IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.25571 of 2013

R.Rajarathinam ... Petitioner

vs.

1. The Chief General Manager,
State Bank of India,
H.R. Department,
Local Head Office,
'Circle Top House',
Post Box No.737,
16, College Lane,
Chennai 600 006.

2. The General Manager (NW2),
State Bank of India,
Local Head Office,
Chennai 600 006.

3. The Deputy General Manager (B & O),
State Bank of India,
Madhuram Complex,
No.2, Dr.Ambedkar Road,
Madurai 625 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to the 1st Respondent's order made in A & R 81, dated 27.06.2013 by confirming the order of the 2nd Respondent dated 06.02.2013 and quash the same and direct the Respondents to reinstate the Petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.K.Sankaran

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 27.06.2013 passed by the 1st Respondent, by confirming the order dated 06.02.2013 passed by the 2nd Respondent and for a direction to the Respondents to reinstate him in service with all consequential service and monetary benefits.

2. According to the Petitioner, he was selected and appointed as Probationary Officer in the State Bank of India in the year 2002, after serving 11 years in Indian Air Force as Non-Commission Officer (NCO). He was regularized in the post of Assistant Manager (Scale I) on 08.04.2004 and promoted as Deputy Manager in MMGS-II scale in June 2006. He was posted as a Branch Manager of Jeyamangalam Branch, Theni District in June 2007 and he worked there till 19.07.2010. Thereafter, he was transferred to Administrative Unit, Network-2, Madurai as an Officer MMGS II.

3. While the Petitioner was working as an Officer, the 3rd Respondent, who is the Disciplinary Authority issued a Charge Memo dated 28.10.2011 on the basis of the Investigation Report relating to Self Help Group (SHG) conducted in the year 2009 alleging that, while he was working at Jeyamangalam Branch, he committed serious irregularities/lapses from 05.06.2007 to 19.07.2010. On that basis, two charges were framed against the Petitioner. Following are the said Charges:

> Charge No.1: The Petitioner failed to adhere to Bank's instructions to be observed for sanctioning loans to Self Help Groups.
>
> Charge No.2: The Petitioner failed to initiate steps/follow up action on the irregular Self Help Group loans, as a result of which, these loans have added huge NPA to the tune of Rs.1220.75 lakhs to the Branch and they are likely to result in substantial loss to the Branch.

4. The Petitioner submitted his reply to the said Charge Memo on 23.11.2011. Not being satisfied with the same, the Disciplinary Authority appointed an Inquiry Officer. However, according to the Petitioner, the inquiry was not conducted in a fair and proper manner. Though the Inspection Register of the Branch during the relevant period was available at the time of perusing the records by the Defence representative, the same was not produced during the enquiry and the Inquiry Authority held that, certain charges are proved on the basis of the non-availability of the Inspection Register, and sent the Inquiry Report. After receipt of the Inquiry Officer's Report, the Petitioner submitted his further explanation, in detail. The 3rd Respondent/Disciplinary Authority also concurred with the Report of the Inquiry Officer and made his remarks to the 2nd Respondent, who is the Appointing Authority.

5. The 2nd Respondent/Appointing Authority, without considering all the relevant material evidence, imposed a major punishment of 'removal from service' by an order dated 06.02.2013, which was forwarded to the Petitioner by the 3rd Respondent/Disciplinary Authority vide proceedings dated

18.02.2013. Aggrieved by the same, the Petitioner preferred an Appeal to the 1st Respondent herein on 27.03.2013. But, the Appellate Authority, without considering the grounds of Appeal, rejected the Petitioner's Appeal and confirmed the order of the Appointing Authority. Aggrieved by the same, the Petitioner is before this Court.

6. Learned counsel for the Petitioner submitted that, loans are sanctioned to Self Help Groups only on the basis of the Master Circular as well as the Guidelines issued by the NABARD and that, the Respondents erred in holding that, enhanced loan has been sanctioned to the Self Help Groups at the first instance itself without looking into their performance. He pointed out that, for the same Self Help Groups, higher quantum of loans were sanctioned by other officials, which was not considered 'wrong' by both the Appointing Authority as well as the Appellate Authority.

7. It is the contention of the learned counsel for the Petitioner that, the Respondents failed to consider that, Self Help Groups have been repaying the loan amount while the Petitioner was working in the Bank and that, he had taken serious efforts to realize the loan amounts from the Self Help Groups, i.e. a sum of Rs.700 lakhs for the period from June 2009 to June 2010.

8. As regards the second charge imposed on the Petitioner, learned counsel for the Petitioner submitted that, though the Petitioner requested through RTI vide his application dated 23.07.2013 to provide the break-up details for Rs.1220.75 lakhs, the same was denied by the Disciplinary Authority vide his letter dated 20.08.2013. It is his contention that, the second charge was framed only on assumption and presumption and that, the very figure of the NPA account itself is without any basis and there is no proof to show that, the Branch incurred substantial loss. In this regard, learned counsel drew the attention of this Court to the deposition of P.W.1, successor of Branch Manager, who himself had deposed that, at the time of taking over charge of the Bank, the NPA loan amount was only Rs.54 lakhs. It is also his contention that, the Respondents failed to consider the overall performance of the Petitioner while awarding such major punishment of removal from service.

9. In support of his case, learned counsel for the Petitioner has relied on the following:

(i) an Apex Court decision in the case of Bhagwati Prasad Dubey v. Food Corporation of India reported in 1987 Supp SCC 579

> "7. We have already pointed out the circumstances in which the appellant was constrained to purchase a huge quantity of

mats. Under the pressure of necessity, he acted to the best of his judgment. He ultimately sanctioned payment only at the rates at which another public undertaking, namely, the SWC, had acquired the same goods. There is nothing whatever on record to show that the appellant had any special reasons for favouring M/s Iqbal Ahmed Ansari. It is clear that, at worst, the appellant can only be accused of an error of judgment.

8. For the above reasons, we are of the opinion that the conclusion of the enquiry officer as well as the order of removal of the appellant dated June 9, 1980 have to be quashed. It consequently follows that the order of the High Court dated September 2, 1980 should also be and is set aside. Counsel for the appellant submitted that the appellant is on the verge of retirement and that he would therefore not insist on being reinstated in service. We therefore direct that the petitioner will not be entitled to reinstatement but that he should be paid the salary due to him for the period June 9, 1980 till date."

(ii) another Apex Court decision in the case of M.A.Khalsa vs. Union of India reported in 1988 (Supp) SCC 436

"3. In view of the seriousness of the charge, the appellant rightly deserved the order of dismissal. However, looking to the long years of service that he has put in, we direct on compassionate grounds that he be reinstated in service without any back wages or allowances but with the lesser punishment of withholding of two increments with cumulative effect and with consequential loss of seniority. There shall however be no break in service for purposes of pension. We trust that the appellant will learn by experience and discharge his duties with a sense of responsibility. "

(iii) yet another Apex Court decision in the case of Kailash Nath Gupta v. Enquiry Officer (R.K.Rai), Allahabad Bank reported in (2003) 9 SCC 480

"11. In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs 46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

10. Learned Standing Counsel appearing for the Respondent/Bank with reference to the counter Affidavit filed by the Respondents, submitted that, the Petitioner sanctioned loans to Self Help Groups, where most of the members of the group belong to the same family, which is evident from their Family Card. Thus, the concept of one member from a family was violated by the Petitioner in the case of Self Help Groups viz. PEX 41 to PEX 48. Learned counsel pointed out that, the Inquiry Authority, by relying on the evidence of P.W.1, has held that, the Petitioner failed to maintain the Inspection Register for Self Help Groups and had not conducted pre-sanction and post-disbursement inspection within one month from the disbursement of loans and as regards the availability of the Inspection Register, the Petitioner has not cross-examined P.W.1. Hence, the learned Standing Counsel submitted that, the charges framed against the Petitioner were proved beyond doubt, based on the documents marked in the Department proceedings.

11. To substantiate his stand, learned Standing Counsel appearing for the Respondent/Bank has relied on the following Apex Court decisions:

(i) Chairman and Managing Director, United Commercial Bank vs. P.C. Kakkar, (2003) 4 SCC 364

"14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the 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 69 : 1996 SCC (L&S) 1194] 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 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. These aspects do not appear to have been kept in view by the High Court."

(ii) State of Uttar Pradesh vs. Man Mohan Nath Sinha, (2009 (8) SCC 310

"12. In State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] a three-Judge Bench of this Court held: (AIR pp. 1726-27, para 7)

"7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

12. Heard the learned counsel on either side and perused the material documents available on record.

13. In the case on hand, the allegation against the Petitioner is that, without following the Rules framed under the SBI Officers Service Rules, the Petitioner has sanctioned loans to several Self Help Groups, thereby causing huge Non-Performing Assets (NPA) to the tune of Rs.1220.75 lakhs to the Branch. For the charges alleged against the Petitioner, inquiry was conducted by the Inquiry Authority, who, on the basis of the non-availability of the Inspection Register, held that, the charges against the Petitioner are proved. Based on the report of the Inquiry Authority, the 2nd Respondent/Appointing Authority imposed a punishment of 'removal from service' by an order dated 06.02.2013. Aggrieved by the same, the Petitioner preferred an Appeal to the 1st Respondent on 27.03.2013. However, the said Appeal was rejected by the 1st Respondent by an order dated 27.06.2013.

14. Though, according to the Petitioner, the major punishment of removal from service is highly disproportionate to the alleged delinquency committed by him, it is the case of the Respondent/Bank that, the Petitioner has grossly violated the Bank's lending norms to Self Help Groups and that, his action has resulted in huge NPAs and consequent loss to the Bank with no scope of recovery. Hence, taking into account the gravity of the charges proved against the Petitioner, the 2nd Respondent/Appointing Authority imposed the punishment of removal from service in terms of Rule 67(i) of the State Bank of India Officers Service Rules.

15. Respondent/Bank has filed a detailed counter giving an account of the loans extended by the Petitioner to various Self Help Groups and the outstanding amount. It is seen that, loans were sanctioned to Self Help Groups even before opening of SB Accounts and that, several of the Self Help Groups did not even have an active Savings Bank (SB) Account, pursuant to the sanction of loan. Further, some of the Self Help Groups had no Term Deposits on the date of sanction, thereby the Petitioner has violated the eligibility norms for Self Help Groups fixed by the Bank, which says 'Savings First Credit Later'. That apart, the Petitioner has sanctioned loans to Self Help Groups, where, most of the members of the group belong to the same family, as in the cases of Self Help Groups viz. PEX 42 to PEX 49. Thus, the concept of one member from one family was violated by the Petitioner.

16. It is also noticed from the Report of the Inquiry Authority that, the Petitioner closed the existing loans of Self Help Groups from and out of the proceeds of new quantum of loan, as could be seen in the case of Self Help Groups viz. PEX 52, PEX 55, PEX 58 and PEX 61. Undoubtedly, such action of the Petitioner constitutes violation of the guidelines laid

down by the Bank. Further, based on the evidence of P.W.1, the Inquiry Authority has held that, the Petitioner failed to maintain Inspection Register for Self Help Groups and had not conducted pre-sanction and post-disbursement Inspection within one month from the disbursement of loans. However, the Petitioner has not chosen to cross-examine P.W.1 on the availability of Inspection Register.

17. The Inquiry Authority has further held that, the end use of the loans was not verified by the Petitioner and due to non-creation of assets from the loans sanctioned by the Petitioner, repayment in loans had been irregular and the scope of recovery of the substantial amount had become difficult. Thus, based on the findings of the Inquiry Authority, the 1st Respondent/Appellate Authority concurred with the findings of the 2nd Respondent/Appointing Authority and held that, the Petitioner violated Rule 50(4) of the State Bank of India Officers Service Rules and found that, the Petitioner did not discharge his duties with integrity.

18. The very discipline of an Organization, 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. Admittedly, in the case on hand, charges against the Petitioner herein are not casual in nature and are serious. As the charges alleged against the Petitioner were proved, he was imposed with the punishment of 'removal from service'.

19. It has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In Prem Nath Bali - Vs - High Court of Delhi reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has held as under :

> "20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

> 21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."
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> (Emphasis Supplied)

20. In the case on hand, the 2nd Respondent/Appointing Authority, keeping in view the nature and gravity of the charges against the Petitioner, findings of the Inquiry Authority and all relevant factors relating to the Petitioner, exercised his discretion and then imposed the punishment as provided in the Rules.

21. Thus, in the light of the aforesaid analysis, this Court is of the view that, there is no flaw in the decision making process and the findings of the Inquiry Officer are not perverse. In view of the misconduct on the part of the Petitioner, he is not entitled to any relief as claimed in this Writ Petition.

Accordingly, the Writ Petition fails and stands dismissed. No costs. Consequently, connected M.P.No.1 of 2013 and M.P.No.1 of 2015 are closed.

-sd-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chief General Manager,
State Bank of India,
H.R. Department,
Local Head Office,
'Circle Top House',
Post Box No.737,
16, College Lane,
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+1 C.C. to M/S. MR.M.Muthappan Advocate SR.NO. 36676/2020

W.P.No.25571 of 2013

SR(CO)

VS 19.12.2020