IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	***17.10.2023***
Pronounced on	***27.11.2023***

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5138 of 2020

J.Paramesh ... Petitioner

/vs/

1. State Bank of India,
   Rep. by its Reviewing Committee, Dy. General Manager,
   Appeals and Review Department,
   Corporate Centre,
   8th Floor, State Bank Bhavan
   Madame Cama Road,
   Mumbai – 400 021.

2. State Bank of India,
   Rep. by its Chief General Manager,
   Appellate Authority
   Local Head Office,
   Circle Top House,
   4th Floor, No.16, College Lane,
   Nungambakkam,
   Chennai – 600 006.

3. The General Manager (NW-II) & Appointing Authority,
   Local Head Office,
   Circle Top House,
   8th Floor, No.16, College Lane,
   Nungambakkam, Chennai – 600 006. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the concerned records from the respondents, quash the order of the first respondent dated 05.10.2019 sent along with the letter dated 30.10.2019, the order of the second respondent dated 05.09.2018 sent along with the letter dated 05.09.2018 bearing A&R No.174 and the order of the third respondent dated 07.03.2018 bearing No.VIG/KMV/204 as illegal, arbitrary and contrary to law and consequently direct the respondents to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits.

For Petitioner	...	Mr.Balan Haridas
For Respondents	...	Mr. S.Ravindran Senior Counsel for Mr.K.Chandrasekaran

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified mandamus to quash the orders passed by the first, second and third respondents dated 05.10.2019, 05.09.2018 & 07.03.2018 respectively, and consequently direct the respondents to reinstate the petitioner in service with full backwages, continuity of service and all other attendant benefits.

2. The petitioner was an employee of the State Bank of India. While he was working at Sathyamangalam Branch of State Bank of India, he had applied for a housing loan in respect of a project promoted by State Bank of India Officers Association under the project name “Unity Enclave” at Mambakkam, Channai. Under the said project the officers association was constructing a multi-storied building through their association. The petitioner also booked a flat in the said project by paying Rs.5,00,000/- out of his own funds. Basing on the progress of construction, the respondent bank had released two payments to the promoter viz. each payment of Rs.10,00,000/- and in all Rs.20,00,000/-.

2.1 On 01.11.2016, the petitioner made a request to convert his housing loan to a Max Gain Account. The advantage of conversion to Max Gain Account is that the entire loan amount can be treated like an over draft facility and there would not be any repayment by way of liquidated monthly installments. The account can be repaid and the maximum limit of the over draft can be enjoyed by paying a minimum instalment and the interest. The petitioner's request was considered by the respondent bank on 08.02.2017 and his housing loan account was converted into Max Gain Account. So he was eligible to utilize the account by drawing the amount to the maximum of Rs.41,54,000/-.

2.2 The respondent bank had issued a charge memo against the petitioner on 12.04.2017 for the following charges:

> "*Charge No.1:*
> *That I debited from my Non-Home Housing Term Loan Account No.34431846734, which was maintained at Station Road Branch, Egmore, Chennai from Coonoor Branch on various dates without approval from the appropriate authority.*
>
> *Charge No.2:*
> *That after making debit from the Non-Home Housing Term Loan, credited the proceeds in the account of my spouse and third party SB Account without approval and misappropriated the funds given for house construction.*
>
> *Charge No.3:*
> *That I authorize the debit vouchers of Non-Home Housing Term Loan on various dates, without the approval of the appropriate authority.*
> *Charge No.4:*
> *That I failed to discharge my duties."*

2.3 At the end of disciplinary proceedings all the charges against the petitioner were found to be proved and consequently the petitioner was imposed with the punishment of removal from service. The appeal filed by the petitioner was rejected and the review filed by the petitioner was also dismissed and thus the punishment of removal of service got confirmed. Now the petitioner had filed this writ petition challenging the order of removal of service on the ground that the punishment is grossly illegal, disproportionate and without any justification.

3. The learned counsel for the petitioner submitted that the petitioner got his housing loan converted into Max Gain Account which is a nature of an over-draft account; due to conversion, the petitioner is entitled to avail the benefit of drawing money up to the sanctioned limit and then to repay the same as and when the funds are available; the amount withdrawn from the housing loan by the petitioner on three occasions was well within the unutilized portion of the housing loan; since the petitioner's sister was suffering from Cancer, he had a medical emergency to utilize the amount and there is no intention to mishandle the funds; when this was objected, the petitioner had repaid the entire outstanding; however the petitioner was removed from service after a disciplinary proceedings initiated against him and he was imposed with a capital punishment, which is disproportionate to the charges framed against him.

3.1 The petitioner's 21 years of unblemished service record was totally ignored; there had been a communication from the Local Head Office to the respondent bank to the Conoor Branch to the effect that there was no irregularity in the transaction effected by the petitioner; the petitioner was charge sheeted and he was removed from service without any legality or justification; since the petitioner was removed from service just on completion of 21 years, he is not entitled to get any pensionary benefits; the transaction has been made in good faith without any intention to defraud the bank in any manner; the punishment of removal from service is grossly disproportionate; a small mistake in the transaction which has been subsequently rectified, was blown out of proportion and it resulted in the removal of service.

3.2 The respondent bank apportioned all the Provident Fund dues of the petitioner to all his loan accounts except the housing loan and the petitioner's gratuity has not been settled; the housing loan which is now in the form of Max Gain Account has also not been closed; though the flat has been completed and handed over to all other employees, the remaining loan amount was not transferred and the petitioner could not get possession of his flat; the sum of Rs.20,00,000/- transferred to the promoter has been charged with interest and the remaining balance in the sanctioned amount to the tune of Rs.21,54,000/- was also not utilized; the petitioner was put to grave mental agony and harassment coupled with non-employment; the respondent bank has to be directed to remit the gratuity and other dues of the petitioner to the outstanding payable to the "Unity Enclave" or to pay the amount directly to the petitioner to enable him to pay the remaining sale consideration in respect of the flat and in turn sell the same and close his housing loan / Max Gain Account without prejudice to his rights and contentions made in this petition and also to direct the respondent to reinstate the petitioner back into service with full back wages, continuity of service and other attendant benefits.

3.3 In support of his above contention the learned counsel for the petitioner relied on the following judgment of the Hon'ble Supreme Court:

i) ***State of Mysore Vs. K.Manche Gowda*** reported in ***1963 SCC***

OnLine SC 50

ii) ***Nicholas Piramal India Limited Vs. Harisingh*** reported in ***(2015) 8 SCC 272***

iii) ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar*** reported in ***(2014) 10 SCC 301***

4. Mr.S.Ravindran, learned Senior Counsel appearing for the respondent filed counter and submitted that the petitioner had failed to protect the interest of the bank and discharged his duties with utmost devotion and diligence and thereby violated Rule 50(4) of State Bank of India Officers Service Rules and it was decided to initiate major penalty proceedings against the petitioner in terms of Rule 67 (i) of State Bank of India Officers Service Rules; the petitioner's explanation for lapses was not found satisfactory and hence disciplinary proceedings were initiated and charges against the petitioner were proved; the third respondent who is the appointing authority heard the petitioner and considered the records and imposed penalty of removal of service vide order dated 07.03.2018 and the same was intimated to the petitioner also; after considering all the contentions raised by the petitioner in his appeal, the second respondent in his order dated 05.09.2018 was of the view that the petitioner's appeal has got no merits and confirmed the punishment of removal of service.

4.1 The review petition filed by the petitioner was also considered and a speaking order dated 05.10.2018 was passed by taking a view that the punishment imposed by the petitioner commensurate with the gravity of lapses; the petitioner was granted employment on compassionate ground and he joined in the service on 18.08.1997 in the post of Clerk and Cashier; he was promoted as Assistant Manager during August, 2009 and thereafter as Deputy Manager in the year 2015; while he was the Assistant Manager, the petitioner submitted an application for availing housing loan under the scheme of Housing Loan to Staff Members for purchase of flats; the petitioner was also sanctioned with house term loan to the tune of Rs.41,54,000/-; the entire amount would be disbursed only when the construction is completed and it is ready for occupation; the petitioner is fully aware of the rules; the bank had made two disbursement initially to the tune of Rs.10,00,000/- each.

4.2 The petitioner was not eligible to utilize the account by drawing the maximum of Rs.41,54,000/- even when the construction was not completed; the petitioner has not stated anything about the max gain account either in his reply or during the enquiry proceedings; the petitioner submitted an application for converting his individual house promotion loan to max gain scheme and it was converted to max gain with effect from 08.02.2017; the petitioner himself had debited his housing loan account for Rs.1,00,000/- on 13.03.2015, Rs.5,00,000/- on 05.05.2015 and Rs.4,95,226/- on 12.06.2015; all these transactions were done before the house term loan was converted into a max gain account; the petitioner admitted that he had debited the amount as he was in urgent requirement of funds; he has stated that his sister was suffering from cancer and she subsequently passed away on 01.05.2015; but the amounts have been deducted subsequent to the said date; deputing the housing term loan without any authority for the purposes other than the housing loan, house construction is nothing but misappropriation of the bank's money.

4.3 The petitioner being an officer of the bank who deals with the public money, is aware of the rules and regulations of the respondent bank with regard to the process of sanction and disbursement; since the charges proved against the petitioner are serious in nature, the punishment of removal of service was imposed and it is proportionate to the misconduct which included the charges of misappropriation; the conversion of term loan to Max Gain Account does not entitle the petitioner to debit his loan account and credit the same to his wife and mother's account; even when the petitioner is entitled to utilize the unavailed portion of the housing loan as an overdraft, that is possible only subsequent to the conversion of house term loan into House term loan Max Gain plus; so the petitioner cannot plead error of judgment; as he was serving in the bank for 20 years and he is aware of the rules, the housing loan reminder cannot be debited by himself to meet his personal purposes.

4.4 The enquiry was conducted by fully observing the principles of natural justice and after giving the petitioner a sufficient opportunity to make his defense; the punishment of removal of service was also imposed after considering the petitioner's submission and the available records; the appellate authority has also dismissed the appeal only after a dispassionate and independent application of mind to the merit of case.

5. In support of his contention the learned Senior Counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in State ***of Andhra Pradesh Vs. Sree Rama Rao*** reported in ***AIR 1963 SC 1723*** wherein it is held that the High Court in a petition filed under Article 226 of Constitution of India cannot review the evidence and arrive at an independent finding on the evidence. He further relied on the judgment of the Hon'ble Supreme Court in ***Union of India Vs. Sardar Bahadur*** reported in ***(1972) 4 SCC 618*** wherein it is held that it is not the function of High Court to exercise its jurisdiction under Article 226 of Constitution of India to review the materials for arriving at an independent finding on the materials.

6. The petitioner who was sanctioned with the housing loan had opted to debit the amounts on three occasions i.e. 13.03.2015, 05.05.2015 and 12.06.2015 @ Rs.1,00,000/-, Rs.5,00,000/- and Rs.4,95,226/- and credited the same in the account of his family members. Since the housing loan is meant to be released in stages in accordance with the stages of construction, the petitioner cannot take the liberty of utilizing the loan amount as per his whims. So the petitioner was given with a charge memo and was found guilty.

7. The petitioner's contention is that he has got his home loan converted into Max Gain Loan which is an over-draft facility and hence he had chosen to debit the amount and that too due to the medical emergency arose at the relevant point of time. But the conversion had taken place only subsequent to those withdrawal and at the time when the withdrawals were made, the loan account was only a housing loan account. In the disciplinary proceedings, this Court has got a limited jurisdiction to appreciate the materials and findings in respect of the charges unless if there is apparent illegality or when there is non-compliance of principles of natural justice. So far as the disciplinary proceedings are concerned, the petitioner was given with sufficient opportunity and only after an exhaustive enquiry, he was found guilty. The third respondent appointing authority had chosen to impose punishment of removal from service which is a capital punishment in service jurisprudence.

8. The petitioner was given with an opportunity to make his submissions after the punishment of removal from service was contemplated to be imposed on the petitioner. However, the submission of the petitioner was not convincing to the appointing authority and hence the punishment of removal of service was imposed.

9. In the judgment of the Hon'ble Supreme Court in ***Union of India and others Vs. P.Gunasekaran reported in (2015) 2 SCC 610*** it is held that in any case the High Court shall not act as an Appellate Authority in disciplinary proceedings. For a better appreciation, the relevant part of the judgment is extracted below:

"" *13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under* Article 226/227 *of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting *the proceedings;*

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 *of the Constitution of India, the High Court shall not:*

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

10. So far as the respondents are concerned, the petitioner's action in using the bank's money for personal use is a systematic loot of public money. The respondent had arrived at a conclusion that the people with "Itching hand" should not be allowed to serve in the bank.

11. But there is a fine line difference between a person misappropriating the general funds of the bank and mismanaging the funds lying in his loan account. So far as this case is concerned, the petitioner has been sanctioned with a home loan to the tune of Rs.46,16,000/-. Whatever the petitioner debited on different dates was only from his account. The petitioner appears to have assumed ownership over the loans sanctioned towards his housing loan and he had utilized the same without waiting for the amount to be transferred to the builder who has been appointed to construct flats for the officers of the bank. When a public applies for a bank loan and gets it sanctioned for building a house, it will not be possible for him to get all amount released at one stroke even before the completion of the stages of the construction. The petitioner had misused his authority and dealt his account according to his own whims.

12. Unlike the other cases where misappropriation is done by directly putting hands on the funds of the bank, in the case on hand the petitioner had chosen to operate his own channel of housing loan account, but by pre-releasing it. The petitioner had put in 20 years of service and during that period he did not have any adverse remarks on his service. Even though the petitioner has unblemished past service track record, that cannot be the reason to view the present lapse on a less serious note. However, the said fact could have been taken into consideration while deciding the gravity of the punishment.

13. Before imposing the punishment of removal of service, the petitioner was given with an opportunity to make his submissions. The appointing authority had made the following observation in its order while imposing the punishment of removal of service.

> "*I, as Appointing Authority concur with the views of DA.*
> *The Disciplinary Authority has gone through the Charges levelled against the CSO, IA's findings and CSO's submission in its entirety and observed that the CSO has not followed the laid down instructions of the Bank in disbursement of his own housing loan. CSO had debited his non home HTL A/c on various dates unauthorisedly and credited the proceeds to his spouse and third party accounts, without obtaining prior approval from*

the appropriate authority and misappropriated the funds sanctioned for house construction. Thus CSO acted prejudicial to the Bank's interest by making unauthorized non-home debits in his own housing term loan account for meeting his pecuniary benefits and thereby violated the terms of sanction of Individual Housing Loan. After independently going through all the relevant records relating to the case, taking into account the Charges are held as proved, the track record of service of the Official and considering the attendant circumstances in his case, the DA proposed to impose the penalty of "Removal from service" on Shri J Paramesh, Officer, MMGS II, Sathyamangalam ADB, in terms of Rule No. 67 (1) of SBIOSR-1992 that would meet the ends of justice.

I, as Appointing Authority having gone through the lapses IA's findings, CSO's submissions, concur with the views of DA and propose to impose the penalty of "Removal from service" on Shri J Paramesh, Officer, MMGS II, in terms of Rule No. 67 (i) of SBIOSR-1992 that would meet the ends of justice.

As the CSO has not brought out any new facts in his defence during the personal hearing on 01.03.2018 and also in the letter submitted by him during personal hearing, the penalty proposed earlier viz., "Removal from service" on Shri J Paramesh, Officer, MMGS-II in terms of Rule No 67 (i) of SBIOSR, 1992 will continue.

Accordingly, in compliance of Rule No.68 (3) (iii) of State Bank of India Officers' Service Rules, 1 order to impose penalty of "Removal from service" on Shri.J.Paramesh, Officer, MMGS II in terms of Rule No. 67 (i) of SBIOSR-1992 which would the ends of justice.

I further order that this order be served on the CSO, Shri J Paramesh, Officer, MMGS-II and a copy thereof be placed in his service file.

This order will come into effect from the date on which it is served on the

CSO.

Shri J Paramesh, Officer, MMGS-II, may, if he so desires, prefer an appeal against this order to the Appellate Authority within 45 days from the date of receipt of this order in terms of Rule 69 (1) & (2) of State Bank of India Officers' Service Rules (SBIOSR) 1992."

14. From the reading of the above excerpts it can be construed that while imposing the capital punishment of "Removal from Service", the appointing authority had considered the service track of the petitioner. However, the order does not disclose which details in the service track record had convinced the conscience of the Appointed Authority to arrive at a conclusion that only the punishment of removal of service is the appropriate one for the proved charges.

15. While confirming the punishment of removal of service, the appellate authority on his part has made the following observation:

" *04. I observe that the Appellant Shri Paramesh J joined the service of the Bank as Junior Associate on 18.08.1997 at our Kilkotagiri branch and got promoted as JMGS I w.e.f. 12.08.2009 from out Kothagiri Branch and promoted to MMGS II w.e.f. 30.09.2014. The appellant served in various capacities as on Officer of the Bank since 12.08.2009, including Overseas branch, Chennai and was working as Deputy Manager at our Coonoor Branch from 29.03.2015 to 24.09.2015. The Disciplinary Authority for the officials working in Overseas Branch i.e. General Manager, CCGRO, Chennai has contemplated Disciplinary action against Shri Paramesh J*

under "Vigilance" Category, in some other case and kept in abeyance.
The Appellant has only repeated the submissions made by him to the Disciplinary Authority earlier during disciplinary proceedings and has not brought in any new submissions.

Upon an independent and dispassionate application of mind and careful consideration of the facts and circumstances of the case, I do not find any reason to interfere with the order of the Appointing Authority and reject the Appeal of Shri Paramesh J, Officer, JMGS I, as without substance and order accordingly."

16. What is irking in the above observation is a contemplated disciplinary action against the petitioner falling under the Vigilance category for some other incident and which was kept in abeyance. So far as this observation is concerned, it did not surface at any point of enquiry proceedings and no materials in this regard was given to the petitioner even before passing an order for removal from service. The petitioner could not have made any effective submission about the facts which is not within his knowledge. The authorities appeared to have influenced by some extraneous circumstances which did not form part of disciplinary proceedings, while passing the order of punishment.

17. Even the review committee had dealt the previous finding as against each charges and held that the findings are correct. The petitioner had raised a limited point that the punishment is too harsh and his previous achievements were not considered while imposing the punishment. In the order passed in the review appeal, the review authority had recorded the following submissions made before him.

> “ *i) The punishment is too harsh and disproportionate.*
>
> *ii) The penalty order leaves the appellant and his family without any means of life.*
>
> *iii) The unblemished track record has not been given due credence*
>
> *iv) The charges were not proved convincingly and conclusively by the Presenting Officer.*
>
> *v) The Statement of Defence submitted by the Appellant had been totally negated by the Disciplinary Authority.”*

18. But there is no convincing discussion on those submissions and whether the authorities below had properly considered those grounds while awarding the highest punishment.

19. While imposing the gravest punishment and concurring with the same, the authorities are expected to consider the past services of the petitioner and the relative damage that might be caused to the institution, in the event of allowing him to be in service. While doing such a serious exercise the materials which in the opinion of the authorities are very crucial for consideration ought to have been served to the petitioner also. Failure to do the same may invite the discretion of the court to moderate the punishment.

20. Though this Court is conscious of its limited scope to interfere with the disciplinary proceedings, the manner in which the ultimate punishment has been imposed against the petitioner is seen to be inviting that little scope for interference. If the authorities had not relied on extraneous materials while passing the order of removal of service, there is likelihood of moderate severity in the punishment. The result of severity of punishment could have been lesser than the ultimate. The petitioner is said to have repaid the amount so debited by him and there is no loss of revenue for the bank.

21. The petitioner has not completed 25 years of service and hence he is not qualified to get any substantive terminal benefits. It is unfortunate that the petitioner's father had died due to harness when he had completed just 14 years of service. The petitioner who was inducted on compassionate grounds is now facing removal from service before the completion of 25 years of service. The bank has chosen to appropriate his GPF balance towards his other dues payable by the petitioner. The petitioner is liable to pay interest for the two disbursement of Rs.10,00,000/- each made to the builder. Despite the petitioner was allowed to convert his personal loan account to Max Gain Loan, the remaining funds were not released in favour of the builders to complete the flat for the petitioner by utilizing the above loan already sanctioned to him. Petitioner is neither able to get his flat done nor his loan amount get settled and now he is put in a perplexed situation.

22. The petitioner has suffered mental agony, fear and stress for more than five years and the said fact was also not taken into consideration at the time when the punishment was imposed. Further, it is proved from the records that the petitioner had mismanaged the funds sanctioned to his loan account and he had not misappropriated the public funds. Hence, I feel there should be some reduction in punishment suiting to the charges.

23. In view of the above stated reasons, this Writ Petition is partly allowed and the impugned orders passed by the first, second and third respondents dated 05.10.2019, 05.09.2018 & 07.03.2018 respectively, imposing the punishment of removal of service are set aside and the punishment for the charges proved against the petitioner is modified and reduced to stoppage of 5 increments with cumulative effect for 5 years. Hence, the respondents 1 to 3 are directed to reinstate the petitioner without back wages but with other attendant benefits by passing an order to that effect within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

27.11.2023

Index: Yes / No
Speaking order / Non-speaking order
Netural citation : Yes / No
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To:

1.The Dy. General Manager, Reviewing Committee
State Bank of India,
Appeals and Review Department,
Corporate Centre,
8th Floor, State Bank Bhavan
Madame Cama Road,
Mumbai – 400 021.

2. The Chief General Manager
State Bank of India,
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3. The General Manager (NW-II) & Appointing Authority,
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Nungambakkam, Chennai – 600 006

R.N.MANJULA ,J.

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Pre-delivery order in
W.P.No.5138 of 2020

27.11.2023