IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Writ Petition No.32232 of 2018
& WMP Nos.38175 & 37487 of 2018

S.Ganapathy ... Petitioner

versus

1. The Managing Director & Chief Executive Officer / Appellate Authority, Indian Overseas Bank, 763 Anna Salai, Chennai 600 002
2. The Disciplinary Authority / General Manager (NKG), Indian Overseas Bank, 763 Anna Salai, Chennai 600 002 ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in No.D. VIG:GM:NKG:DA: 7603:4289:2013-14, dated 30.10.2013 as confirmed by the order of the first respondent in DO:AA:MD&CEO:VIG:7603:2595:2018-19, dated 30.06.2018, to quash the same and to consequently to direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

For Petitioner : Mr. A.N.Thambidurai, for, M/s. A.Rajaperumal
For Respondents : Mr. K.Srinivasamurthy, for,
Mr. NGR Prasad, for R-1 & R-2

ORDER

The petitioner, who joined the services of the Indian Overseas Bank on 22.09.1982 was placed under suspension on 05.01.2011, in terms of Regulation 12 (1) (b) of IOB Officer's (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as "the Regulations").

1.1. This suspension was based on the complaint given by Dr.T.G.Govindarajan, Chairman, Dr. Kamakshi Memorial Hospital Pvt. Ltd., Chennai and his wife, R.V.Jayanthi, in respect of eight transactions amounting to Rs.1,24,20,000/-.

2. The investigation was conducted by the officials of Indian Overseas Bank and it was submitted to the Inspection Department, vide reports dated 21.12.2010, 13.01.2011 and 25.01.2011. The reports pointed out 10 transactions amounting to Rs.1,21,44,000/-. On 14.02.2011, a concurrent suspension order was issued under Regulation 12 (1) (a) of the said Regulations. A preliminary enquiry was held on 15.09.2012. The Presiding Officer handed over the documents to the petitioner. **The petitioner was asked to attend the regular enquiry on 10.01.2013, vide letter dated 07.01.2013, which was received by the petitioner on**

09.01.2013. As the petitioner was left with short notice of 24 hours, the petitioner sought for an adjournment, which was refused. The Management documents were taken on record in the absence of the petitioner and without the knowledge of the defence assistant. Protest was expressed through the letter dated 10.01.2013. **At that time, as the local police was also investigating the same, the petitioner wanted the enquiry to be deferred.** The petitioner also wanted some more documents.

3. The enquiring authority conducted enquiries on 28.02.2013 and 01.03.2013 and only during the course of enquiry, the fourth instalment of documents were introduced. **It indicated that all the documents were not at all perused before the issuance of charge sheet by the concerned authority.** No opportunity was given to the petitioner to verify the fourth instalment of documents. It was furnished only on the day of enquiry. The petitioner / defence wanted to examine the witnesses, Cashier and another officer of the Bank. This letter was forwarded to the concerned authority. The Enquiring Authority submitted the findings to the disciplinary authority, vide the letter dated 31.08.2013.

4. The Chief Manager, Conduct and Disciplinary Action Cell, sent the findings of the enquiry authority and sought for comments within seven days. It was not known, how the Chief Manager got possession of this report which is given to the Disciplinary Authority. The Chief Manager has no authority to step into the shoes of the disciplinary authority. It is expected of the disciplinary authority to record his approval either for the agreement or disagreement with the report and then only to send the copy of the report by himself to the delinquent / employee. This was not followed in this case.

5. The Disciplinary authority took a decision to dismiss the petitioner on 30.10.2013, which was communicated to the petitioner on 22.11.2013. The petitioner submitted an appeal to the appellate authority on 02.01.2014. The petitioner was asked to come for a personal hearing on 17.02.2014. The presence of an unidentified third person in the hearing caused prejudice to the entire hearing. The petitioner had expressed his displeasure by sending an e-mail. The opportunity of hearing was a mere farce. ***The appellate authority dismissed the appeal stating that there was no submission of new evidence***. That made the petitioner to file a Writ Petition

No.15462 of 2014 which was partly allowed on 31.08.2016. A Review Petition was filed and the said Review Petition is pending. Pending review, the petitioner was asked to appear by the appellate authority and which was also complied with by the petitioner. Thereafter, the appellate authority passed the order on 30.06.2018, which is challenged in this writ petition.

5.1. A counter affidavit has been filed disputing the contentions raised in the writ petition. Placing reliance upon the counter the learned counsel for the respondents made the submissions.

5.2. The learned counsel appearing for the respondents contended that the claim made in the writ petition is barred by res judicata. The petitioner's claim for setting aside the order passed by the second respondent has been rejected by the order dated 31.08.2016 in W.P.No.15462 of 2014. Therefore, this second writ petition filed challenging the order of the second respondent, dated 30.10.2013, is barred by res judicata.

5.3. ***The disciplinary authority passed an order of dismissal as against the petitioner which was confirmed in the appeal by the appellate authority by the order dated 30.10.2013***.

5.4. The contention raised regarding res judicata is patently incorrect. No doubt, on an earlier occasion, W.P.No.15462 of 2014 has been filed challenging the dismissal order as confirmed by the appellate authority. But, in the writ petition even though the order of the disciplinary authority was confirmed, the order of the appellate authority was set-aside. The matter was remitted back to the appellate authority for fresh consideration. Only thereafter, the second writ petition has been filed. Therefore, the contention that the present writ petition is barred by res judicata is not correct.

6. A perusal of the impugned order dated 30.06.2018 would reveal the following facts:-

Based on the Memorandum of allegation and article of charge dated 23.04.2012, an enquiry was conducted and by the order dated 30.10.2013, the penalty of dismissal was imposed (which shall ordinarily be a disqualification for future employment in terms of Regulation 4 (J) of the Indian Overseas Bank Officers/Employees (Discipline and Appeal) Regulations 1976). In the appeal, the order of the disciplinary authority was confirmed.

6.1. In the writ petition, this court has directed the appellate authority to consider the letter of the petitioner dated 17.04.2014. The appellate authority was also directed to consider the allegation regarding the discriminatory treatment given to the petitioner alone by awarding the punishment of dismissal from service, whereas all other persons connected with the same allegations have not been dismissed, whose particulars are tabulated as hereunder:-

S.No.	***Name of the Staff***	***Branch***	***Designation***	***Punishment***
1.	N.Subramanian	Spencer Plaza	Chief Manager	Censure
2.	V.Raman	Spencer Plaza	Asst. Manager	1 increment cut
3.	G.Rengan	Dr. R.K.Salai	Chief Manager	No Action - Retired
4.	R.Purushothaman	Dr. R.K.Salai	Chief Manager	1 increment cut on day of retirement.
5.	B.Kaliyan	Dr. R.K.Salai	Chief Manager	Deceased
6.	P.V.Sudhakaran	Dr. R.K.Salai	Chief Manager	1 increment cut
7.	V.Srinivasan	Dr. R.K.Salai	Senior Manager	1 increment cut
8.	Vasudevan	Dr. R.K.Salai	Deputy Manager	1 increment cut
9.	G.Kannan	Aminjikarai	Chief Manager	2 increment cuts
10.	V.Sivaramakrishnan	Adambakkam	Chief Manager	1 increment cut on day of retirement.
11.	S.Usha	Adambakkam	Deputy Manager	Censure

7. So far as this aspect is concerned, the appellate authority has stated that the disciplinary authority while arriving at a decision (regarding punishment) did not weigh the same reasoning for such other parties involved, as the gravity of their involvement and such other aspects like previous record of allegations, tenure of the member, service period, conduct, malafide intention, prospective career and such other crucial elements pertaining to all the parties would be different.

7.1. This Court is of the opinion that the explanation given by the appellate authority after remittance is very general and among the reasons stated, it is only the gravity of the allegation and to be more specific, the exact allegation made alone is relevant and other matters are collaterally relevant or marginally incongruous. When there is a possibility to point out the nature of allegations, evidence, findings and the necessity of the punishment specifically, the order passed by the appellate authority in general terms is cosmetic in nature and not corrective in nature, which is expected of the order to have been passed, in terms of the earlier order of this Court.

7.2. The order of the appellate authority reflects ego, as the essence of its defiance.

8. It is also stated that the petitioner had violated the rules and guidelines of the Bank by debiting the customer's Account unauthorizedly and fraudulently by internal vouchers under the single signature of the petitioner and the petitioner had misappropriated the funds of the hospital / the associates.

8.1. The further allegation is that the petitioner had abused his authorities and had exposed the bank to grave risk.

9. Whether proper procedure has been adopted and whether proper materials have been considered to arrive at those findings and if so, whether the findings are sustainable or not is the issue to be considered in this writ petition.

10. What are the nature of work allotted to each of the co-delinquent, the responsibility was to what extent and when the transaction involved was in crores, will it be possible for a single person to have committed the illegality – are the issues not specifically dealt with by the appellate authority (even after remittance). Further, it is not borne out by record as to what is the findings of the Inspection/Audit during the said period when the alleged transaction is said to have taken place. Even though there was a direction by this court to consider the letter dated 17.4.204, which, on perusal, discloses series and serious allegations, which goes to the root of the matter, the appellate authority has not dealt with the said allegations separately.

11. Yet another contention raised by the learned counsel appearing for the petitioner is that the criminal prosecution initiated against the petitioner has ended in discharge and therefore, the

petitioner has to be exonerated from the civil liability also.

11.1. The petitioner has specifically pointed out the observations made in paragraph 17 of the order wherein it is stated that the perusal of charge sheet, statement of witnesses and the investigation report of the Indian Overseas Bank clearly establish that only to escape from the payment to be made by the defacto complainant to the brother of the accused/petitioner herein, ***the said false case has been lodged against the petitioner***.

11.2. The case of the prosecution is that the petitioner's brother had invested money in the hospital and when the petitioner's brother demanded shares for the invested amount, the defacto complainant was evading and only in order to escape from the payment, the false prosecution had been launched against him. This defence taken by the accused has been upheld by this Court in Crl.R.C.No.1119 of 2017, by the order dated 11.04.2018.

11.3. The allegations with reference to which the discharge has been granted is outlined in paragraph 8 of the order of this Court, in the said Criminal Revision Case, which clearly shows that all transactions, barring one transaction, which took place in 2008 the other transactions had taken place in the year 2007. The complaint has been lodged only during 2010.

11.4. The learned counsel appearing for the respondents relied upon the observations made in paragraphs 17, 18, 22 and 23 of the W.P.No.15462 of 2014 and submitted that just because the Bank has not sustained any loss that will not exonerate the petitioner from liability:

> 17. At the outset, it has to be noted that the charges levelled against the petitioner are serious in nature. The petitioner, an officer of the respondents bank has indulged in withdrawal of huge amount without any authorisation or voucher signed by the account holder. The allegation against the petitioner is that he has withdrawn amount to the tune of Rs.20 lakhs without following the norms of the bank. Such withdrawal of amount has not been confined to one bank branch where he was posted, but it was extended to the other branch of the bank where he was posted. Therefore, it cannot be construed that the allegations levelled against the petitioner are mere procedural irregularity or a bonafide omission.
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> 18. The learned Senior counsel for the petitioner would contend that the impugned order passed by the disciplinary authority is without authority of law and the disciplinary

authority has no jurisdiction to pass the order of punishment. According to the learned Senior counsel for the petitioner, it is the Deputy General Manager who has to pass the order of punishment and not the General Manager/ Disciplinary Authority in this case. Repudiating such contention, the learned counsel for the respondent would contend that a common enquiry was conducted as against the delinquent officers who are Class I and Class II Officer. In such an event, the General Manager is competent to pass the order of punishment as against all the delinquent Officers, including the petitioner. Having regard to such submission made by the learned counsel for the respondent, I find that when varied classes of officers were subjected to disciplinary proceedings, the disciplinary authority in this case, being the General Manager of the Bank alone is competent to pass the order of punishment and therefore the averments raised by the petitioner as regards the jurisdiction of the disciplinary authority has to be rejected.

22. As regards the quantum of punishment, it is seen that the disciplinary authority has

imposed varied punishment to the delinquent officers in accordance with the role played by them in the commission of offence and the responsibility shouldered by them. As regards the petitioner is concerned, he was imposed with capital punishment, which according to him is disproportionate to the charges, excessive and harsh.

23. The averment of the petitioner that the customer of the bank has not been examined is not sustainable. It is well settled that a customer of the bank need not be examined in the departmental proceedings. Further, merely because the account holder has no grievance and there was no loss caused to the bank it will not be a ground to invalidate the order of punishment, which according to the petitioner is discriminatory and unreasonable. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (State Bank of India and another vs. Bela Bagchi and others) 2005 4 LLN 1 relied on by the learned counsel for the respondent wherein in Para No.15 of this judgment, it was held as follows:-

"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 and others vs. Nikunja Bihari Patnaik (1996 (2) LLN 92) it is no defense available to say that there was no loss or profit in the case when the officer/ employee acted authority. The very discipline of an organisation more particularly a bank is dependent upon each 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 charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

11.5. The learned counsel appearing for the petitioner relied upon the letter, dated 18.07.2008 addressed by C.Mani, Proprietor, Krishna Constructions to the Branch Manager, IOB, Spencer Plaza Branch, wherein he has admitted that when he did not have the cheque to withdraw the money, he gave the letter and withdrew money from the account of the wife of the Managing Director and therefore, he himself was responsible for transferring Rs.20 lakhs and no further claim will be made on account of the money having been withdrawn by using such letter.

11.6. This letter would go to show that the alleged violation for a sum of Rs.20 lakhs made as against the petitioner cannot be true.

12. Further, the vouchers annexed in the additional typed set are pertaining to the account of the hospital. That account reveals that whenever cash is deposited, immediately it is transferred to some other account. This account is handled by three persons in the name of persons who, a) entered, b) passed and c) verified.

12.1. What is the responsibility of each of the three persons and what is the extent of the responsibility is not known.

13. At this juncture, it is relevant to point out that the Bank Investigating Authority and Disciplinary Authority have failed to consider the petitioner's financial statements as to the Assets and Liabilities attested by a Chartered Accountant submitted to the bank every year and produced at the time of enquiry. Without considering the said report, it would be wholly unjustified to say that the earnings of the petitioner had been from illegal means.

14. From the above contentions and counter contentions, the

following emerge:-

i) Though charges have been framed, however, from the materials available on record it is evident that all the documents have not been considered at a stretch while framing the charges, but piecemeal consideration has been made only during the time of enquiry, which is a fundamental procedurally lacunae going to the root of the matter and, thus making the charges baseless;

ii) Inspite of the repeated requests by the petitioner to grant him time to defend himself, the records reveal that the petitioner has not been granted sufficient opportunity to present his case nor provided with an opportunity to examine witnesses on his side;

iii) When parallel enquiry both by the Bank and the Police is sought to be deferred, the enquiring authority was not willing to accede to the said request;

iv) Though enquiry has been initiated against nine persons, out of them 8 persons have been given lesser punishment/minor punishment with the exclusion of the petitioner. On a query by the Court as to the sequence followed in concluding a transaction, though three persons are said to be involved in concluding a transaction, however, the responsibilities and duties of the said individuals have not been placed before the Court. In the absence of the same, fastening the liability on the petitioner alone and inflicting a major punishment would be wholly unjustified;

v) Though this Court in W.P. No.15462 of 2014 has directed the appellate authority to consider the letter of the petitioner as well as the allegations raised by him, however, the appellate authority, for reasons best known, has not taken into consideration the same and has passed the order in total defiance of the directions of this Court.

15. The lacunae pointed out above clearly reveal that all is not well with the enquiry process, there being total procedural violation and infraction of Article 14 of the Constitution in inflicting punishment on the petitioner, thereby warranting this Court to interfere with the impugned order.

16. In view of the foregoing reasonings, the impugned order, dated 30.10.2013 as confirmed by the order of the first respondent in

dated 30.06.2018, is hereby quashed and the respondents are directed to reinstate the petitioner into service, with all consequential and other attendant benefits.

17. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMPs are closed.

10.01.2019

Index : Yes / No.
Internet : Yes / No.
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To

1. The Managing Director & Chief Executive Officer / Appellate Authority, Indian Overseas Bank, 763 Anna Salai, Chennai 600 002

2. The Disciplinary Authority / General Manager (NKG), Indian Overseas Bank, 763 Anna Salai, Chennai 600 002

Dr. S.VIMALA, J.,

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