IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.8930 OF 2014
MP NO.1 OF 2014

M.Natarajan ...Petitioner

Vs.

1. The Executive Director / Review Authority
   Indian Bank
   Corporate Office
   254-260, Avvaishanmugam Salai,
   Royapettah, Chennai - 600 014.

2. The General Manager / Appellate Authority
   Indian Bank
   Corporate Office
   254-260, Avvaishanmugam Salai,
   Royapettah, Chennai - 600 014.

3. The Deputy General Manager / Disciplinary Authority
   Indian Bank
   Corporate Office
   254-260, Avvaishanmugam Salai,
   Royapettah, Chennai - 600 014. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 3rd respondent in his Proceedings No.VG:TRY:F1084/CS1438/4450/2011-12 dated 08.02.2012 as confirmed by the 2nd respondent in his Proceedings VG:TRY:F:1084/485/2012-13 dated 09.05.2012 and as confirmed by the 1st respondent in his Proceedings VG:F-1084:4290:2013 dated 03.01.2013 and quash the same and direct the respondents to confer all the consequential benefits.

For Petitioner : Mr.C.Selvaraj
Senior Counsel for
M/s.C.S.Associates

For Respondents : Mr.V.Kalyanaraman
for M/s.Aiyar & Dolia

O R D E R

According to the petitioner while he was working as a Chief Manager of the respondent Bank, was issued with a charge memo dated 06.07.2011 containing 9 charges. An enquiry was conducted. The Enquiry Officer set him exparte on 21.04.2011 and enclosed the enquiry minutes and called for written arguments within 10 days by his communication dated 06.07.2011. Though the petitioner sought for ten more days for preparing written arguments, he submitted the same only on 23.01.2012. Against the report of the Enquiry Officer, explanation was called for and the petitioner submitted his explanation on 01.02.2012 and the impugned order of dismissal was passed on 08.02.2012 and the same was confirmed by the Appellate Authority as well as the Revisional Authority. Challenging the same, the petitioner has preferred the above writ petition on the grounds of violation of principles of natural justice and non-application of mind and discrimination in imposing the punishment.

2.The learned Senior Counsel appearing for the petitioner would contend that the entire disciplinary proceedings are void ab initio, since it was conducted in violation of principles of natural justice and not for giving opportunity to the delinquent. The date of enquiry was fixed as 28.12.2010 and at the request of the petitioner, since he was under the custody of CBI, it was adjourned to 21.02.2011. Since he was on conditional bail, the hearing fixed on 21.02.2011 was adjourned to 10.03.2011 and at his request, due to his wife's illness, the same was adjourned to 16.03.2011. On 16.03.2011, he could not finalise his defence assistant and verify the compilation of documents, therefore, it was adjourned to 07.04.2011. Again, citing illness, the petitioner sought for adjournment on medical grounds. Therefore, he was directed to appear before the Medical Board on 21.04.2011. But, he contacted the Cantonment Medical Centre, through his Doctor, and it was informed that the date and time will be intimated to him later. While he was waiting for the information, the Medical Board informed the Head Office that the petitioner did not appear for examination on 21.04.2011 till 10.45 am. Thereafter, the Enquiry Officer informed the petitioner on 21.04.2011 that the enquiry proceedings were conducted setting him exparte and he continued the enquiry and have examined the witnesses. He called for written arguments within 10 days in the communication dated 21.04.2011. The petitioner requested for 10 more days, but it was refused. Therefore, the conduct of the enquiry, without giving ample opportunity to the petitioner and the cryptic order passed by the Appellate Autority as well as Revisional Authority are violative of principles of natural justice. In so far as the proved misconduct is concerned, he submitted that the findings of the Enquiry Officer are arbitrary, illegal and for frivolous charges, he was penalised with an vindictive attitude, whereas, the person who has committed the same misconduct to the tune of Rs.600 Crores was permitted to retire and only in the case of the petitioner, a harsh punishment of dismissal was imposed. The discrimination of imposing punishment between the delinquents in respect of the same offence is contrary to the judgments of Hon'ble Supreme Court.

3.Per contra, the learned counsel appearing for the respondent Bank would contend that the petitioner was given ample opportunity at every point of time. He was allowed to examine and cross examine the witnesses. The charge memo containing 9 charges are very serious in nature. The petitioner, with fraudulent intention, released excess funds and transferred funds from one account of the customer to the other account of the other customer, which is fraudulent and serious. Out of the 9 charges, charge No.1 was not proved; charge Nos.2 and 6 are partly proved. Charge Nos.3, 4(a)(c) ad (d), 7, 8 and 9 are proved, whereas charge No.4(b) was not proved. Opportunity was given to the petitioner to submit his comments on the Enquiry Officer's finding and after giving ample opportunity and after getting his explanation, the disciplinary authority, after thorough consideration of all the records of the case and the enquiry proceedings, Enquiry Officer's findings, comments of the petitioner and other evidences produced during the enquiry process has passed the order of dismissal on 08.02.2012. Each and every proved charge are of serious in nature and the Appellate Authority and Revisional Authority, considering the petitioner's misuse of the Authority of his office, fraudulent transfer of money and concealing and not declaring the Non Performing Asset against the banking rules and on the basis of admission made by the petitioner have confirmed the order of dismissal. Therefore, the impugned order does not warrant any interference.

4.I have considered the submissions as well as the materials placed before this Court.

5.The admitted facts are that there were certain irregularities in the transactions of the Bank, while he was holding the office of the Branch Manager, during his tenure between 24.07.2006 and 30.04.2010 at Cantonment Branch, Trichy.

The allegations were that he released excess funds beyond his limit; failed to get pre-release audit; pre-release legal opinion before releasing the loan sanction order; failure to get loan coverage, equilateral mortgage deeds for the loans advanced and suppressed the facts to the Head Office. Further, the fraudulent transfer of around Rs.41.85 Lakhs to M/s.Nagi Enterprises from the account of M/s.Cethar Vessels Ltd, while the total amount recoverable from the borrower was Rs.4.59 Lakhs with insufficient securities. Likewise, several serious charges were framed against the petitioner. The petitioner's defence is that the pre-legal audit and pre-release audit were conducted and it was proved to be false by records. But it was proved as post-audit ratification after sanctioning of the loan. For one charge that he has released loans without obtaining the documents of security, the reply of the petitioner was that it was the duty of the Desk Officers and for their misconducts, he should not be penalised. But the fact remains that the petitioner as Loan Sanctioning Officer, has the responsibility to verify as to whether proper security has been obtained or not. All the statements of the Presenting Officer, reply by the petitioner, and findings of the Enquiry Officer goes to show that the explanation submitted by the petitioner with regard to the proved charges does not appear to be satisfactory. As contended by the petitioner, I do not find any violation of principles of natural justice. The petitioner was accommodated at every stage, during his custody in prison, during his conditional bail, his wife's illness and during his illness also. When he was directed to appear before Medical Board, the petitioner came out with a lame and unacceptable excuse for his failure to appear. In between, opportunity was afforded to examine and cross examine witnesses and even after his appearance before the Medical Board, he was given opportunity to submit his written arguments.

6.To be elaborate, in so far as the conduct of enquiry is concerned, as admitted by the petitioner, in his rejoinder, the enquiry was fixed on 28.12.2010. He was under the custody of CBI and it was adjourned to 21.02.2011. Prima facie, the custody of the petitioner, under CBI shows that he has committed some grave criminal offence and was granted conditional bail to be stationed at Chennai. Therefore, the enquiry was adjourned to 10.03.2011. Even on that date, he has sought for 10 days time, due to his wife's illness. On the next date of hearing on 16.03.2011, he was further granted time for finalising the defence statement and verifying the compilation of documents till 07.04.2011. Again on submission of medical certificate due to his illness, he was referred to the Medical Board on 18.04.2011. Even though he was directed to appear before the Medical Board, the petitioner has given lame excuses that he enquired through his Doctor about the date and time of the medical examination by the Medical Board and since it was not informed, he did not appear on 21.04.2011.

7.From the prompt responses sent by the respondents, I could infer that the petitioner was informed of the dates then and there, but he was in the habit of taking adjournments to avoid the enquiry proceedings. Since he did not appear before Medical Board as well as before the Enquiry Officer on 21.04.2011, he was set exparte. The enquiry was again conducted on 22.04.2011. There is no explanation from the petitioner for not submitting any letter for participating in the enquiry after 22.04.2011. When he was asked to submit his written argument, by the Enquiry Officer, he has sought for 10 more days. Even assuming that the 10 more days commenced from 22.04.2011, he could have submitted his explanation within a reasonable period. The Enquiry Officer submitted his report on 23.01.2012 that is to say that after a period of nine months from the date of exparte order. Therefore, the complaint that the petitioner was denied of opportunity is not sustainable.

8.After submission of the enquiry report, the petitioner has not asked for further opportunity to examine or cross examine the prosecution witnesses nor sought for any opportunity to produce defence witnesses and he has not expressed any prejudice over the same. In the absence of any prejudice pleaded by the petitioner, it cannot be said that he was denied of opportunity for effectively participating in the enquiry. Therefore, I do not find any violation of principles of natural justice or irregularity or improper conduct of enquiry with an vindictive attitude to penalise the petitioner.

9.It is also not the case of the petitioner that the authorities who issued the charge memo and imposed the punishment are incompetent to do so or having no jurisdiction to take action against the petitioner. In the absence of any jurisdictional error or competency or violation of principles of natural justice or arbitrary and improper exercise of power, this Court cannot interfere with the punishment. The petitioner also does not make out any case for interfering with the same.

10.It is well settled that a Bank Officer having higher position and responsibility is expected to very vigilant, honest and trustworthy while dealing with public money. In the instant case, the petitioner himself admits certain charges and disowns his responsibility putting the blame on his inferiors and prays for lesser punishment or no punishment comparing him with another wrong doer. There cannot be any negative equality in illegality. Each and every case is based on the facts and circumstances of its own and therefore, the petitioner cannot claim that the punishment shall be set aside on the grounds that the other person was let off for more serious misconduct.

11.Therefore, considering the totality of the circumstances, this Court finds no reason to interfere with the punishment imposed on the petitioner and accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

TK

To

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+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.42767

+1cc to M/s.C.S.Associates, Advocate, S.R.No.42812

W.P NO.8930 OF 2014

PL(CO)
RGA(29/09/2021)