IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2022

DELIVERED ON : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU
W.P.No.7172 of 2009

Shanti Durham … Petitioner

Vs

1.State Bank of India,
by its Review Committee for Disciplinary Proceedings
through the Deputy General Manager (Appeal & Review), Appeals & Review Department,
Nariman Point, Mumbai 400 021.

2.The Chief General Manager,
Appellate Authority,
State Bank of India, Local Head Office,
Rajaji Salai, Chennai 1.

3.General Manager – 1,
(Disciplinary Authority cum Appointing Authority),
Rajaji Salai, Chennai – 1. … Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for records pertaining to the Order DIS/CON/No 566 dated 12.03.2005, passed by the 3rd respondent imposing the penalty of 'Dismissal from Service' and treating the period of suspension as suspension only and the Order No A&R/33 dated 21.07.2005 passed by the 2nd respondent confirming the findings and removal from service and the final order dated 19.11.2006 which was communicated in No 171 dated 13.11.2006 passed by the 1st respondent confirming the order of the 3rd respondent as modified by the 2nd respondent and quash the same.

For Petitioner : Mr.S.S.Vasudevan

For Respondents : Mr.K.Sankaran

ORDER

The instant Writ Petition has been filed by the employee of the Bank challenging the impugned orders passed in the disciplinary proceedings against her resulting from her being removed from service.

2.Heard Mr.S.S.Vasudevan, learned counsel appearing for the petitioner and Mr.K.Sankaran, learned counsel appearing for the respondents.

3.Mr.S.S.Vasudevan, learned counsel appearing for the petitioner submitted that the petitioner had joined the services of the respondent bank as a Junior Management Grade Scale-I in the year 1989 and rose up to the rank of Deputy Manager of Accounts. During which period she was placed under suspension on 23.10.2001, pending enquiry into certain grave charges. Thereafter, after a period of 11 months ie. on 11.06.2002, the 3rd respondent herein had called upon the petitioner to submit her explanation for certain alleged misconducts during the period 23.10.2000 to 13.09.2001. The allegations for which an explanation was sought for was that two fictitious accounts were opened by the petitioner and certain amounts were credited in the same and the said fictitious accounts were closed and the amount lying in the said accounts were transferred either to the petitioner or to her children.

4.He further submitted that disputing the said allegations, the petitioner had submitted a detailed explanation on 16.09.2002. However, a charge memo dated 18.10.2003 was issued by the 3rd respondent inter alia alleging that the petitioner had reversed several income related transaction and had diverted the amount from five accounts using her ID. The said accounts were also transferred. Further, though she had opened two fictitious accounts in the name of Sushil M. Kumar and S.K.Das and thereafter, transferred amounts to the said accounts and closed the same and credited the amount lying in those accounts in the Savings Bank Account of the petitioner's son and her husband. The account of the husband was joint account held by the petitioner. Further, the allegation in the charge memo was that she had debited Rs.30,000/- and Rs.20,000/- from a Custom Collection Cargo Extension Current Account and credited the same to the joint account of herself and her husband, apart from the other charges. On receipt of the said charge memo, by letter dated 04.12.2003, the petitioner had sought some time to submit her explanation after visiting the branch and perusing certain documents. By letter dated 31.12.2003, she requested further time to verify the records and prepare a statement of defence. Without considering the same, the Enquiry Officer had scheduled an enquiry on 08.01.2004. On which dated the petitioner had appeared and denied the charges and the Presenting Officer had produced 19 documents as proof of charges which was marked as Ex.P1 to Ex.P.19. The Enquiry Officer had permitted the petitioner to peruse the documents at Meenambakkam Airport Branch and had adjourned the enquiry. By letter dated 22.01.2004, the petitioner had further made a request to the Enquiry Officer to furnish various document of which only 16 documents were produced and they were marked as Ex.D.1 to Ex.D.16. With respect of certain documents the Presiding Officer had submitted that they were not available, as the same are not maintained in view of the computerisation of the branch.

5.The learned counsel for the petitioner would contend that the documents that were marked on the side of the Presiding Officer were all copies of printouts taken and therefore, they are not admissible. But, without considering the various objections and the infirmities, the Enquiry Officer had submitted an Enquiry Report holding that the charges have been proved. The learned counsel for the petitioner would further submit that the 3rd respondent herein issued a notice dated 25.10.2004 along with the findings of the Enquiry Officer and directed the petitioner to submit her explanation, to the which the petitioner had also submitted a detailed explanation pointing out as to how the findings of the Enquiry Officer was wrong and perverse. But, however, without considering the same, the 3rd respondent being the Disciplinary Authority had passed an order dated 12.03.2005, dismissing the petitioner from service. Being aggrieved against the same, the petitioner had preferred an appeal on 25.04.2005 to the 2nd respondent and the 2nd respondent without considering the appeal filed by the petitioner had dismissed the same by its order dated

21.07.2005. But, however, modified the punishment of dismissal from service into one removal of service. Thereafter, the petitioner had filed a review before the 1st respondent and the 1st respondent by his order dated 09.11.2006 has rejected the Review Petition. Being aggrieved against the same, the present Writ Petition is filed.

6.Mr.S.S.Vasudevan, learned counsel for the petitioner would vehemently contend that the entire charges have been at the instance of one Hridayanathan and his accomplices against whom the petitioner had complained to the Bank. He would further submit that the petitioner had put in 20 years of unblemished service and that there was no necessity for her at this stage to indulge in the alleged acts. He would also submit that the documents relied upon by the Bank could not have been considered for the reason that they were all extracts of printouts. He submitted since, the Bank is a computerised branch, the same could be accessed by anyone and throw the blame on the petitioner. These aspects were all not considered by any of the respondents in holding that the petitioner have committed the delinquencies as alleged. On the other hand they should have exonerated the petitioner, considering the explanation and the grounds of appeal submitted by her. He also relied upon various judgments of this Court and the Hon'ble Apex Court to putforth his contentions that when there is no evidence and that if the findings of the Enquiry Officer was based on no evidence then it is perverse and this Court under Article 226 of the Constitution of India can interfere. He has also relied upon a judgment of the Hon'ble Apex Court to contend that a Court exercising the power of judicial review will have to look into whether the evidence have been taken into consideration and irrelevant facts have been excluded therefrom.

7.Relying upon the aforesaid judgment, he would contend that there was no acceptable material evidence before the Enquiry Officer to hold that the charges were proved. He would also further contend that there was no independent witnesses that were examined by the Enquiry Officer to come to such a conclusion that the alleged delinquencies stands to be proved. This aspect has been wholly overlooked by the respondents 1 to 3 in imposing the penalty and therefore, this Court under Article 226 will have to interfere with the impugned orders passed by the respondents and set aside the same, direct reinstatement of the petitioner with all attendant benefits.

8.Countering his arguments, Mr.K.Sankaran, learned counsel appearing for the respondent would submit that there is no procedural irregularity in conducting the Enquiry proceedings. According to him, the same has also not been seriously disputed by the petitioner. He would further submit that the Enquiry Officer has dealt with in detail all the allegations and the case of the Presenting Officer and the explanation submitted by the petitioner. He would further contend that the petitioner had called upon certain documents which are not being maintained by a fully computerised branch. This aspect has been admitted to by the petitioner in detail in the affidavit filed in support of the Writ Petition.

9.He would further vehemently contend that the various documents relied upon by them has been furnished to her and she had also been permitted to inspect the documents at the Branch where the delinquencies had taken place. She had not not specifically denied that from three accounts from which she had transferred amount to the account belonging to her husband which was also held by her jointly and the account of her son . It is not also her case that vouchers or instructions have been issued by the account holders from which account she had transferred money to the joint account belonging to her and her husband and the Savings Bank Account of her son. He would further vehemently contend that the computers in the Bank could be operated by the concerned employees only by entering from a particular user ID protected with a password. He would contend that there is a specific finding that all the alleged transactions have taken place from the user node of the petitioner using her ID and password. Therefore, the petitioner's allegation that some one else has tampered her user ID and password is imaginery. He would further submit that these transactions took place between October 2000 and September 2001 and that she was placed under suspension on 23.10.2001 and a charge memo was issued on 11.06.2002. He would submit that if the contention of the petitioner is to be accepted that these transactions have taken place without her knowledge then, she being a joint account holder of a account ought to have made a complaint that there has been some suspicious transaction in which the amount has been credited into her account. Even till the date of the charge memo, she had not made any such complaint with the Bank, which itself would show that it was she who had intentionally made such transfers causing discredit to the Bank and unbecoming of a banking official who handles the money of the general public in trust. Hence, he submitted that the order of dismissal from service as modified to removal of service is justified and prayed this Court to dismiss the Writ Petition.

10.I have considered the rival submissions made by the learned counsels appearing on either side and perused the material documents available before this Court.

11.The contention of the petitioner that the documents marked on behalf of the Presenting Officer could not be relied upon as they are computer extracts of certain accounts, in my view is wholly unfounded. Even in her affidavit filed in support of this Writ Petition, she had in detail explained how a computerised Bank operates. She had admitted in the pleadings that there were no books maintained by the Bank and everything were computerised and could be accessed by the employees of the Bank using user ID and a secrete password. When that be so, the petitioner had not convincingly explained as to how her user ID has been misused by third parties.

12.The allegation that certain amounts from certain accounts were transferred into a joint account held by her and her husband and to another account held by her son, were not disputed by her by contending that no such amounts were credited to the joint account held by her and her son's account by producing the statement of account or the passbook relating to such accounts. Hence, as rightly contended by the learned counsel for the respondents that if an account belonging to her has been credited with some amount, such person that too being a bank employee ought to have made an complaint of such suspicious deposit in their account, which has not been made till date by the petitioner.

13.As rightly pointed out by the learned counsel for the respondents that the petitioner has not made any such complaint of a suspicious deposit in the account belonging to her or her son atleast till the date of the charge memo. In that view it could be safely presumed that it was by her action such amounts have been credited to her personal accounts and her family members. In such view of the matter, I find that the allegations leveled against the petitioner are not baseless and has been substantiated.

14.Now coming to the question as to whether there was a procedural irregularity or perversity in the findings arrived at by the Enquiry Officer which led to the order of punishment, I am of the view that there is no infirmity, irregularity or perversity in the findings of the Enquiry Officer. He had in extenso dealt with the various charges, the evidences that were let in and also the defence statement submitted by the petitioner in coming to a conclusion that the charges have been proved. The Original Authority, Appellate Authority and the Revisional Authority has also by well defined reasons passed the orders that are impugned before this Court.

15.In view of the same, I find no reasons to interfere with the impugned orders passed by the 1st respondent modified by the 2nd respondent and as confirmed by the 3rd respondent.

16.In view of the same, the Writ Petition fails and is dismissed accordingly. However, there shall be no order as to costs.

31.10.2022

Index: Yes/no
Speaking/non-speaking
gba

To

1.The Deputy General Manager (Appeal &Review),
Review Committee for Disciplinary Proceedings,
Appeals & Review Department,
State Bank of India, Nariman Point, Mumbai 400 021.

2.The Chief General Manager,
Appellate Authority,
State Bank of India, Local Head Office,
Rajaji Salai, Chennai 1.

3.General Manager – 1,
(Disciplinary Authority cum Appointing Authority),
Rajaji Salai, Chennai – 1.

K. KUMARESH BABU, J.

gba

A Pre-delivery order in
W.P.No.7172 of 2009

31.10.2022