



W.P.No.38839 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 05.12.2022

DELIVERED ON : 07.02.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.38839 of 2003

K.Satshathipathi

... Petitioner

Vs.

Indian Overseas Bank
rep.by its General Manager
Central Office
763, Anna Salai
Chennai – 600 002.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent dated 27.02.2001 in DO/GM (RK)/AA/2600/2001 and quash the order passed therein and consequently direct the respondent to reinstate the petitioner into the service



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of the respondent, with all monetary and attendant benefits.

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For Petitioner : Mr.Radhakrishnan
for Mr.K.Thilageswaran

For Respondent : Mr.K.Srinivasamoorthy

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent dated 27.02.2001 in DO/GM (RK)/AA/2600/2001 and quash the same and consequently to direct the respondent to reinstate the petitioner into the service of the respondent, with all monetary and attendant benefits.

2.The petitioner joined the respondent Bank on 16.05.1980 as a Clerk. After getting promotions, while he was serving as Deputy Manager, at Thatchampattu branch, he was issued with a charge memo cum suspension order dated 17.09.1996, with regard to certain irregularities committed by him, when he was working as Manager in Kallavi Branch.



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3. In the course of enquiry, additional charge has been framed against him on 12.06.1997. After enquiry, the Disciplinary Authority imposed punishment of penalty of reduction of the basic pay for four stages with cumulative effect vide order dated 31.12.1997. The petitioner preferred appeal as against the punishment imposed against him and the said appeal was dismissed.

4. While the petitioner was working in Erode, he was again suspended by an order dated 24.06.1998 and a fresh charge sheet dated 26.12.1998 was issued to him. On conclusion of the enquiry into the fresh charge memo, he was dismissed from service on 20.05.2000. Aggrieved by the order of dismissal from service, the petitioner preferred appeal before the Appellate Authority. The said appeal was dismissed on 27.02.2001. Hence, the petitioner has filed the present Writ Petition.



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5.The learned counsel for the petitioner would submit that the charge memo dated 26.12.1998 does not speak about the irregularities alleged to be committed by the petitioner regarding misappropriation of bank's funds or loss to the Bank. It is based on the report of internal audit in Kallavi Branch and not based on any complaint given by any customer of the Bank. The charge memo speaks that the petitioner exercised his discretionary power in excess. Since no allegation regarding misappropriation of funds is found in the charge sheet dated 26.12.1998, it cannot be termed to be the one issued against the petitioner for acting against the interest of the Bank. In the absence of any loss to the Bank and since there is no charge regarding misappropriation of Bank's funds, the penalty of dismissal from service imposed against the petitioner would be disproportionate to the charges framed against him.

6. The learned counsel further submitted that the disciplinary



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authority failed to consider the petitioner's detailed explanation given as against the findings of the Enquiry Officer. The disciplinary authority simply reproduced the findings of the Enquiry Officer and therefore, the order of the disciplinary authority suffers from the vice of non-application of mind.

7. It is also submitted that the observations of the appellate authority are contrary to the charges levelled against the petitioner. According to the counsel for the petitioner, proper opportunity of hearing is not afforded to the petitioner. In support of his submission, learned counsel relied on the decision of the Honourable Supreme Court in the case of ***Ram Chander Vs. Union of India***, reported in ***(1986) 3 SCC 103***. It is submitted by the counsel for the petitioner that no personal hearing is afforded to the petitioner by the appellate authority on 26.12.2000 and so on this sole ground, the order impugned deserves to be quashed.



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8. The learned counsel for the respondent-Bank would submit that allegations in the two charge memos issued to the petitioner are different and independent. Considering the gravity of the allegations levelled against the petitioner, he was suspended from the service, vide order dated 24.06.1998. In this writ petition, the petitioner questioned the order of the appellate authority dated 27.02.2001, dismissing his appeal. As far as departmental proceedings and the punishment awarded to the petitioner based on enquiry report dated 17.09.1996 are concerned, the same are passed after following the procedures. The learned counsel for the respondent submitted that the petitioner's prayer for reinstatement has no merits.

9. Heard both sides and perused the records.

10. The first charge sheet cum suspension order dated 17.09.1996 reads that the petitioner contravened Regulation 3(1) and 3(3) of Bank Regulations which amounts to misconduct in terms of Regulation 24 thereof. The statement of imputations reads that while the petitioner was



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working as Manager of Kallavi Branch, he obtained signatures of the borrowers in loan documents with the help of middlemen in respect of the crop loans and misappropriated the proceeds. The petitioner released SRTTO loan without ascertaining the availability of chasis from the dealer and credited the loan proceeds to SB Account of the borrower to accommodate the borrower who misutilised the loan proceeds. Fourthly, it is stated that the petitioner failed to ensure and protect the interest of the bank and discharge his duties with utmost honesty, integrity and diligence.

11. In the above charge memo, it is stated that since the charges are serious in nature, pending enquiry, the petitioner is placed under suspension. The petitioner given his explanation dated 07.10.1996 to the above charge memo dated 17.09.1996. However, the respondent Bank framed Additional charges on 12.06.1997 against the petitioner. The article of charges in the additional charges are that the petitioner contravened Regulation 3(1) and 3(3) of Bank Regulations. Statement of Imputations



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would read that the petitioner while granting crop loan, violated the norms and caused wrongful loss to the Bank and the petitioner not verified the end use of the loan and consequently the Bank was put to a total loss of Rs.53,176/-.

12. For the additional charges also, the petitioner given his explanation dated 02.07.1997. The Disciplinary Authority after going through the findings of the Inquiry Authority and the reply of the petitioner found that imputation 1 framed against the petitioner was not proved. However, by holding that the charges on imputation 2 and additional charges framed are proved, penal of reduction in basic pay by four stage with cumulative effect was awarded as punishment and thereby revoked the suspension.

13. Again the petitioner was charge sheeted on 26.12.1998 wherein 45 article of charges were framed. The petitioner given reply to the said



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charges memo, stating that the alleged loan amount was recovered along with interest and he has not committed any misappropriation.

14. The Disciplinary Authority by order dated 20.05.2000, held that the proved charges revealed that the petitioner misused his official position and exceeded discretionary powers and conferred undue pecuniary gain to the borrowers, resulting in wrongful loss to the Bank. The authority therefore, awarded punishment of penalty of dismissal from service. Aggrieved by the penalty awarded, the petitioner filed appeal and the appellate authority, agreed with the decision of the Disciplinary Authority and held since imputations are proved and the charges are grave in nature, penalty of dismissal imposed warrants no interference.

15. It is the case of the petitioner that he has not been given an opportunity of personal hearing by the appellate authority. Learned counsel for the petitioner by citing the Supreme Court decision in the case of **Ram**



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Chander Vs. Union of India (1986) 3 SCC 103, submitted that hearing the delinquent servant would give a chance to satisfy the authority regarding the final orders that may be passed in the appeal.

16. The charge memos issued against the petitioner would show that the petitioner acted against the interest of the Bank. But the petitioner in his explanation submitted that all the loan granted were repaid to the bank and there was no loss caused to the Bank by the petitioner. In the absence of any loss to the bank and in the absence of any allegation against the petitioner regarding misappropriation of bank's funds, the penalty of dismissal imposed is considered to be a punishment which is disproportionate to the nature and gravity of lapses committed by the petitioner.

17. It is settled principle of law that the punishment should be commensurate with the nature and gravity of lapses/misconduct committed by the erring official. The petitioner alone could not be held liable for the



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sanction of the loans. Any penalty disproportionate to the gravity of misconduct would be violative of [Article 14](#) of the Constitution. There was some negligence in performance of duty of the petitioner and his negligence in performance of duty was likely to cause some loss to the Bank. But the fact is that no loss is caused to the Bank and it has not been proved. In such circumstances, the punishment imposed is totally disproportionate to the charges said to have been made out against the petitioner. The Disciplinary Authority had not taken into account the other vital factors that there is no allegation whatsoever regarding misappropriation of banks' funds or loss to the Bank. Further the charge sheet was not issued pursuant to any complaint given by the public. The charge sheet speaks about exercise of petitioner's discretionary powers in excess.

18. The disciplinary authority accepted the findings of the Enquiry Officer and has not gone into the charges framed and the explanation submitted by the petitioner independently. In the present case, the



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punishment is so strikingly disproportionate.

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19. In view of the above reasonings, justice and fair play would be met by directing the respondent-Bank to impose a penalty other than dismissal, removal or compulsory retirement from service. On such modified penalty being imposed by the respondent/Bank, the petitioner is entitled to all other consequential benefits arising thereof. The respondent shall comply with the directions within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is allowed on the above terms. No costs.

07.02.2023

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

Jer/nvsri



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To
The General Manager
Indian Overseas Bank
Central Office
763, Anna Salai
Chennai – 600 002.

J.NISHA BANU, J.

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