IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2020

DELIVERED ON : 15.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.1937 of 2013

M.Ramasamy .. Petitioner

Vs.

1. State Bank of India,
   Rep. by its Chief General Manager (Appellate Authority),
   Local Head Office,
   Circle Top House,
   No.16, College Lane,
   Chennai - 600 006.

2. General Manager (Net Work-02),
   Appointing Authority,
   Local Head Office,
   Circle Top House,
   No.16, College Lane,
   Chennai - 600 006. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st and 2nd respondents, quash the order of the 1st Respondent dated 23.07.2012 and the order of the 2nd respondent dated 10.07.2011 as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the arrears of pay and all other attendant benefits along with interest at the rate of 18% per annum.

For Petitioner : Mr.Balan Haridas

For Respondents : Mrs.Malarvizhi Udayakumar

O R D E R

The writ petition has been filed challenging the order passed by the second respondent Disciplinary Authority, imposing the punishment of reduction to a lower stage in the time scale of pay by three stages for a period of three years with cumulative effect, which has been confirmed by the first respondent Appellate Authority.

2. The brief facts leading to filing of this writ petition is as follows:

(i) The petitioner was working as Branch Manager at Asakalathur Branch of the State Bank of India, from the year 2004. In the year 2009, a disciplinary proceedings has been initiated against the petitioner, consequently a charge memo came to be issued on 30.12.2009, leveling as many as five charges which read as follows:

> "Shri M.Ramasamy, officer, MMGS-II, while working as Branch Manager, Asakalathur Branch, during the period from 21.04.2006 to 31.03.2008 allegedly committed certain irregularities as per Articles of Charge detailed below:
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> Charge No.1:
>
> The official sanctioned Agricultural Term Loan for Rs.4.00 lacs to Shri.R.Sathish (A/c No.30339393049) for Land Reclamation and Development. It is observed from the statement of account, the following amounts were transferred from the loan account to the SB A/c of the borrower Sri.R.Sathish SB A/c No.30334478677.
>
> In this connection, it is alleged that the official has not ensured the end use of funds (as stated in the statement of allegations under item no.(i)).
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> Charge No.2:
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> The official transferred a sum of Rs.2.00 lacs on 08.03.2008 through CBS from the SB account of Shri R.Sathish, 30334478677 at Asakalathur Branch to Smt.R.Ezhilarasi's (official's daughter) SB Account No.30342927498 at Kallakurichi Branch - just to facilitate an unlawful gain to his daughter (as stated in the statement of allegations under item No.(ii)).
>
> Charge No.3:
>
> The official arranged from M/s.Sri Thirumala Farm Equipments a sum of Rs.5,80 lacs on 08.03.2008 SB Account No:30342927498 at Kallakurichi branch (Amount withdrawn by cheque No:797974 dated 08.03.2008) for credit of Smt.R.Ezhilarasi's (official's daughter) SB Account No:30342927498 at Kallakurichi branch - just to facilitate an unlawful gain to his daughter (as stated in the statement of allegations under item No.(iii)).

Charge No.4:

The official entered into a financial dealing with Shri P.Mohana Rangan, Special Assistant, Kallakurichi branch for the benefit of his daughter (as stated in the statement of allegations under item No. (iv)).

Charge No.5:

The official transferred a sum of Rs.60,000/- on 08.03.2008 through CBS from his Current Account Overdraft 11426027326 at Asakalathur for credit of Smt.R.Ezhilarasi's (official's daughter) SB Account No:30342927498 at Kallakurichi branch (as stated in the statement of allegations under item no.5)"

(ii) After the receipt of the explanation from the petitioner, departmental enquiry was conducted and the Enquiry Officer found that Charge Nos.1, 2 and 3 were proved and Charge Nos.4 and 5 were not proved.

(iii) After furnishing a copy of the Enquiry Report and also after giving an opportunity to the petitioner to offer his explanation for the proposed punishment, the Disciplinary Authority concurring with the findings of the Enquiry Officer, imposed the following punishment:

"Reduction to a lower stage in the time scale of pay by three stages for a period of three years with cumulative effect and with further direction that the officer will not earn increments to pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay"

(iv) Challenging the above punishment, the petitioner filed an appeal before the first respondent Appellate Authority. The Appellate Authority after giving an opportunity of hearing to the petitioner, dismissed the appeal thereby confirmed the penalty imposed on the petitioner. Now, challenging both the orders, present writ petition has been filed.

3. Mr.Balan Haridas, learned counsel appearing for the petitioner would contend that absolutely there is no material to conclude that the petitioner has committed any irregularity. It is purely a transaction between the petitioner's daughter with some third party and the petitioner has no connection whatsoever in it.

4. According to the learned counsel, even the materials placed before the Enquiry Officer did not reveal the involvement of the petitioner in all these allegations and that the petitioner has no nexus in the transactions alleged to have been done by his daughter. Only on presumption, the charges were leveled against the petitioner and without any evidence whatsoever, the Enquiry Officer has held that the charges were proved against the petitioner, which is totally perverse.

5. That apart, while conducting the disciplinary proceedings, no proper opportunity was given to the petitioner to defend his case. The Disciplinary Authority while concurring with the findings of the Enquiry Officer did not give any valid reason for accepting the findings of the Enquiry Officer in total violation of the Service Regulations.

6. The first respondent, Appellate Authority has also without considering any of the grounds raised by the petitioner and without giving any valid reason whatsoever dismissed the appeal filed by the petitioner and confirmed the penalty imposed on the petitioner.

7. According to the learned counsel appearing for the petitioner, as regards the first charge, it is an usual practice in the banks to disburse loan to the borrower’s account and there is no illegality in it. As the loan was sanctioned for land reclamation work and at the time of grant of loan the land reclamation work was completed, loan was credited to the borrower's account, as there is no requirement to credit the amount to the machinery suppliers and hence the amount was credited to the borrower’s account. The petitioner has also ensured the completion of reclamation work, the amount was not granted for the purpose of providing funds to his daughter, absolutely he has no connection with the borrower. But the Authorities without any materials whatsoever, only on presumption came to the conclusion that the charges were proved.

8. So far as the second charge is concerned, according to the learned counsel, it is a private dealing between the borrower, one Mr.R.Sathish, and the daughter of the petitioner, where the petitioner’s daughter has borrowed the amount from him through one Mr.P.Mohanarangan, an Assistant, attached to the Kallakurichi Branch, and only through him the transfer was facilitated, for which, the petitioner has no role at all, absolutely there is no evidence whatsoever to show that only at the instance of the petitioner, the amount was transferred to his daughter’s account.

9. So far as Charge No.3 is concerned, according to the learned counsel, the loan sanctioned in favour of M/s.Tirumala Farm Equipments has been credited only in their account.

Thereafter, one of the partners of the firm has given a loan to the petitioner's daughter, who was very well known to her, and there is no material to connect the petitioner with that transaction. However, the Enquiry Officer without considering the materials available on record only on presumption has held that the charges are proved without any evidence whatsoever and the Disciplinary Authority also mechanically accepted the same and imposed the punishment. Further, according to the learned counsel appearing for the petitioner, there is no financial loss to the respondent bank and the petitioner has not violated any of the service conditions.

10. Per contra, Mrs.Malarvizhi Udayakumar, learned counsel appearing for the respondents would contend that, the petitioner was working as Manager and he has sanctioned the loan in favour of a third party, in turn, the amount sanctioned in the name of the borrower has been transferred to the petitioner's daughter's account and the materials available on record clearly establishes that the petitioner has granted the loan only in the interest of his daughter, which is a clear violation of the bank service regulations.

11. So far as the Charge Nos. 1 and 2 are concerned, the learned counsel submitted that the amount has been sanctioned within a span of 11 days, and without disbursing the loan directly to the supplier, the entire loan was credited to the borrower's savings bank account and the borrower clearly admitted in his evidence that out of the amount deposited in his account, he gave a sum of Rs.2,00,000/- to the petitioner's daughter Mrs.R.Ezhilarasi from the loan proceeds. Exhibit P.Ex.6 clearly reveals that the amount has been transferred from the borrower's account to the petitioner's daughter account. That apart, the borrower Mr.R.Sathish also gave evidence that the amount has been transferred only from the loan proceeds. The loan has been sanctioned hurriedly without even ensuring the end use of the funds and the Enquiry Officer based on the materials rightly came to the conclusion that Charge Nos. 1 and 2 were proved.

12. So far as Charge No.3 is concerned, the learned counsel submitted that the materials available on record clearly shows that after sanction of the tractor loan, without sending the amount to the tractor dealer the amount has been deposited in the borrower's account, subsequently the said loan amount has been transferred to the account of the petitioner's daughter, which has been clearly established by the statement of accounts produced by the bank and also the statement of accounts of the borrower. Hence, the act of the petitioner is clearly violative of Rules 50(4) and 59 of the State Bank of India Officers' Service Rules (hereinafter referred to as the 'Rules'), which prohibits the employee permitting any member of his family to borrow money from the bank. Considering all these circumstances, the Enquiry Officer held that the above charge was proved.

13. The learned counsel appearing for the respondents has further submitted that, the Disciplinary Authority after giving adequate opportunity and after complying with all the mandatory requirements concurred with the findings of the Enquiry Officer after giving valid reasons for the same. The Appellate Authority also considering the entire materials on record dismissed the appeal, which is supported by valid reasons and absolutely there is no mandatory violation in this regard.

14. According to the learned counsel for the respondents, the Disciplinary Authority has held that the charges are proved, unless it is established by the petitioner that the findings are perverse, this Court cannot normally interfere with the findings of the Authorities. In support of her contention, she relied upon a judgement of the Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India reported in (1995) 6 SCC 749.

15. I have considered the rival submissions and also perused the materials on record.

16. Before considering the dispute in the present writ petition, it will be useful to refer to the Rule 50(4) and Rule 59 of the Rules, which reads as follows:

> "Rule 50(4):
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> Every officer shall, at all times, take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer.
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> ***
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> Rule 59:
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> No officer shall, in his individual capacity :
>
> (i) borrow money or permit any member of his family to borrow money or otherwise place himself or a member of his family under a pecuniary obligation to a broker or a money lender or a subordinate employee of the Bank or any person, association of persons, firm, company or institution, whether incorporated or not, having dealings with the Bank.
>
> Provided that nothing in this clause shall apply to borrowing from the Bank, the Life Insurance Corporation of India, a co-operative credit society or any financial institution, including a bank, subject to such terms and conditions as may be laid down by the Bank.

Provided further that an officer may accept a loan, subject to other provisions of these rules, from a relative or personal friend or operate a credit account with a bonafide tradesman.

(ii) buy or sell stocks, shares or securities of any description without funds to meet the full cost in the case of purchase or scrips for delivery in the case of a sale;

(iii) incur debts at a race meeting;

(iv) lend money in private capacity to a constituent of the Bank or have personal dealings with a constituent in the purchase or sale of bills of exchange, Government paper or any other securities; and

(v) guarantee in his private capacity the pecuniary obligations of another person, or agree to indemnify in such capacity another person from loss, except with the previous permission of the competent authority.

Provided that an officer may stand as surety in respect of a loan taken from a co-operative credit society of which he is a member by another member.

Provided further that nothing in this clause shall apply to any guarantee/indemnity that an officer may execute in favour of (a) the President of India in support of a passport application for any relative of his, (b) any financial institution or educational trust for a loan or advance that such institution or trust may give to any relative of his for educational purposes."

17. It is settled law that, the power of judicial review in disciplinary proceedings are very limited and the Courts are not functioning as Court of Appeal, and Court cannot re-appreciate the evidence and substitute its own conclusion to that of the Disciplinary Authority. The Courts also cannot substitute its own findings of fact to that of the Disciplinary Authority, the Courts should not normally interfere with the findings of the charges unless the findings are utterly perverse. The Disciplinary Authority and on appeal, the Appellate Authority being the fact finding Authorities, they have the exclusive power to consider the

evidence and they are also invested with discretion to impose appropriate punishment considering the gravity of misconduct.

18. That apart, the disciplinary proceeding being quasi judicial in nature, the charges in the disciplinary proceedings need not be proved like a criminal trial i.e. beyond all reasonable doubt. However, there should be some evidence to prove the charge and the Enquiry Officer upon analyzing the evidence both oral and documentary has to arrive at a conclusion that there has been preponderance of probability to prove the charges. It is also equally settled that, the Disciplinary Authority while accepting the findings of the Enquiry Officer has to give some reasons for his agreement. Likewise, the Appellate Authority also even while concurring with the findings of the Disciplinary Authority has to give valid reasons for his conclusion.

19. Keeping the above principles in mind, I proceed to consider the instant case. The petitioner has been charges with as many as five charges, out of which, Charge Nos. 1 to 3 were held to be proved. The sum and substance of the entire charges is that while the petitioner was working as the Branch Manager at Asakalathur Branch, he has sanctioned a sum of Rs.4,00,000/- Agricultural term loan, to one Mr.R.Sathish for land reclamation and development and without ensuring the end use of the funds the amount has been directly deposited to the borrower's account. Thereafter, from the loan proceeds, which was deposited in his account, the borrower has transferred a sum of Rs.2,00,000/- to the account of one Mrs.R.Ezhilarasi, who is the daughter of the petitioner at Kallakurichi branch. According to the respondents the above loan has been sanctioned by the petitioner only in order to facilitate an unlawful gain to his daughter. Likewise, the petitioner also sanctioned a tractor loan to one M/s.Thirumala Equipments to the tune of Rs.5.8 lakhs and the loan amount has been directly deposited to the borrower's account instead of sending it to the equipment dealer. Thereafter, the said amount has been transferred to the credit of the petitioner's daughter Mrs.R.Ezhilarasi at Kallakurichi branch and therefore the said loan was also granted by the petitioner only to facilitate an unlawful gain to his daughter and thereby the petitioner has violated Rule 50(4) and Rule 59 of the Rules.

20. During the enquiry, the Enquiry Officer after giving ample opportunity to the petitioner, examined the borrower, and also considering the statement of accounts to show that the loan amount has been transferred to the petitioner's daughter account, has come to the conclusion that the Charge Nos. 1 to 3 were proved. A perusal of the Enquiry Officer report clearly revel that the Enquiry Officer has considered all the materials before arriving at the above conclusion.

21. Thereafter, a copy of the Enquiry Officer's report was furnished to the petitioner and after obtaining his

explanation for the proposed punishment, the second respondent Disciplinary Authority, independently considered the nature of charges and materials available on record, concurred with the findings of the Enquiry Officer and imposed the punishment. A perusal of the order passed by the Disciplinary Authority also clearly revels that the Disciplinary Authority has applied his mind independently and considered the entire materials for imposing the punishment. The materials available on record clearly reveals that, the loan amount sanctioned by the petitioner was transferred to his daughter's account, from the borrower's account maintained in the petitioner's branch, it is not open to the petitioner to contend that he has no knowledge about the transaction, the proof is not beyond all reasonable doubt, but only preponderance of probability, and the Disciplinary Authority rightly held that the charges are proved.

22. Subsequently, an appeal was filed by the petitioner and the Appellate Authority after considering the grounds raised by the petitioner in the appeal, dismissed the same by giving reasons for the same.

23. Thus, both the Disciplinary Authority as well as the Appellate Authority after appreciating the evidence, have come to the conclusion that Charge Nos.1 to 3 were proved and thereby imposed the punishment and at any rate the findings given by the said Authorities cannot be held to be perverse. That apart, the Authorities have also followed the procedure throughly and I find no mandatory violation in the conduct of the enquiry, therefore, I find no reason to interfere with the said concurrent findings of the Authorities.

24. Mr.Balan Haridas, learned counsel appearing for the petitioner would rely upon a judgement of the Hon'ble Supreme Court in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya, Gramin Bank Vs. Jagdish Sharan Varshney reported in (2009) 4 SCC 240 and submitted that the Appellate Authority being the final authority on fact should give valid reason while dismissing the appeal. No doubt, the Appellate Authority even while confirming the order of the original Authority should give reasons for the same. On a perusal of the order passed by the Appellate Authority, it could be seen that the Appellate Authority has given valid reasons for confirming the order passed by the Disciplinary Authority and hence the judgement relied upon by the learned counsel appearing for the petitioner is not helpful to the facts and circumstances of this case.

25. So far as the punishment is concerned, considering the gravity of the offence, the Disciplinary Authority has imposed the punishment of reduction to a lower stage in the time scale of pay by three stages for a period of three years with cumulative effect, which is not disproportionate to the gravity of the charges. I find no reason to interfere with the

said punishment imposed on the petitioner.

26. In the result, I find no merit in the writ petition and the writ petition deserves only to be dismissed and accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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W.P.No.1937 of 2013

PP(CO)
GMY(28/07/2020)