IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2019
Pronounced on : 31.10.2019

Coram

THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

WP No.19387 of 2013

1. M.K.Ravivarma (Deceased)
2. P.Gayathri ..Petitioner
(P2 substituted as LR of the deceased P1 vide order of dated 30.11.2018 made in WMP No.8266 of 2018 in WP No.19387 of 2013)

v.

1. Union Bank of India,
Rep. by its Chairman and Managing Director,
Appellate Authority,
No.239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai - 400 021.

2. Executive Director (Disciplinary Authority)
Union Bank of India,
No.239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai - 400 021. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, after calling for the concerned records from the 1st and 2nd respondent and quash the order of the 1st respondent dated 3.1.2013 bearing Ref.No.CO:IRD:123:2013 and the order of the 2nd respondent dated 26.02.2010 bearing Ref.No.CO.IRD:1161:2010 and consequently direct the respondents to settle the terminal benefits of the petitioner viz., Pension, Management Contribution of the Provident Fund, Gratuity, Leave Encashment etc., along with interest at the rate of 12% per annum and treat the petitioner as retired from service for all purpose on 30.04.2009, award cost.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

ORDER

The instant writ petition is one for certiorarified mandamus, to quash the order dated 03.01.2013 passed by the Chairman and Managing Director, Appellate Authority, Union Bank of India, Mumbai bearing Ref.No.CO.IRD:123:2013 and the order dated 26.02.2010 passed by the Executive Director (Disciplinary Authority), Union Bank of India, Mumbai, the 2nd respondent, imposing punishment of dismissal from service and for a consequential direction to settle the terminal benefits of the petitioner.

2. It is pertinent to mention that the petitioner viz., M.K.Ravivarma passed away and his wife P.Gayathri has been substituted as petitioner. The petitioner joined service of the bank as a Probation Officer in the year 2005. He was working as the Regional Head at Chennai. The petitioner was given a charge memo dated 08.10.2007, regarding sanction of adhoc limits, enhancement in Temporary Over Draft, etc., in favour of one M/s.Sri Venkateswara Imports and Exports Company.

3. The charge memo dated 25.04.2007, states that the petitioner sanctioned Ad hoc PC limits and enhanced Over Drafts in favour of M/s.Sri Venkateswara Imports and Exports Company, despite poor turnover, over dues in PC, frequent cheque returns in the CD Account. The charge memo states that this action of sanction, amounted to serious lapse on the part of the petitioner and resulted in substantial damage to the bank. Relevant portion of the charge sheet reads as under.

> - Vide letter No:ROC:RAD:4248 dated 03.02.2006, you had informed the branch that despite enhancement of the PC limit to Rs.400.00 lacs in October 2005, enhancement of two-way interchangeability to Rs.400.00 lacs on 18.11.2005 and permitting Ad hoc PC limit of Rs.50.00 lacs on 30.12.2005 the branch was extending TOD in the CD account regularly. But no action was taken to curb the practice.
>
> - You did not ensure that the factory inspection was carried out as per your instructions by the branch.
> - Despite the above irregularities you permitted the following facilities to the party on 17.05.2006, :
>   - Modification in the DA period on the export bills from 60 days to 120 days.
>   - Enhancement in the FDBP/FUDBP (DA 60/120 Days) under LC limit from Rs.200.00 lacs to Rs.400.00 lacs upto August 2006.
>   - Extension of Ad hoc PC limit of

Rs.50.00 lacs to 10.06.2006 which was then valid upto 30.04.2006.

- Extension of time for adjustment of TOD by 15.05.2006.
- Ratification of the action of the branch for having purchased FUDBP Bills of Rs.62.85 lacs over and above the available limit of Rs.100.00 lacs.

- The branch was regularly sanctioning TOD. Ad hoc PC limit, increase in interchangeability limit and loans against the deposits (cut-back deposits originally intended to be additional security for the credit limits) were utilized to wipe-off overdraft periodically as shown hereunder:

Date	Credit From	Total Amount (Rs. in Lacs)
24.09.2005	PC Rs.50.00 lacs	43.11
14.11.2005	PC Rs.50.00 lacs	83.24
28.11.2005	PC Rs.50.00 lacs	47.08
30.12.2005	PC Rs.50.00 lacs	48.16
10.06.2006	Loan against deposits Rs.28.00 lacs	17.21
07.07.2006	PC Rs.50.00 lacs	11.93

- The branch purchased the following 13 bills without shipping bills / custom clearance certificate and GR forms from 16.05.2006 to 14.07.2006.

No	Date of purchase	FUDBP No	Amount in US $	Rupee Value	Buyer	Remarks
1	16.05.06	127	24820	11,30,799/-	Unitex International	All the bills are of 120 days tenor/ Sl.No.2 to 5 amounting to Rs.44,77,600/- were adjusted with rupee remittance on 31.07.2006
2	19.05.06	129	24820	11,16,900/-	..do..	
3	19.05.06	130	24820	11,16,900/-	..do..	
4	25.05.06	131	24820	11,16,900/-	..do..	
5	25.05.06	132	24820	11,16,900/-	..do..	
6	09.06.06	148	24820	11,16,900/-	..do..	
7	16.06.06	151	24820	11,16,900/-	..do..	
8	16.06.06	152	24820	11,16,900/-	..do..	
9	23.06.06	157	24820	11,16,900/-	..do..	
10	23.06.06	158	24820	11,16,900/-	..do..	
11	29.06.06	167	24820	11,16,900/-	..do..	
12	29.06.06	168	24820	11,16,900/-	..do..	
13	14.07.06	173	24820	11,16,900/-	..do..	

- When the information regarding purchase of defective export bills amounting to over Rs. 100.00 lacs was received by you on 29.09.2006 from Ashok Nagar Branch, you did not take any concrete steps to protect Bank's interests. You did not even take care to inform about the serious lapse on the part of Branch officials to FGMO / Central Office.

- You ratified and permitted TOD upto 30.06.2006 when the branch vide letter No:ADV:MA:530:06 dated 13.06.2006 sought ratification of TOD of Rs. 10.79 lacs already allowed by them and permission for allowing TOD of Rs.25.00 lacs.

- You accorded approval to the branch request for extension of overdue PC advance of Rs.191.57 lacs beyond 180 days on 04.07.2006. With the instructions that the Chief Manager should inspect the unit and submit report immediately. However, this was not ensured by you.

- The turnover in Packing Credit account for the period from 01.04.2005 to 31.03.2006 was Rs.285.74 lacs and for the period from 01.04.2006 to 31.10.2006 was Rs.315.74 lacs which was not commensurate with the sanctioned limit. You permitted extension of PC advances disbursed from 14.11.2005 to 31.12.2005 to the extent of Rs.191.57 lacs beyond 180 days.

- Vide letter No:CO:IRD:975:06 dated 15.02.2006, you were advised to post Shri Arjunan in non-sensitive area. Instead of complying with the above instructions, you preferred to represent vide letter No:NRO:DP:2591 dated 28.02.2006 to Central Office to continue him as Chief Manager, Ashok Nagar Branch. Vide your letter No:NRO:DP:341 dated 11.05.2006, you informed that except a Censure issued for the lapses in the account of Shri Krishna Remedy, the service record of Shri Arjunan is satisfactory. In spite of receiving fillers about various irregularities committed by him at Ashok Nagar Branch, you continued him at the same branch till 17.10.2006.

The foregoing reveals that you sanctioned Adhoc limits, enhancement in TOD, etc. in favour of Shri Venkteswara Imports & Exports Co despite poor turnover, overdues in PCs, frequent cheque returns in CD account due to which substantial amount of Bank's funds are at stake. Had you acted prudently and removed Shri Arjunan promply, substantial damage could have been averted."

4. The petitioner was asked to give his explanation. The explanation was accepted and by an order dated 08.10.2007, Articles of Charge was issued to the petitioner along with a detailed statement of allegation. The petitioner gave a detailed reply. An enquiry officer was appointed. The petitioner participated in the enquiry. On conclusion of the enquiry, the enquiry officer gave the report on 17.03.2009.

5. For the first charge, the enquiry officer found that there were irregularities in the account of Sri Venkateswara Imports and Exports Company, but he find that the petitioner alone cannot be held as responsible. It was found that despite the approval accorded by the petitioner, the other officers are equally responsible and more so the officers of branch, who recommended the renewal of the account. The enquiry officer found as under:

Charge No.1	It is alleged that in spite of the adverse observations [as mentioned in Ex.S.8], in October' 2005 while reviewing the account, the PC limit was enhanced from Rs. 300.00 lacs to Rs. 400.00 lacs and FDBP/FUDBP limit at the existing level of Rs. 200.00 lacs. Two-way interchangeability between the PC and bills limit was permitted to the extent of Rs. 50.00 lacs.
Finding of the Enquiry Officer	From the above discussion of evidence both documentary and oral, it is established that there were irregularities in the account of M/s.SVIE. However, despite that the approval was accorded by the CO as DGM, NRO, Chennai on the recommendations of the Branch, for renewal of the account with two way intercahngeability of Rs.50 Lacs. The CO has contended that there were recommendations from the Branch to the effect; the monitoring report in Ex.S.8 was for the month of May 2005 and the turnover of Rs.0.66 lacs reported pertained to 2 months period, when the firm was having negligible export orders; and the ad hoc limit of Rs.50 lacs was sanctioned on 23.09.2005 as an interim measure, pending submission of the enchancement proposal which the branch had assured to submit within a couple of days, to enable the firm to procure materials for the export orders they could sercure after a long time. The CO has further averred that the enhancement done was within his delegated powers. Although there is strength in the arguments put forth by the CO, yet the fact remains that while approving the proposal in question the CO has failed to point out the deficiencies / irregularities mentioned in the Monitoring Report. Further, the officers who scrutinized / processed the proposal in the NRO have also failed to point out / deliberate upon the issues mentione din the Monitoring Report. As such, the CO cannot be held solely responsible in this regard, given the circumstances under which he was functioning as DGM - as has been deposed by SW-1. Hence, he shares his responsibility in this regard, and this part of the charge is held as 'proved' to this extent.

6. As regards charge no.2, the enquiry officer again held that the charges as proved, as under

Charge No.2	It is alleged that the CO also sanctioned Ad hoc PC limit of Rs.50.00 lacs on 23.09.2005 for a period of two months. Interchangeability between the PC and the Bills limit was also enhanced from Rs.50.00 lacs to Rs.100.00 lacs on 18.11.2005.
Finding of the Enquiry Officer	However, as is evident from above, there was a monitoring report from the Credit Monitoring Cell with regard to irregularities in the account of the firm, which was also endorsed to the Branch, but there is no mention of the said irregularities either by the Branch in their proposal or by the RO in their processing / approval note. As such, the CO among others shares his responsibility in this regard, and to that extent this part of the charge is held as "proved" against him.

7. Similarly for charge no.3, the enquiry officer held as under

Charge No.3	It is alleged that vide letter No: ROC:RAD:4248 dated 03.02.2006, the CO had informed the branch that despite enhancement of the PC limit to Rs.400.00 lacs in October 2005, enhancement of two-way interchangeability to Rs. 100.00 lacs on 18.11.2005 and permitting ad hoc PC limit of Rs. 50.00 lacs on 30.12.2005, the branch was extending TOD in the CD account regularly. But no action was taken to curb the practice.

Finding of the Enquiry Officer	From the available case records it is established that the RO was extending enhancement from time to time to the said firm. From Ex.S.18 it is also evident that the firm was not adhering to the terms and conditions/stipulations, but despite that limits were being enhanced, and TODs were also allowed. It is also on record that proposal for enhancement of limits was approved and conveyed to the Branch on 13.10.2005 [Ex.S.13], knowing well that there existed irregularities in the account. Further, two- way interchangeability between PC and Bills Limit was enhanced from Rs. 50 Lacs to Rs. 100 Lacs on 18.11.2005 [Ex.S.15]. Also, ad-hoc PC limit of Rs. 50 lacs was permitted for a period of 1 month on 30.12.2005 [Ex.S. 17]. In Ex.S.18 there is a mention that "branch is extending TOD in the account on a regular basis". It is also mentioned therein that "the firm is in the habit of seeking interchangeability/excess in the account on a regular basis, quoting various reasons, without any improvement in submission of bills of negotiation". But except Ex.S.18, there is no record to show that any concrete steps were taken by the RO to curb this situation. The CO has averred that the senior staff in the Regional Office has failed in their duties and he has followed the papers put up to him after due verification and recommendations of the senior grade officers of Regional Office. Although there is strength in the argument of the CO, being an officer of sufficient seniority and level, he cannot shun his liability. As such, he is responsible for not initiating any action with regard to excess TODs in the account. This part of the charge is therefore held as 'proved' against the CO.

8. For charge no.4, the enquiry officer held as under

Charge No.4	It is alleged that the CO did not ensure that the factory inspection was carried out as per his instructions by the branch.

Finding of the Enquiry Officer	The documentary evidence as mentioned above has been gone through and it is seen that stock has been inspected by the auditors during 25.4.2005 to 27.4.2005 [Ex.S.7] and 19.3.2006 and 25.3.2006 [Ex.D. 17]. It is also evident from Ex.S.9 that the RO, Chennai has brought to the notice of the branch that they are not inspecting stock and regular quarterly stock inspection should be ensured. As has been contended by the CO, it was the responsibility of the Branch to ensure quarterly stock inspector report, he cannot be held solely responsbile for this. But on the other hand, being a officer of the sufficient seniority and level, and especially when the account was not being maintained property by the Branch [as is evident from various proposal and communications], the CO cannot absolve of his responsiblilty completely and as such he also shares his responsibility for not ensuring regular quarterly stock inspection reports. Hence, he is culpable to this extent, and this part of the charge is therefore held as 'proved' to that extent.

9. For charge no.5, the enquiry officer held as under:

Charge No.5	It is alleged that the despite the above irregularities, the CO permitted the following facilities to the party on 17.05.2006: - Modification in the DA period on the export bills from 60 days to 120 days. - Enhancement in the FDBP/FUDBP (DA 60/120 Days) under LC limit from Rs.200.00 lacs to Rs.400.00 lacs upto August 2006. - Extension of Ad hoc PC limit of Rs.50.00 lacs to 10.06.2006 which was then valid upto 30.04.2006. - Extension of time for adjustment of TOD by 15.05.2006. - Ratification of the action of the branch for having purchased FUDBP Bills of Rs.62.85 lacs over and above the available limit of Rs.100.00 lacs.

Finding of the Enquiry Officer	From the above discussion of evidence it is established that there were irregularities with regard to the account of M/s SVIE. However, despite that, various facilities - as mentioned above, were extended to the firm. In the sanction letter dated 17.5.2006 [Ex.S.25] it has also been mentioned that "please be guided accordingly and confirm compliance of all sanction terms at the earliest". Apparently, every time compliance report from the Branch has been sought, but there was no compliance by the Branch and the firm was allowed to operate the account at their whims and fences. The COs averments that the decisions taken were commercial decisions and were taken in good faith and in the interest of the bank, are not convincing, in as much as the firm was continuously not following / adhering to the terms and conditions, but despite that they were being sanctioned / enhanced / renewed limits, thereby jeopardizing the interests of the bank. The CO being Regional Head was expected to ensure that the account is being maintained properly and the requirements of the sanction / enhancement / renewal are adhered to by the branch / firm scrupulously. As such the CO cannot shun his liability, and to this extent he is culpable. This part of the charge is therefore held as "proved" to that extent.

10. Charge Nos.6 , 7 and 8, were not proved.

11. For charge no.9, the enquiry officer held as under

Charge No.9	It is alleged that the turnover in Packing Credit account for the period from 01.04.2005 to 31.03.2006 was Rs. 285.74 lacs and for the period from 01.04.2006 to 31.10.2006 was Rs. 315.74 Lacs, which was not commensurate with the sanctioned limit. The CO permitted extension of PC advances disbursed from 14.11.2005 to 31.12.2005 to the extent of Rs. 191.57 Lacs beyond 180 days.

Finding of the Enquiry Officer	From the above it is established that the Packing Credit account of the firm during the aforesaid period was not commensurate with the sanctioned limits and the sales of the firm. However, despite that the limit was extended by the CO from 180 days to 360 days for PC disbursed from 14.11.2005 to 31.12.2005. Hence, the RO should not have extended this period especially when the firm could not export the goods till then. Hence, allowing beyond 180 days by Regional Office, Chennai is not correct. The CO has not been able to put forth any tangible evidence or reasonable explanation to rebut the charge. This part of the charge is, therefore, held as 'proved' against the CO.

12. Charge No.10, was not proved.

13. The petitioner was asked to give a reply to the enquiry report and the proposed punishment of dismissal. The disciplinary authority concurred with the findings of the enquiry officer and gave punishment of dismissal from service. The appellate authority has also concurred with the findings of the disciplinary authority. The findings of the disciplinary authority and the appellate authority are under challenge in the instant writ petition.

14. Mr.Balan Haridass, learned counsel for the petitioner would contend that a reading of the charges would show that there is no malafides and there is no finding that the petitioner wanted to favour Sri Venkateswara Imports and Exports Company, but at best it is a case of error of judgment. He would also argue that there is no finding that the petitioner was negligent or as stated earlier had shown undue anxiety to help Sri Venkateswara Imports and Exports Company. In the absence of such a finding, this Court should not approve the extreme penalty of dismissal from service.

15. Mr.Balan Haridass, learned counsel for the petitioner would also contend that the entire process of granting of facilities is a collective process and the petitioner alone cannot be singularly punished with the extreme penalty. He would submit that the petitioner, would only act on the recommendations given by the Branch and therefore, the petitioner cannot be solely held as responsible.

16. Mr.Balan Haridass, would also place reliance on the decision of the Hon'ble Supreme Court in Man Singh Vs. State of Haryana and Others, reported in (2008) 12 SCC 331, wherein the Hon'ble Supreme Court has observed as under.

"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service."

17. For the same preposition he would also rely on the decision of the Hon'ble Supreme Court in State of Uttar Pradesh and Others Vs. Raj Pal Singh, reported in (2010) 5 SCC 783, wherein the Hon'ble Supreme Court, held as under.

> "Though, on principle, the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees."

18. Mr. Balan Haridass, learned counsel for the petitioner would state that in the facts of the present case, the extreme punishment of dismissal ought not to be given.

19. On the other hand the learned counsel for the respondent would contend that the petitioner is a very senior officer and he was forewarned and had knowledge of the bad performance of Sri Venkateswara Imports and Exports Company, but yet he continued to be benevolent. He would state that even as of today a substantial amount is due by Sri Venkateswara Imports and Exports Company. The findings of the enquiry officer that others are also involved in the decision, to grant facility cannot absolve the petitioner. The all other officers are juniors to the petitioner and petitioner being the Head of the Organisation and responsible to safe guard the interest of the bank, can alone be singularly proceeded with.

20. Heard the counsel for either sides and perused the records.

21. Though Mr.Balan Haridass, learned counsel for the petitioner made strenuous efforts to challenge each and every ground and the findings of the enquiry officer, a reading of the enquiry report, would show that the decision making process has been fair. It is settled that the High Court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot go into excruciating details on facts and come to a different conclusion.

22. A perusal of the Union Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 would show that the bank had followed the procedure.

23. As stated above, a perusal of the enquiry report would also show that the petitioner being the Head of the Organisation

at that point of time, has not acted, in the interest of the bank. The Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India and others, reported in 1995 SCC (6) 749 has held that the Court cannot go into excruciating details and facts and conduct a fresh enquiry while exercising jurisdiction under Article 226 of the Constitution of India. It can only go into decision making process. It can interfere with the findings of the enquiry report and the disciplinary authority only when it finds that the report is completely perverse.

24. The reading of the enquiry report does not show that the report is so perverse that it cannot be accepted at all. In this scenario, the High Court cannot come to a different conclusion, substituting its conclusion with the one arrived at by the disciplinary authority, even if the conclusion is more probable.

25. The learned counsel for the respondent, has placed reliance on the judgment of the Hon'ble Supreme Court in State Bank of India and another Vs. Bela Bagchi and others, reported in 2005 (7) SCC 435, wherein the Hon'ble Supreme Court has observed as under.

> "15.A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

26. It is well settled that it is impermissible for the High Court to re-appreciate the evidence which has been considered by the enquiry officer, disciplinary authority and the appellate authority. Since the findings of the enquiry officer and the authorities do not suffer from any perversity, the order of dismissal does not require any interference.

27. The petitioner as stated is holding an extremely responsible position. He ought to have taken sufficient steps. The fact that the Branch Manager was given a lesser punishment, cannot be a ground to award the same punishment to the petitioner, having regard to the position held by him. The writ petition is dismissed. No Costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ars/mvs.

+1 CC to M/s. Balan Haridass, Advocate sr 90289
+1 CC to Mr.T.S. Gopalan & Co, sr 90180.

WP No.19387 of 2013

GP(CO)
SP(03/12/2019)