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W.P.No.22034 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22034 of 2016

R.Tabendran

... Petitioner

Vs.

1.The Board of Directors

Indian Overseas Bank

Central Office: P.B.No.3765

763 Anna Salai, Chennai 600 002.

2.The General Manager

Indian Overseas Bank

Central Office, Anna Salai

Chennai 600 002.

3.The Deputy General Manager

Indian Overseas Bank

Central Office: P.B.No.3765

763 Anna Salai, Chennai 600 002.

4.The Assistant General Manager

Indian Overseas Bank

Central Office: P.B.No.3765

763 Anna Salai, Chennai 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the rerecords in connection with the charge sheet No.DO.Vig: AGM(SP): DA:2010 dated 05.04.2010 issued by the 4th respondent herein and the order of dismissal



from service No.DO:VIG:AGM(SP)DA:6142:2010-2011 dated 28.01.2011 passed by the 4th Respondent herein and the order of rejection on appeal No.DO:VIG:GM(RMR):AA:F-7244:2508:2011 dated 28.07.2011 passed by the 2nd respondent herein and the order of rejection on mercy petition No.DO:VIG/C&DAC:DGM(RKG):F-7244-2013-14 dated 22.07.2013 passed by the 3rd respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner into service with all service and monetary benefits.

For Petitioner : Dr.R.Sampath Kumar

For Respondents : Mr.K.Srinivasamurthy

ORDER

The punishment of dismissal from service of the writ petitioner and confirmed by the Appellate Authority and Revisional Authority are under challenge in the present writ petition.

2. The petitioner joined as a Clerk in the respondent / Bank in the year 1989. A charge sheet was issued in proceedings dated 05.04.2010, framing 9 charges against the writ petitioner. The alleged incident occurred between the years 2007 and 2008 at Pattukkotai Branch of Indian Overseas Bank. The main allegation against the writ petitioner was that the Bank's money kept in Sundry Accounts were misappropriated by way of transferring the same to



the SB Accounts of various persons.

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3. The petitioner on receipt of the charge sheet, submitted his reply on 17.05.2010. In his reply, the petitioner states that he was shouldering of all the works in the branch during his tenure at Pattukkottai Branch and further stated that he had remitted back the entire amount to the Bank to ensure that there is no financial loss to the respondent / Bank. Accordingly, the petitioner made a request to pardon him by considering his family background.

4. An Enquiry Officer was appointed in proceedings dated 19.07.2010. Summons were issued to the writ petitioner and the Enquiry Officer conducted an enquiry by affording opportunity to the writ petitioner. The Enquiry Officer submitted his final report and the petitioner was provided with an opportunity to file his objections, if any on the findings of the Enquiry Officer. Accordingly, the petitioner submitted his reply on 02.12.2010 and thereafter, the Disciplinary Authority passed final orders on 28.01.2011, imposing the penalty of dismissal from service. The petitioner preferred an Appeal against the order of dismissal on 24.02.2011 and the Appellate Authority provided an opportunity to the writ petitioner for personal hearing. After hearing the parties, the Appellate Authority also rejected the Appeal on



28.07.2011. Thereafter, the petitioner filed Mercy Petition before the Board of Directors and the said petition was also rejected.

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5. The learned counsel for the petitioner mainly contended that the allegations are absolutely false. The petitioner had conceded the charges on forced circumstances and on account of mental pressure. The circumstances made him to concede the charges and in this regard, the evidence recorded by the Enquiry Officer are also to be considered.

6. The learned counsel for the petitioner relied on the findings of the Enquiry Officer by stating that it may not be possible for the petitioner alone to commit such a misappropriation in the Indian Overseas Bank. The allegation was that he has misused the Code Number allotted to the other officials of the Bank and transferred the money. If it is one officer, one can understand, but it may not be possible for the petitioner to misuse the code of four officials of the Bank, which is beyond truth and thus, the petitioner was made as a scapegoat in respect of the misappropriation committed by some other persons in the Bank.

7. The learned counsel for the petitioner reiterated that the cheques



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were passed by the other officials. However, no action was taken against none of those officials and all the officials and the Employees Association misguided the petitioner to concede the charges and thereafter, imposed the penalty of dismissal from service.

8. The learned counsel for the petitioner relied on the findings of the Enquiry Officer and has stated that all the cheques were passed by the other officials of the Bank. Thus, the very allegation that the petitioner passed the entry by stealthily using the password of the Assistant Manager and other officials are absolutely untenable and thereafter, the punishment of dismissal is to be set aside.

9. The learned counsel for the petitioner relied on the proceedings of the personal hearing before the Appellate Authority dated 24.08.2010. The reply given by the petitioner to the charge sheet and further proceedings would reveal that the petitioner was under the forced circumstances to concede the charges and thus, the entire proceedings are to be held vitiated.

10. The learned counsel appearing on behalf of the respondents / Bank objected the said contention by stating that it is not on one occasion that the



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petitioner conceded the charges, consistently on several occasions, the petitioner in clear terms admitted the charges. The petitioner submitted his reply to the charge sheet, wherein, he has stated that he had remitted back the entire amount to the Bank to ensure that there is no financial loss to the Bank. He further made a request to pardon him.

11. At the first instances, the petitioner had admitted the charges, while submitting his reply to the charge sheet dated 05.04.2010. Thereafter, during hearing before the Enquiry Officer, the petitioner in clear terms admitted that he had understood the charges. He has further stated that *“I accept all the charges and I do not intend to bring any person to defend my case”*. Thus, even before the Enquiry Officer, the petitioner has admitted the charges and not stopping with that, the petitioner even while submitting reply to the finding of the Enquiry Officer in letter dated 02.12.2010 categorically stated that;

“I voluntarily confessed and remitted entire amount with interest back to the bank, to ensure that there is no loss to the bank”.

.....

“I regret for the inconvenience caused to the bank. I assure you sir it will not happen in future I shall conduct my self properly to the satisfaction of



all my superiors. I earnestly request you to pardon me considering my family background”.

12. Again, during the personnel hearing before the Appellate Authority, the petitioner has replied by stating that *“When I was in the Clerical cadre due to my family circumstances, and mental pressure I did not know what I was doing and did the acts as mentioned in the charge sheet. After becoming an Officer, I realised my mistakes and in the enquiry, I voluntarily confessed the mistake and did not even contested the issue. I have made good the loss to the bank in this regard.”*

13. Therefore, the petitioner has repeatedly admitted the charges before the Disciplinary Authority, Enquiry Officer and before the Appellate Authority. Thus, the enquiry became unnecessary. Despite the fact that the petitioner conceded the charges, the Disciplinary Authority conducted an enquiry for the purpose of establishing the charges framed against the writ petitioner. Once the Enquiry Officer scrutinised the documents and evidences available on record and made a finding that the charges against the writ petitioner are held proved, now, there is no reason to interfere with the order of penalty, since the proved charges are grave in nature.



WEB COPY

W.P.No.22034 of 2



14. The learned counsel appearing on behalf of the respondents relied on the judgement of the Hon'ble Supreme Court of India in the case of ***Himachal Pradesh Road Transport Corporation and Another Vs. Hukam Chand reported in [(2009) 11 SCC 222]***, wherein, the Hon'ble Supreme Court of India held as follows:

“13. On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate principles of natural justice.”



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15. This Court is of the considered opinion that the petitioner himself has stated in his reply affidavit dated 17th May 2010 that he was shouldering all the works in the branch during his tenure at Pattukkottai Branch. Further, he has admitted that the entire amount were remitted back to the Bank to ensure that there was no financial loss. Even during the enquiry proceedings before the Enquiry Officer, the petitioner in unambiguous terms admitted that he accepted all the charges and he did not intend to bring any person to defend his case.

16. If at all there was a forced circumstances as stated by the petitioner, the said circumstances cannot be considered, since the petitioner consistently admitted the charges before all the authorities namely Disciplinary Authority, Enquiry Officer and before the Appellate Authority. Thus, the very statement that the petitioner had admitted the charges on forced circumstances cannot be trusted upon. The petitioner at no circumstances registered his complaint against such forced circumstances, coercion or otherwise either before the Disciplinary Authority or before the Higher Authority. Thus, the very statement is to be construed as an after thought and cannot be taken into consideration for the purpose of assailing the punishment of dismissal from service.



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17. The proved charges against the writ petitioner are misappropriation of the funds of the Bank. The respondent / Bank is a Nationalised Bank. The Nationalised Bank is a trustee in respect of the customers, who all are depositing their money. Thus, the allegations of misappropriation is grave and affecting the institutional integrity of the Nationalised Banks and therefore, there is no possibility of any lenient view in the cases of misappropriation of funds of the Nationalised Banks.

18. Merely depositing the misappropriated amounts would not be a ground to exonerate from the proved charges. Returning the misappropriated money is only to make good to the financial loss occurred to the Bank and not to grant pardon or exoneration for the employee, who committed such offence of misappropriation of the funds of the Bank. Therefore, by making good the financial loss to the Bank, an employee, who committed an act of misappropriation, cannot seek relief or exoneration from the departmental disciplinary proceedings or punishment. Therefore, the very contention raised in this regard by the petitioner is unacceptable.



19. In the present case, the petitioner at every stage admitted the charges and even before the Appellate Authority, he made a statement that he admitted the charges voluntarily. That being the factum established, this Court do not find any reason to interfere with the punishment imposed, which cannot be said to be disproportionate. The procedures as contemplated were followed by the respondent / Bank and there is no violation of principles of natural justice.

20. Accordingly, the Writ Petition is devoid of merits and stands dismissed. No costs.

28.10.2022

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Index : Yes
Speaking order

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S.M.SUBRAMANIAM, J.

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