IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2019

PRONOUNCED ON : 02.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 27965 OF 2011

V.Ramesh .. Petitioner

- Vs -

1. The General Manager
(Personnel Services)
Appellate Authority
UCO Bank, 3 & 4, DD Block, (Sector-1)
Salt Lake, Kolkata 700 064.

2. The Deputy General Manager
(Disciplinary Authority)
UCO Bank, 328, Thambu Chetty Street
Chennai 600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent pertaining to his order dated 31.10.2011 and quash the same and consequently direct the respondents to release the withheld increment and to pay the unpaid salary due, excluding the subsistence allowance already paid to the petitioner from 19.5.2007 to 19.12.2008.

For Petitioner : Mr. T.K.Kulasekaran

For Respondents: Mr. Srinath Sridevan

ORDER

The petitioner, aggrieved by the 1st respondent modifying the punishment imposed by the 2nd respondent, has filed the present writ petition to quash the same and to grant consequential and attendant benefits.

2. The petitioner was an officer of the respondent-bank. While he was working as Branch Manager at the relevant point of time, he was issued with a charge memorandum on 23.1.08 framing certain articles of charges against him in relation to the period when he was

functioning as Manager of Navinapatti Branch from 11.8.05 to 18.5.07. The charges, as framed against the petitioner, are as under :-

1. Shri V.Ramesh failed to submit to Controlling Office, the following statements/returns in violation of the extant guidelines/instructions :

(a) CMR - 1 Since November 2006

(b) CMR - 20 Since March 2007

(c) Compliance Report for LFAR for the year ended 2006-07

2. Shri. Ramesh failed to produce before the Asst. General Manager (Retail & S.E.), R.O., Chennai, when he visited the branch on 15-05-2007, process notes and sanction Letters in respect of Loans sanctioned by him during January, 2007, for his scrutiny and verification.

3. When his lending powers was kept in abeyance by the Competent Authority and this decision was conveyed to him vide the then Regional Office letter bearing Ref. No.CR/MON/22/07-08 dated 5-4-07, Shri.Ramesh, in total disregard to the above instructions, had sanctioned loans aggregating to Rs.4.40 lacs and for which the required details were not found available in the Account Opening Register.

4. Shri. Ramesh failed to produce necessary papers/documents to the Asst. General Manager (Retail & S.E.), R.O., Chennai, for his verification of the following Loans sanctioned by him.

No.	Name of Borrower	Date of Sanction	Limit (Rs./Lac)
1.	K.Chinnaiah	22-02-07	4.00
2.	Mookaiah	12-03-07	3.00
3.	Jegannathan	14-03-07	4.00
4.	Ravichandran	15-03-07	4.00

3. Further to the charge memo, after receipt of explanation, an enquiry was instituted against the petitioner. Witnesses were examined and several documents were marked in the departmental enquiry. After conclusion of the enquiry, the enquiry officer submitted his report on 23.07.08 holding that except charge No.1 (b) the other charges were held proved and charge No.1 (b) was held partially proved. On the basis of the enquiry report, the disciplinary authority sought explanation from the

petitioner and explanation was submitted by the petitioner on 7.8.08, which was found to be not satisfactory, the disciplinary authority, the 2nd respondent herein, passed penalty order dated 15.12.08 imposing the following penalty :-

Articles of Charge	Findings	Punishment awarded
No.1	Proved	Basic pay of Sri. V.Ramesh be reduced by 1 stage in the time scale of pay for a period of 2 years. He will not earn increments of pay during the period of reduction and reduction will have the effect of postponing future increments of pay.
No.2	Proved	Basic pay of Sri. V.Ramesh be reduced by 1 state in the time scale of pay for a period of 2 years. He will not earn increments of pay during the period of reduction and reduction will have the effect of postponing future increments of pay.

4. As against the said order passed by the disciplinary authority, an appeal was preferred by the petitioner before the 1st respondent/appellate authority n 9.5.09. The appellate authority, the 1st respondent herein, vide his order dated 31.10.2011, modified the penalty imposed on the petitioner as under :-

Charge	Findings	Punishment awarded
Charge No.1	Proved	Basic pay of Sri. V.Ramesh be reduced by 1 stage in the time scale of pay for a period of one year with further direction that he will not earn increment during the period of reduction and on expiry of such period the reduction will have the effect of postponing his future increments of pay.

Charge No.2	Proved	Basic pay of Sri. V.Ramesh be reduced by 1 state in the time scale of pay for a period of one year with further direction that he will not earn increment during the period of reduction and on expiry of such period the reduction will have the effect of postponing his future increments of pay.

The above order of the appellate authority modifying the penalty passed by the disciplinary authority is put to challenge in the present writ petition.

5. Learned counsel appearing for the petitioner vehemently submitted that in view of the earlier litigation by the petitioner against the bank and also filing of contempt petition for non-implementing the orders passed by this Court in the earlier litigation, the respondent bank had vindictively framed certain flimsy charges against him and, thereafter, imposed the impugned penalty. According to the learned counsel for the petitioner, in the earlier litigation, there was an observation by this Court about the character and integrity of the petitioner and, hence, the petitioner, who was otherwise certified by this Court of his integrity and character was sought to be penalised for no fault of his by the respondent bank.

6. As regards the merits of the charges are concerned, learned counsel for the petitioner submits that the charges in regard to non-submission of forms are concerned, the Branch was under-staffed and the documents were arranged in a haphazard manner and, therefore, he could not produce and submit the same before the authority concerned. As regard the charge about sanctioning of loan to the tune of Rs.4.40 Lakhs is concerned, the explanation of the petitioner was that he had to oblige the Government agencies, since those agencies had extended co-operation to the bank and he wanted to reciprocate by sanctioning some loans. However, learned counsel for the petitioner submitted that the explanation given by the petitioner was not an admission of any dereliction of duty, as it only amounted to justifying the position of the petitioner, being in-charge of the branch.

7. It is further submitted by the learned counsel for the petitioner that the so-called circular issued by the respondent bank suspending the lending powers of the petitioner was never circulated to the branch at all and the petitioner was not aware of the same, According to the learned counsel for the petitioner, the circular dated 5.4.07 was not forwarded to the branch and, therefore, the

petitioner was not aware of the same. Despite the explanation given by the petitioner, the disciplinary authority has imposed severe penalty initially and, of course, the same was modified by the appellate authority. During the pendency of the disciplinary proceedings against him, the petitioner was also denied of his due promotion to the next higher grades.

8. Learned counsel for the petitioner took pains to draw the attention of this Court to the evidence tendered by the management witnesses in the enquiry proceedings in order to emphasize the fact that suspension of lending power vide circular of the Zonal Office dated 5.4.07 was not known to the petitioner. In this regard, he drew the attention of this Court to the deposition of M.W.1, wherein when a question was put to the said witness, the said witness has stated that he was not aware of the stoppage of lending powers of the petitioner and he never saw this letter prior to suspension of the petitioner. The above deposition of M.W.1 has been heavily relied on by the learned counsel for the petitioner in order to demonstrate that the petitioner, being no aware of the suspension of lending powers, had sanctioned the loans and, therefore, the charge cannot be held to be a valid one and cannot be held to be proved at all.

9. Learned counsel appearing for the petitioner further submitted that as regards the other charges, there was proper explanation by the petitioner stating that the documents at the branch were not properly arranged and was in a chaotic state of affairs and, therefore, the same could not be made available at the time of inspection to the higher officials of the bank. It is therefore submitted that the entire action initiated against him is tainted with mala fides in view of the earlier litigation initiated by the petitioner against the respondent bank and in the litigation the petitioner was successful. The respondent-bank, in order to deny an honest officer like the petitioner his due promotion to the next higher grade, has come up with false charges and imposed the impugned penalty on him.

10. Per contra, learned counsel appearing for the bank submits that the arguments advanced on behalf of the petitioner are contrary to the records and the same have to be rejected outright. Learned counsel for the respondent-bank submits that the petitioner himself had, by and large, admitted the lapse in his explanation and also in his appeal and his explanation was found to be not satisfactory in view of the petitioner holding a very responsible position and, therefore, the punishment was imposed. Learned counsel for the respondent-bank drew the attention of this Court to the deposition of M.W.1 and submitted that

the said witness has merely said that he was not aware of the suspension of lending powers of the petitioner and the said witness was not talking about the petitioner being unaware of it.

11. Learned counsel appearing for the respondent-bank further submitted that in the same departmental proceedings when M.W.3 was examined, he had categorically deposed that the petitioner was aware of the suspension of lending powers vide circular dated 5.4.07 and the said witness further deposed that the officer had waited for more than two hours, but the petitioner was unable to produce the documents demanded by the officer as he was still searching for the same. Therefore, the reliance placed on the evidence of M.W.1 by the petitioner cannot come to the rescue of the petitioner's claim as there was sufficient evidence made available in the departmental enquiry to prove that the petitioner had failed to discharge his duties property and had also acted contrary to the specific circular issued by the Zonal Office suspending his lending powers.

12. According to the learned counsel for the respondent-bank, all through the departmental proceeding, the case of the petitioner was that he had to reciprocate the Government agencies as they had co-operated with the Bank and, therefore, he had sanctioned the loan and never once the petitioner had anywhere stated that he was not aware of the suspension of lending powers vide circular of the Zonal Office dated 5.4.07. The arguments advanced on behalf of the petitioner before this Court is made for the first time and such arguments are contrary to the records and, therefore, request is made to this Court to dismiss such arguments as being without any merit and substance and also contrary to the facts.

13. Learned counsel for the respondent-bank also submitted that the action of the respondent-bank was not tainted with mala fides and, in fact, the appellate authority, who had considered the appeal, had modified the penalty that what was originally inflicted by the disciplinary authority and, therefore, the respondent-bank cannot be accused of acting against the legitimate interest of the petitioner's career. According to the learned counsel for the bank, the petitioner, being a senior officer of the bank, is expected to discharge his functions befitting the office he held and he cannot be allowed to come up with lame excuses for not attending to his duties effectively as per the instructions issued by the superiors.

14. Learned counsel for the petitioner relied on the decision of the Constitution Bench decision of the Hon'ble Supreme Court in Union of India - Vs - H.C.Goel (AIR 1964

SC 364), wherein it was held by the Constitution Bench that the Court could enquire when an order is based on no evidence. Learned counsel also relied on certain observations made by the Constitution Bench of the Hon'ble Supreme Court in regard to mala fide action on the part of the Government. However, this Court is unable to appreciate as to how the said judgment of the Constitution Bench of the Hon'ble Supreme Court could be pressed into service in the factual matrix of the present case.

15. On behalf of the respondent-bank, two decisions of the Hon'ble Supreme Court in Canara Bank - Vs - V.K.Awasthy (AIR 2005 SC 2090 :: MANU/SC/0249/2005) and State of Meghalaya & Ors. - Vs - Mecken Singh N.Marak (AIR 2008 SC 2862 :: MANU/SC/7663/2008), relating to the power of the Court in interfering with the proportionality of the punishment inflicted and the competence of the Court to interfere in such matters. This Court, of course, does not find it necessary to refer to the said judgments in detail in view of the order that it proposes to pass.

16. This Court bestowed its attention to the submissions advanced by the learned counsel on either side and also perused the materials to which this Court's attention was drawn, which forms part of the typed set of documents.

17. Although the learned counsel for the petitioner vehemently contended about the character and integrity of the petitioner, being an honest officer of the respondent-bank, at the same time, this Court cannot lose sight of the fact that the respondent-bank has come up with definite articles of charges against the petitioner vide its charge memo dated 23.1.08. The allegation as contained in the charge memo, in fact, have not been disputed or denied by the petitioner himself categorically. In fact, as rightly contended by the learned counsel for the respondent-bank, the petitioner has come up with some explanation for the allegations made against him and nowhere he had denied the charges per se. Therefore, the contentions advanced on behalf of the petitioner about his integrity and conduct as an upright officer cannot come to his rescue for the reason that insofar as the present charges are concerned, this Court has to see what his explanation was and how the charges were dealt with by the enquiry officer as well as the disciplinary authority and the appellate authority while imposing punishment on the petitioner.

18. From the records, it could be seen that the departmental enquiry has been conducted by affording reasonable opportunity to the petitioner to put forth his defence. From the evidence, as could be seen, which was relied on by both the petitioner as well as the respondent-

bank, the allegations as raised against the petitioner were found to be established, particularly when the petitioner himself has not taken the plea in regard to the main charge that the circular dated 5.4.07, suspending the lending powers of the petitioner was not to his knowledge. As rightly contended by the learned counsel for the respondent-bank, it was always the case of the petitioner that loans were sanctioned in order to satisfy the Government agencies and not once anywhere the petitioner had come up with the plea of not being aware of the circular of the Zonal Office suspending his lending powers. Even in regard to the other allegations about non-production of certain documents, the excuse of the petitioner was that things were lying haphazardly in the branch and, therefore, the same could not be produced in time. Therefore, the facts would unequivocally establish that there was some kind of dereliction of duty on the part of the petitioner for which he was proceeded against, particularly when the petitioner was holding a responsible position as Branch Manager.

19. The petitioner cannot unduly rely on his earlier litigation launched by him against the bank where, of course, he was successful in the earlier litigation. However, that alone cannot be the basis for this Court to come to the rescue of the petitioner when the fact of the matter is that the petitioner was slapped with the charge memo with certain allegations and the allegations were not denied by the petitioner and the allegations were also found to be established in the properly conducted departmental enquiry. Moreover, the disciplinary authority, who initially imposed the penalty by order dated 15.12.08, had passed a detailed order and even there, the petitioner appear to have not said anything about he being not aware of the circular dated 5.4.07 suspending his lending powers. Even at the appellate stage it was not the case of the petitioner. Therefore, it is too late in the day for the counsel appearing for the petitioner to take a completely different stand, which did not form part of the records or plea in the departmental proceedings.

20. The appellate authority, who considered the appeal, had taken a lenient view in reducing the severity of the penalty by modifying the original punishment inflicted by the disciplinary authority vide appellate order dated 31.10.2011.

21. About the denial of further promotion to the next higher grades, it is to be stated that it is a consequence, which an officer would suffer when he is facing departmental action and the said consequence was unavoidable, particularly when the officer was ultimately found guilty of the charges and punished. May be, the

petitioner was aggrieved by being persecuted for being an honest officer of the bank, but at the same time, this Court cannot lose sight of the fact that there were certain allegations against the petitioner during his stint as Manager of the branch during the period 11.8.05 to 18.05.07 and whatever be the status of his character and conduct, it was incumbent upon the petitioner to come out unscathed of the allegations as contained in the charge memo dated 23.01.08. In this case, this Court finds that the petitioner did not come out unscathed, as the allegations were found to be true in the departmental proceedings initiated against him. The argument that the charges were flimsy and they were framed only on mala fide consideration cannot be acceptable on the basis of the overwhelming documentary evidence made available before this Court. No doubt, mala fides or otherwise alleged by an employee against the institution is very difficult to establish, but at the same time, this Court cannot accept the plea of mala fides simply at its face value and proceed to adjudicate the matter on that premise.

22. For all the above said reasons, this Court finds that the impugned action of the respondent does not call for any interference and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

GLN

To
1. The General Manager
(Personnel Services)
Appellate Authority
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Salt Lake, Kolkata 700 064.

2. The Deputy General Manager
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+1cc to Mr.T.K.Kulasekaran , Advocate SR.No. 31717
W.P. NO.27965 OF 2011

RGN(co)
A.SK(10/04/2019)