IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.10.2022

Judgment Delivered on : **20.10.2022**

CORAM :

THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.54 of 2015
and
M.P.No.1 of 2015 & C.M.P.No.12360 of 2016

1.The General Manager,
Circle Office,
Canara Bank,
Bhopal.

2.The General Manager,
Disciplinary Authority,
Canara Bank, No.112, J.C.Road,
Bangalore – 2.

3.The Executive Director,
Canara Bank,
Head Office, No.112, J.C.Road,
Banglore – 2. ... Appellants

Versus

1.M.Swaminathan

2.The Union of India,
Rep. by its Secretary,
Finance Department,
New Delhi. ... Respondents

Prayer : Writ Appeal has been filed under Section 15 of Letters Patent, to set aside the Judgment dated 17.09.2014 in W.P.No.11456 of 2014 and allow the Writ Appeal.

For Appellants : Mr.T.R.Sathiya Mohan

For Respondents : Mr.R.Sivakumar (R1)

JUDGMENT

D.Bharatha Chakravarthy, J.,

This Writ Appeal arises out of the order of the learned Single Judge dated 17.09.2014 in W.P.No.11456 of 2008, in and by which the learned Single Judge allowed the Writ Petition filed by the first respondent/writ petitioner, thereby quashing the order of Disciplinary, Appellate and Review Authorities, dated 23.12.2005, 12.01.2007, and 14.07.2007 respectively and directing reinstatement of the petitioner with all back-wages and consequential benefits.

2.The first respondent/writ petitioner (since superannuated) was working as Manager in the Appellant/Bank. While so, a Charge Memorandum dated 02.03.2005 containing six charges was issued against the first respondent/petitioner. Even though each article of charge is descriptive in nature, it is necessary to extract the relevant portion of each article of the charge so as to understand the gravamen of each of the article of all the charges:-

***Article No.1** : While working so, as Branch In-*

charge, you have granted amongst others, 403 loans under the Retail Loans Schemes, under the Branch powers wherein in many cases serious irregularities have been observed, which includes amongst others granting loans much above the eligibility, not ensuring that the asset was created out of the loan proceeds, sanctions against the quotations/bills of non-existing dealers, involvement of an outsider as a middle man, and not ensuring the regular repayments in all the loan accounts.

The majority of the loans sanctioned by you have shown a quick mortality and within a span of one year about 85% of the loans so sanctioned have become NPA. Out of the total advance of Rs.141.74 lacs, almost Rs.95.08 lacs have become NPA, besides Rs.20 lacs being classified under Special Watch Category. The lapses/charges on your part are fully enumerated in the statement of imputation to this Article of Charge.

Article No.2 *: The records at the Branch reveal that you got, as many as 24 DDs in all amounting to Rs.4,67,397/- issued by debiting to your accounts maintained with the Branch. Besides the above, you also got 23 DDs in all amounting to Rs.184550/- issued bv paying cash. The said DDs have been issued favouring different members of your family and made payable at different places which includes Nagapatnam, Thevur, Chennai etc. Further 5 local cheques, in all amounting to Rs.34836/- in your favour have been* *discounted under LCDB and given credit to your accounts with the Branch.*

Similarly, 5 DDs payable at Nagapatnam in all amounting to Rs.95000/- issued in your favour and in favour of your family members have been deposited in your accounts at Nagpatnam. The said DDs were got issued by one Sri Harish Talreja, a local man at Koh-e-Fiza, Bhopal, well acquainted with you and who is said to have worked as a middle-man and was instrumental in getting a majority of the loans under Retail Lending sanctioned at the Branch during your tenure. It is noted that a good number of abnormal transactions have taken place in your accounts. None of the transactions exceeding Rs.25000/- have been reported as per the rules of the Bank. The charges are fully enumerated in the statement of imputation to this Article of Charge.

Article No.3 *: While working so you have failed to respond a BAR No.164/02 raised by our Rewa Branch for Rs.10315/- towards your Cancard FTV liability. The BAR.No.164/02 was responded afler a gap of 11 months only, after intervention of IC & IF Section, Circle Office, New Delhi. It is observed that a BAR inward register to follow up un-responded BARs was not maintained at Koh-e-Fiza Branch during your teuurc. It is evident that you have deliberately not responded your own Cancard FTV BAR received though our Rewa Branch and kept the same pending for a long time. You have thus derived undue benefit by misusing your official* *position. The details of lapses on your part have been fully enumerated in the Statement of Imputation to this Article of Charge.*

Article No.4 *: While working so, on 27.11.2002 you availed a DPN loan of Rs.17,500/- for subscribing IPO of Canara Bank for 500 shares. The repayment schedule fixed for the said loan was in 36 equal monthly instalments @ Rs.577/- p.m. to commence with from January 2003 from monthly salary payable to you. The repayment was not affected by deducting the EMI from your salary instead the amount was transferred from your SB account according to your convenience. Further the said proceeds of 300 shares, which you had disposed off, were not given credit to your loan account as stipulated in the loan scheme. The charge against you is fully enumerated in the Statement of Imputations to this Article of Charge.*

Article No.5 *: While working so, on 04.03.2003, you have availed a Festival Advance of Rs.20,400/- The entire advance was required to be repaid in 10 equal monthlv instalments Rs.2,040/- p.m. starting with April 2003 out of the salary payable to you. You however failed to remit the monthly instalment as per norms and instead remitted two instalments of Rs.8,160/- and Rs.10,200/- in lump sum on 31.08.2003 and 30.11.2003 respectively by debiting your OD Account No.9 maintained with the Branch. You have thus failed to adhere to the laid down norms with regard to the Festival Advance and by delaying remittance violated the laid down norms and also* *derived undue benefits by misusing your official position. The irregularities noted against you are fully enumerated in the Statement of Imputations to this Article of Charge.*

Article No.6 *: While working so, on 13.04.2003 you have sanctioned in your name a vehiçle loan of Rs.40,500/- for purchase of a Motor Cycle under Loan No. LHV(O) 63. The repayment schedule fixed by you for the loan was Rs.450/- p.m. for 84 months whereas the same should have been Rs,675/- p.m. You have thus fixed a wrong EMI at a lesser rate for your own loan and hence failed to adhere to the stipulated EMI guidelines and also derived benefit by misusing your official position. The charge against you is undue fully enumerated in the Statement of Imputations to this Article of Charge.*

3.The first respondent/writ petitioner denied the charges and submitted his explanation. The Appellant/Bank did not accept the explanation and an Inquiry Officer was appointed. In that Inquiry ***M.W.1 to M.W.8*** were examined and documents ***M.Exs.1 to 551*** were marked. The delinquent side did not examine any evidence, however, the documents in ***D.Exs.1 to 5***, were marked. Further, during the course of inquiry, the inquiry authority examined the first respondent/charged official, and it is relevant to extract his further explanation hereunder:-

" Sir, I joined the particular branch on

01/10/2002. Even though the branch has completed 18 month and has situated in a Capital City and also posed one local manager earlier to me who is knowing sindhi language also which is common to the area. He has not at all reached/smashed any of the targets. Then on my posting as an In-charge of the Branch, I found that the branch was running in loss of around Rs.388 Lacs in first year and Rs.2884000/ in the second year. So my duty is to perform well in the branch and also I found slips hardly per day 5-10 that being for a staff of One Manager, Two Clerks, One daily wager working there. As a performer I visited all the areas, I tapped the business and customers increased to 400 to 1500. Then I comfortably crossed my target by giving additional Rs.139.00 Lacs of advance in the first year. Then I brought low cost deposit from Rs.40.00 Lacs to Rs.150.00 Lacs which was appreciated vide Head Officer bulletin. For next year I was given target of Rs.5.00 Crores for Deposits. Then the same was crossed in the month of May itself. Having achieved my deposit target, I concentrated on advances. So I visited one place Koh-e-fiza to Bairagarh, which is around 3 Km from Koh-e-fiza then ascertained the business in the Bairagarh then I thought that this is a suitable place for business and finance. Then I started financing, in the same year I brought the branch from loss making to profit making which is the first time in the history of koh-e-fiza branch.

I was attending to all development work all alone without any assistance from other staff members. Subsequently in the same year RO has revised the target of my branch from Rs.5.00 Crores to Rs.6.00 Crores. That also I have crossed and achieved the figure of Rs.6.09 Crores well before time. I took much strain to fully computerize the branch and I made it the first fully computeralized branch in RO, Bhopal. From the above submissions, it shows how I struggled alone though I was not knowing the local language. This shows that I am a performer in all spheres."

4.Thereafter, the inquiry report was forwarded to the first respondent by communication dated 19.10.2005. The first respondent did not submit any further explanation and two separate orders were passed by the Disciplinary Authority/the second appellant herein, dated 23.12.2005. In one order, the punishment was dismissal from service was imposed and the reasons were contained in the second order. Aggrieved by the same, the first respondent filed a departmental appeal before the Executive Director and by an order dated 12.01.2007, the Appellate Authority rejected the appeal. Aggrieved by which, the first respondent submitted a Review Petition and by an order dated 14.03.2007, the second appellant himself had rejected the review stating that no grounds of review was made out. Aggrieved by the same, the Writ Petition in

W.P.No.11456 of 2008 was filed, which was allowed by the order under appeal.

5.Heard *Mr.T.R.Sathiya Mohan*, learned Counsel for the appellants and *Mr.R.Sivakumar*, learned Counsel appearing for the respondents.

6.The learned Counsel for the appellants, taking this Court extensively through the Charge Memorandum and thereafter, through the inquiry proceedings and the findings of the Inquiry Authority, contended that, in respect of each and every Charges Nos.1 to 6, the Appellants/Bank had mustered all the evidence at its command before the Inquiry Officer. The Inquiry Officer appraised the evidence on record, more specifically the oral evidence marked under ***M.W.1 to M.W.8***, and overwhelming documentary evidence and came to the conclusion that the charges are proved. The Disciplinary and the Appellate Authorities have accepted the said findings. That being so, within the limited powers of judicial review, as law laid down by the Hon'ble Supreme Court of India, in ***State of Uttar Pradesh and Anr., Vs. Man Mohan Nath Sinha and Anr.***[1]***,*** and in ***State Bank of India Vs. Ram Lal Bhaskar and Anr.***[2]***,*** there was no occasion for the learned Single Judge in exercise of powers Article 226 of the Consitutiton of India, to have interfered with the inquiry proceedings. He

1 (2009) 8 SCC 310

2 (2011) 10 SCC 249

would further submit that the order of the learned Single Judge, even though had stated the case of the first respondent/writ petitioner and the appellants, finally only in Paragraph No.39 alone, had rendered the findings. In respect of the said findings, Paragraph No.39(i) to (vi), the learned Single Judge did not advert to any of the contentions or evidence on record and without any reasoning whatsoever, had given the findings and on the basis of Paragraph No.39, the Writ petition. Therefore, he would submit that the order of the learned Single Judge is liable to be interfered with.

7.Further, the learned Counsel for the appellants, making his submissions in respect of the individual charges, he would submit that it is categorically proved that the loans were granted by the first respondent/writ petitioner, without properly verifying the income details, without enquiring any relevant criteria, and without ensuring end use for the purpose and proper repayment. All the loans seem to have been disbursed with the help of a middle man by name *Harish Telreja*. In fact, endorsements in the loan files were being made as if the other employees had also scrutinized the loan files, which was not their case. The majority of the loans have subsequently become Non-Performing Assests (NPA), thus, he has caused loss to the bank.

8.Similarly, in respect of Charge No.2, even though there were several transactions by bank account by virtue of DDs etc, in favour of his family members and others in the State of Tamil Nadu, these were not informed to the Bank and the said middle man viz., *Harish Telreja*, had also purchased five Demand Drafts, which shows the misconduct on the part of the first respondent herein. He would submit that the first respondent/writ petitioner was using CAN card and Branch Advisory Report in respect thereof was received only after eleven months. Similarly, when 500 shares were offered to the first respondent/writ petitioner and when he chose to sell 300 shares out of it, out of the sale proceeds, he had immediately paid the balance amount of the loan advance of Rs.17,500/- granted to him. Further, he also erroneously fixed the monthly EMI for lesser rate in respect of the motorcycle loan. Therefore, he would submit that the misconduct of the petitioner is serious in nature. The loan records of each and every loan, totally amounting 551 documents were produced before the Inquiry Officer. Each and every irregularity, in respect of the loans, were duly established. In that view of the matter, the findings of the learned Single Judge that the middle man was not examined and the relevant documents have not been filed and that the first respondent/writ petitioner repaid the amounts and therefore, does not have any misconduct, are all made outside the scope of the power of the judicial review.

9.Per contra, the learned Counsel for the first respondent, also taking this Court through the inquiry proceedings and the relevant pieces of evidence of the witnesses, submitted that, firstly, in this case, when the Inquiry Officer chose to examine the charge official and he has given evidence in detail, including his explanation (which as extracted supra), the fiindings as if no evidence was let in on behalf of the charge official, is perverse. He would submit that the petitioner was performing exceedingly well and has got Certificate of Appreciation year after year from the year 1990 onwards, repeatedly for his performance. In the background of such an impeccable performance with the language handicap, the first respondent/writ petitioner was transferred to Bhopal and was posted at newly started branch which was running in loss. The first respondent/writ petitioner was challenged to make a turn around which the writ petitioner successfully did. He would submit that on a reading of the evidence on record of subsequent Manager, it clearly shows that none of the other staff in the Branch co-operated in the field visits or in the inquiry for obvious reasons. Under the above circumstances, taking the help of *Harish Telreja*, who was an existing borrower in the branch of the Bank, at a personal level was blown out of proportion. To overcome the linguistic barriers, taking help as a local friend and for his personal needs would not amount to misconduct. The loans granted were all small loans, which were duly distributed to the targeted common public which were duly distributed after obtaining proper loan applications from the customers. As a matter of fact, none of the above loans were NPA and were duly being repaid. Only a Political Personal Assistant (P.A.,) of the local politician went to the said area and announced to the people that the loans are likely to be waived by the Government, suddenly the borrowers stopped payment of loan and the loans became NPA. On a perusal of the accounts of these loans, it would show that the loans would all become NPA only after the particular date and not before. Therefore, the first respondent has not caused any loss to the appellants. On the contrary, he had made the Branch which was running in loss to one of profit-making Branch. The learned Counsel would submit that for the explanation given by the first respondent that there was no cross-examination on the side of the Management. The said averments are also made in detail in the affidavit filed in support of the Writ petition and the same was also not denied in the counter affidavit, which will go to show the veracity and correctness of the said explanation.

10.As far as the Charge No.2, the learned Counsel would submit that on a perusal of the evidence on record, it would show that every amount has been duly accounted by the first respondent/writ petitioner and therefore, there was no misconduct. As far as Charges Nos.3 to 6 are concerned, the learned Counsel would submit that even before issuance of show-cause notice or Charge memorandum, all these personal loans were duly repaid by the first respondent/writ petitioner, and even though there may be one or two lapses in paying EMI (Equated Monthly Instalment), the entire amount due to the Bank was duly repaid and therefore, the said action cannot be construed as misconduct. The learned Counsel would further submit that this is a clear cut case of victimization and after transferring the first respondent/writ petitioner from Southern State to Madhya Pradesh, that too posting in a loss-making Branch and when the first respondent/writ petitioner successfully met the challlenge by turning the fortunes even in the said Branch and undue fault findings has been made. Taking this Court through the evidence of the officers who submitted the Investigation Report, learned Counsel pointed out even the said officers also did not know Hindi language. They have categorically admitted that they have recorded the statements of the borrowers, by guess work and by half Hindi, which was known to them and the rest by presumption. Therefore, he would submit that the very report which formed the base on the Charge Memorandum, cannot at all be taken into consideration. The learned Counsel would submit that the entire gravamen of Charges Nos.1 and 2 is as if the first respondent/writ petitioner took the advise and was in collusion with one

Harish Telreja and disbursed the loans and made transactions at will in connivance of the said person. The fact remains that the said person was very much available for the Management to be examined as a witness, but the said crucial evidence was not at all examined. In the absence of examination of the said *Harish Telreja* as a witness, the very gravamen of charge itself remains to be unproven. Therefore, he would submit that this is a case where the findings of the Inquiry Officer as well as the Appellate Authority are firstly perverse and secondly, in the nature of victimization, and therefore, he would submit that now, the first respondent/writ petitioner had also attained the age of superannuation. The learned Single Judge has rightly arrived at his findings and set aside the order of punishment as well as the Appellate and the Review orders and ordered reinstatement of service with all consequential benefits and he would pray for dismissal of the appeal. He would submit that inspite of the fact that the petitioner attaining superranuation and that there was no interim order, none of the retiral benefits are paid to the petitioner.

11.We have considered the rival submissions made on either side and perused the material records of this case.

12. At the outset, we have to agree with the learned Counsel for the

appellants that the learned Single Judge had only elaborately captured the arguments made on either side from the paragraphs Nos.1 to 38. But, however, rendered his findings in only paragraph No.39. While arriving at the conclusion in paragraph No.39, the learned Single Judge has not adduced his reasons therefor and had not adverted to the relevant submissions made by the learned Counsel. Therefore, the order of the learned Single Judge is not sustainable as far as the reasonings of the learned Single Judge is concerned. But, however, we are unable to allow the present appeal by the appellants as we still find that the ultimate conclusion reached by the learned Single Judge to set aside the punishment and ordering reinstatement as sustainable for the following reasons;

12. 1. In this case, out of the six charges, charge No.1 alone relates to the discharge of the duties by the first respondent/writ petitioner and the charges Nos.2 to 6 are about his personal conduct. It goes without saying that the disciplinary proceedings are quasi criminal in nature and the management has to level clear and unequivocal charge and has to prove the same by adducing evidence, in the event of the denial of the charge. This Court in exercise the powers of Judicial Review under Article 226 of the Constitution of India, can neither re-appreciate the evidence nor will consider the adequacy of evidence. So long as the findings are not perverse and are on the basis of evidence on record and if the view taken by the inquiry authority is a plausible view, the

same will not be upturned by this Court.

12.2. In this background, the basic charge against the first respondent/writ petitioner i.e., Article No.1, that is, irregularities in the advancement of loan is concerned, it can be seen that the loans advanced are small loans for the common public for purchase of household articles, etc. The gravamen of allegations is that the first respondent/writ petitioner went ahead by employing a middle man / *Harish Telreja*. As rightly contended by the learned Counsel for the respondent, the crucial evidence being the said person was not at all attempted to be examined by the said appellants/management.

12. 3. This apart, it is contended that the said loans became NPA only after the particular date when the political personal assistant of Minister had informed about the waiver of the loans to the common public. In that view of the matter, on the one hand, when the first respondent/writ petitioner was posted to the loss making branch to improve its customer base and meet the target, on the other hand, belatedly, he cannot be victimized for his swift actions in disbursement of the loans.

12.4. The charge itself is made based on the inquiry report of the management witness, who admitted that he also did not know the local language i.e., Hindi and that he had made his report by making assumptions and presumptions. Thus, the basis of the charge was without proper ascertainment of the facts on the grounds without even deputing any officer who knew the language so that he would interact with the beneficiaries of the loan.

12.5. A half-hearted attempt is made by the appellant bank and that is why they make a bouquet of incomplete allegations only multiplying the numbers without ascertaining or levelling clear and specific charge as to the Rules and violations. If the allegation is that the writ petitioner employed middleman and received kickbacks, the same ought to have been specifically made as a charge. If the loss was caused, how and in what manner the loans became NPA and whether they were receovered or not. When the bank is unable to categorically ascertain these facts, and pin point the allegations, it is clear that the appellant bank just making numerous allegations by attempting to find faults with magnifying lenses just for the purpose of leveling charges.

12.6. When the petitioner had given the explanation about his functioning, which is extracted above and the same is neither denied in the counter affidavit nor the official was cross-examined on behalf of the management when he made the same statements before the Inquiry Officer. Therefore, when the first respondent/writ petitioner went about his duties with good intentions, to find fault within every aspect of day-to-day functioning retroactively, would only fortify the contention of the victimization raised by the first respondent/writ petitioner. Thus, the charge No. 1 itself was based on a report which is admittedly based on presumptions, unclear facts and is very vague, general and a boquet of variety of allegations which do not stand scrutiny of the test of clarity, specific and on categorical factual basis.

12.7. A perusal of Article No.2 of the charge, it is made as if the first respondent/writ petitioner failed to report the transactions of more than Rs.25,000/- in his account to the higher authorities. In this regard, the statement of imputations proceeds as if the Charge official failed to adhere to the laid down norms with regard to the discounting of cheques, and demand drafts from his account more than of Rs.6.15 lacs was beyond his declared income. He also misused the demand drafts facility by getting the DDs issued at par. The Inquiry Officer, however, recorded his findings in his report as if the charge is about getting illegal ratification from one *Harish Telreja* and also the first respondent/writ petitioner had borrowed even from one *Mr. Pandiyan,* who is one of the customer of Thevur branch and he is misusing the official position and deliberately granting loan to various borrowers through the middle man */Harish Telreja*. Therefore, the Appellant/Management itself is not clear as to what is the misconduct that is alleged against the first respondent/writ petitioner and therefore, the charge levelled is one, the finding of the inquiry authority is based on different set of allegtions and as such are based on irrelevant considerations and hence perverse. As a matter of fact, there was no consideration on the part of the disciplinary or appellate authorities in respect of the explanation given by the petitioner in respect of each and every transaaction and about his income.

12.8. Regarding the charge Nos.4, 5, and 6 are concerned, those are related to repayment of laon in respect of CAN card, Festival Loan, and Vehicle loan, which were duly repaid. The said facts were completely omitted to be mentioned in the charge itself and the said charges are at best only to embellish the charge memorandum against the first respondent/writ petitioner and it cannot be termed as misconduct at all.

12.9. Therefore, we are of the view that none of the charges is clear and categorical. The evidence adduced in respect thereto, is further not to that point and the evidence even though more in number in terms of documents as well as in terms of witnesses, the appropriate evidence was not let in and the relevant witnesses were not examined and thus, the findings of the Inquiry Officer borders on no evidence and perversity. The findings of the Inquiry Officer, in this case, are perverse because it takes into account the irrelevant materials for consideration. On account of fallacy in the charges which are of general and wide import without any specific allegations, the inquiry authority was lead into error. To prove the misconduct, the appellant bank could have hit the nail on its top, specifically restricting the charge to particular loan amount and the violation on standing order or procedure in that regard. By generally beating around the bush in respect of the 400 transactions, the appellants had only made their task difficult and the attempt was only to make it appear as if there is a grave misconduct warranting the capital punishment of dismissal from service and thus, smacks victimisation.

13.In that view of the matter, even though the findings of the learned Single Judge were not backed with the elaborate reasonings, we find that the ultimate conclusions arrived at by the learned Single Judge in setting aside the orders of the punishment and Appellate and Review orders are correct and therefore, we are of the considered view that the appeal cannot succeed.

14. Accordingly, the Writ Appeal in W.A.No.54 of 2015 is dismissed. Since the writ petitioner has already reached the age of superannuation, all the benefits due to him as per the Order in the writ petition shall be disbursed expeditiously, in any event within a period of four months from the date of receipt of the copy of this order. Consequently, the connected miscellaneous petitions are closed. However, there shall be no order as to costs.

(P.U., J.) (D.B.C., J.)
20.10.2022

Index : Yes/No
Speaking/Non-Speaking order

klt

To

The Secretary, Union of India,
Finance Department,
New Delhi.

PARESH UPADHYAY, J.,
and

D.BHARATHA CHAKRAVARTHY, J.,

klt

Pre-Delivery Judgment in

W.A.No.54 of 2015

20.10.2022