciate such a contradictory view taken by the Disciplinary Authority. When the CVC had chosen to differ from the original authority for imposing punishment of reduction of the basic pay and had selectively obeyed such instructions, insofar as the petitioners herein alone are concerned, the same would only amount to discrimination. The punishment itself emanates from the evidences adduced before the Disciplinary Authority. Originally, the Disciplinary Authority was also of the view that insofar the portion of the proven charges are concerned, the punishment of reduction of basic pay would suffice for all these four delinquents. The CVC however, without giving any justification or referring to the findings of the Enquiry Officer, had simply stated that the amount involved was huge and therefore, recommended for major punishment. Such a recommendation without giving any other reasoning, would be an improper advice on the part of the CVC. The Disciplinary Authority, also ought to consider this aspect and applied the same yardstick for the Chief Manager also, which has not been done in case of the petitioners herein. In view of the same, I am of the affirmed view that the punishment itself is not in proportionate to the levelled charges.

12. Though this Court had earlier held that the dismissal orders, as confirmed in the appeals are vitiated, since it is in violation of principles of natural justice, it is seen that apart from these procedural irregularities, there were some materials which could possibly indicate the involvement of the petitioners herein in the charges. As such, the modification of the dismissal order into a lesser punishment would secure the ends of justice.

13. In the light of the above observations, the impugned order dated 15.12.2000 passed by the second respondent in DO:GM:(ALC)/AA:121:2000 and DO:GM:(ALC)/AA:120:2000, confirming the order dated 29.04.1999 bearing No.VIG:335 and DO:DA (NRV): VIG: 333:99 passed by the third respondent herein respectively are set aside. In the result, both the Writ Petitions are partly allowed. Consequently, the orders of dismissal shall stand modified into one of reduction in basic pay by "5 stages with cumulative effect". Consequently, the petitioners shall be entitled for all the terminal benefits. However, the petitioners shall not be entitled to any back-wages. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman and
Managing Director,
Indian Overseas Bank
Central Office,
763, Anna Salai,
Chennai-600 002.

2.The Appellate Authority,
General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai-600 002.

3.The Deputy Chief Officer,
Disciplinary Authority,
Vigilance Department,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai-600 002.

+2cc to Mr.NGR.Prasad, Advocate Sr.21056, 21057

nmI[co]
srg 05/11/2019