BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2023

PRONOUNCED ON : 27.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.21492 of 2019

V.Sundarrajan ... Petitioner

vs.

1.The General Manager,
(HR) and Reviewing Authority,
Bank of India,
Head Office: Star House,
Plot C-5, "G" Block,
Bandra-Kurla Complex,
Bandra (E), Mumbai-051.

2.The Deputy General Manager,
Coimbatore Zone and Appellate Authority,
Bank of India,
Star House, No.324,
Oppanakara Street,
Coimbatore-641 001.

3.The Assistant General Manager,
Coimbatore Zone and Disciplinary
Authority,
Bank of India,
No.324, Star House,
Oppanakara Street,
Coimbatore-641 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, pertaining to the review order, dated 31.07.2019, passed by the 1st respondent by confirming the order, dated 26.09.2018, passed by the 2nd respondent by confirming the order, dated 30.01.2018, passed by the 3rd respondent and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service will all other benefits.

For Petitioner	: Mr.V.Illanchezian
For R2	: Mr.M.Senthil Kumar
For R3	: Mr.Mari Selvan

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O R D E R

This writ petition is filed for writ of Certiorarified Mandamus, to quash the review order, dated 31.07.2019, passed by the 1st respondent by confirming the order, dated 26.09.2018, passed by the 2nd respondent by confirming the order, dated 30.01.2018, passed by the 3rd respondent and consequently, to direct the respondents to reinstate the petitioner in service will all other benefits.

2. The brief facts of the case are that the petitioner joined the respondent Bank as Clerk on 06.03.1991 and was promoted as Officer on 01.02.2004. On 26.07.2016. the petitioner was suspended from service and on the same date, a charge memo was also issued. On 27.09.2016, the petitioner submitted a representation. On 01.03.2017, the petitioner was served with memo calling for explanation for 8 charges. On 15.05.2017, a charge memo was issued for violating Regulation 12 of the Bank of India Officer Employees (Conduct) Regulations, 1976. The charges against the petitioner are extracted hereunder:

"Article I:-

In gross violation to Bank's operational and norms, you endorsed "good for payment, a post-dated Cheque No. 000116 dated 24.05.2017 for Rs. 25 Crore issued by Mr. Sathish Kumar G from his current A/c. No. 821820110000209 held at Bank's Iyer Bungalow Branch, favoring M/s. Royal Stock House and you affixed Bank's seal on the side cheque. You further issued a confirmation letter dated 24.05.2016 to M/s. Royal Stock House to the effect that the above said cheque is transferable, assignable and negotiable in any Bank in India. Further that the said cheque is fully funded and backed by good, clean and cleared funds of non-criminal origin. Also, that the cheque will be honored on due date unconditionally, irrevocably and the cheque will be payable on due date. In the process, you failed to obtain any cash margin/ collateral security for the said cheque amount and further failed to seek approval of the competent authority in this regard.

Article - II

In gross violation of Bank's lending norms, systems and procedures, you sanctioned a cash credit limit of Rs. 25 Lakhs on 30.04.2015 to M/s. CMS Agro Equipment, a non- existing firm, for trading in harvester, power tiller and other agricultural implements.

Article - III

In gross violation of Bank's lending norms, systems and procedures, you recklessly sanction 18 term loans on the basis of the bogus supplier firm of agricultural implements, to accommodated in favour of M/s.CMS Agro Equipment, thereby caused financial loss a sum of Rs. 274.89 Lakhs.

Article: IV

In gross violation of Bank's lending norms, systems and procedures, you recommended 8 term loans without verifying the repayment capacity of the borrowers thereby caused loss to the tune of Rs. 159.12 Lakhs.

Article :V

In gross violation of Bank's lending norms, systems and procedures, you unduly accommodated borrowers by sanctioning 20 MUDRA loans, without verifying the fact that already the said borrowers over due to the loan amounts, thereby caused a loss a sum of Rs.9.17 Lakhs.

Article :VI

In gross violation of Bank's lending norms, systems and procedures, you enhanced limits in three accounts unauthroizedly without proper verification.

Article :VII

In gross violation of Bank's lending norms, systems and procedures, you allowed temporarily over limit to M/s. Annai Velu Builders to the extent of 25.02 Lakhs on 06.05.2015 and Rs. 7.97 Lakhs on 19.05.2015.

Article : VIII

In gross violation of Bank's lending norms, systems and procedures, you failed to disburse the loan amount directly to suppliers with regard to your own housing loan account No. 821868110000006."

3. The list of documents and witness were issued to the petitioner. The petitioner submitted a reply on 07.08.2017 to the 3rd respondent denying all the charges. The 3rd respondent issued a notice on 21.08.2017 proposing major penalty and also intimated that the departmental inquiry would be conducted and an enquiry officer was appointed. The petitioner submitted a request letter to the enquiry officer on 23.08.2017 seeking permission to provide a defence assistant. The 3rd respondent sent a communication, dated 20.11.2017, and directed to submit an explanation for the enquiry report. The petitioner submitted a written

representation to the 3rd respondent stating that the enquiry was conducted and the same is bias and it was conducted in a tutored manner. In spite of such reply, the 3rd respondent passed the order, dated 30.01.2018, treating the charges are all proved and imposed major penalty of "dismissal" from service. The petitioner preferred an appeal and the same was dismissed by confirming the punishment. The petitioner also filed a review and the same was summarily dismissed. Hence, the petitioner is before this Court.

4. The 3rd respondent has filed a counter affidavit stating that the petitioner was given full and fair opportunity to defend his case and the petitioner actively participated in the enquiry and the departmental enquiry was conducted in accordance with the provisions contained in the Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976. The respondent further submitted that as far as the

charge of issuing cheque and confirmation letter, the petitioner’s plea that there is no proper evidence or supportive documents to prove the same is incorrect. The petitioner has not denied that the cheque is signed by the petitioner. These factors were properly considered in the enquiry proceedings. Thereafter only, the punishment was imposed on the petitioner. The disciplinary authority had found the petitioner guilty of various acts of misconduct which is stated in the articles of charges. Ultimately, the disciplinary authority has imposed a major penalty of dismissal. Due to various acts of misconducts, the Bank has suffered financial loss. The appeal and review were dismissed after considering the same. The respondent has conducted the enquiry proceedings after scrupulously following the regulations, principles of natural justice and granted reasonable opportunity to defend and awarded penalty proportionate to the proven charges. Hence the respondents prayed to dismiss the writ petition.

5. Heard Mr.V.Illanchezian, learned Counsel appearing for the petitioner, Mr.M.Senthil Kumar, learned Counsel appearing for the 2nd respondent and Mr.Mari Selvan, learned Counsel appearing for the 3rd respondent and perused the records. The Learned Counsel appearing for the 1st and 2nd respondents had filed written submissions.

6. The first allegation against the petitioner is that the petitioner has endorsed a cheque in Cheque No. 000116, dated 24.05.2017, as good for payment for Rs.25 Crore/- issued by one Sathish Kumar from the current account favoring M/s. Royal Stock House and the petitioner affixed Bank's seal on the cheque. The petitioner further issued a confirmation letter dated 24.05.2016 to M/s. Royal Stock House to the effect that the above said cheque is transferable, assignable and negotiable in any Bank in India. Further, the confirmation letter states that the said cheque is fully funded and backed by good, clean and

cleared funds of non-criminal origin. While endorsing the said cheque the petitioner failed to obtain any cash margin / collateral security for the said cheque amount and further failed to seek approval of the competent authority. The contention of the petitioner is that even though the petitioner has signed and endorsed the cheque of Rs.25 Crores, subsequently, after noticing the mistake, he has not allowed the cheque to be encashed. In short, the said cheque has become stale and all the originals were destroyed and the money was not transferred. In such circumstances, there is no loss to the Bank. After hearing the rival submissions this Court is of the considered opinion that admittedly the petitioner had issued the cheque and confirmation letter, but before the transaction could complete, the petitioner had immediately had recalled the letter and destroyed the cheque. At the most the act of the petitioner can be stated as negligent and irresponsible.

7. The next allegation against the petitioner is that the petitioner in gross violation of Bank's norms and procedures had sanctioned a cash credit limit of Rs. 25 Lakhs to M/s. C.M.S. Agro Equipment, a non-existing firm, for trading in harvester, power tiller and other agricultural implements. The petitioner obtained invalid security documents, failed to verify the Pan Card and Driving License with originals and also failed to verify the rental agreement, failed to ensure end use of bank’s fund by allowing cash payments, failed to ensure that assets were created out of bank’s funds even though the petitioner authenticate the stock statements. But the petitioner refuted the allegations and submitted that the aforesaid defects were pointed out by the RBI Auditors and the same were rectified. Moreover, the security documents were obtained, the petitioner visited the premises before sanctioning the loan and the same was in existence, the said debtor had procured and stocked two harvesters and the same was inspected by the petitioner and at the time of

inspection the said materials were very much available. And the disbursement of six loan accounts were done through RTGS and then the debtor had opened current account. Therefore, the petitioner submitted none of the norms and procedures were violated. After hearing the rival arguments this Court is of the considered opinion that the petitioner being the manager had exercised his power and has sanctioned loan within his permissible limit of Rs.25 lakhs. The successful banking business involves an amount of risk and any person taking such risk would improve the profit and loss account of the bank. And the petitioner had realized his nature of the job and has exercised his power and taken business risk.

8. In fact all other allegations from 3 to 7 are also similar in nature. The 3rd allegation is that the petitioner in violation of norms and procedures had sanctioned 18 term loans on the basis of bogus supplier

in favour of M/s. CMS Agro Equipment and caused loss of Rs. 274.89 Lakhs and in the said 18 loans, 17 had become NPA. For this allegation the petitioner submitted that the said company was very much in existence, but they have shifted their office from Thirunagar to Samayanallur and the products are displaced in the new place. Moreover, the said 18 loans was based on the collateral security wherein all the 18 borrowers have mortgaged the residential building or some land to the bank. Therefore, this cannot be considered as misconduct. The 4th allegation is that in gross violation of norms and procedures had recommended eight term loans without verifying the repayment capacity and caused loss of Rs. 159.12 Lakhs and out of eight loans, seven loans have become NPA. The petitioner submitted that the customer had reared goats, but due to water crises they could not sustain the business. The petitioner further submitted that the 8 loans were disbursed based on the collateral security which is over and above the loan disbursed to the said debtors. Generally, any loan will be disbursed with collateral security which would be over and above the loan that is disbursed. In short, it will be 80% of value of the land. On perusing the same, the petitioner has rightly taken the mortgage and the mortgage is not based on any movables. It is based on either agricultural lands or residential buildings. Interestingly the respondents submitted that the “probable loss to the bank”, which means the loss is not actual but only imaginary. Again, this would confirm it is only business risk and not intentional at all. More so the same cannot be the basis for taking disciplinary action.

9. The petitioner has further stated that the said company is in existence which would be evident from the Management Exhibit No.135 which shows the registration of the firm with the Commercial Tax Department and the said company is having TIN number, GST number and the same is evident from the Delinquent Exhibit No.4. The firm has

also submitted Income Tax Returns from 2010 to 2014 which is evident from the Management Exhibit No.22. The Management Exhibit No.154 which is an inspection report reveals the existence and shifting of the firm. Therefore, the document termed as defective is incorrect. The finding of the disciplinary authority that Mr.S.Jagadeesan was not the dealer of the products of M/s.New Hira Firm Equipment Private Limited is not true. The Management Exhibit No.155 letter, dated 12.10.2016, received from the said M/s.New Hira Firm Equipment Private Limited clearly states that M/s.CMS Agro Equipment was appointed a dealer on 08.03.2012. Later, the company was asked not to good terms and thereafter the said company had directed not to deal with the products of their company. The said letter does not state the date from which M/s.CMS Agro Equipment, were asked to stop acting as their agency to M/s.New Hira Firm Equipment Private Limited. Therefore, the contention that M/s.CMS Agro Equipment is not in existence is disproved. Considering these exhibits, this Court is of the considered opinion that M/s.CMS Agro Equipment was originally in existence and it was the dealer of M/s.New Hira Firm Equipment Private Limited. But subsequently, the was some disputes with the said two companies and they had ended the agency, but it is not evident from which period the agency ended between them. As rightly pointed out by the petitioner, this cannot be considered as a misconduct, when M/s.CMS Agro Equipment was in existence with registration number with Commercial Tax Department with TIN and GST numbers and was filing Income Tax Returns, the same cannot be considered as a non-existing company. Hence the 3rd charge ought to be held as not proved.

10. The 5th allegation is that in violation norms and procedures had unduly accommodated borrowers by sanctioning 20 MUDRA loans, without verifying the fact that already the said borrowers over and the

loan amounts were disbursed mostly during the month / quarter ends by crediting the existing overdue account so as to keep them as standard assets. In the process most of them turned NPA accounts due to the loan amounts and causing “likely loss” of Rs.9.17 Lakhs. The petitioner submitted that the Mudra loans were disburse as per norms and eligible borrows were financed with good intention to achieving targets and all the pending proposal were cleared during month / quarter ends. Here also interestedly the respondents submitted that the “likely loss to the bank”. The petitioner had taken a specific plea that to achieve target the petitioner had considered the eligible borrows and had disbursed to the said eligible borrowers. Again, this is business decision and the same cannot be a reason to take disciplinary action.

11. The 6th allegation is that in violation of norms and procedures enhanced limits in three accounts unauthorizedly without proper

verification and without any request from the account holders and failed to obtained additional documents. But the contention of the petitioner is that the proposals have been prepared, sanctioned and additional documents obtained and the same were shown to the internal auditors at the time of audit. Temporary over limits wherever given were regularized within the stipulated time limit. From the explanation of the petitioner is would be evident that the petitioner had regularized within the time limit, which means the same is as per norms. The petitioner being a manager has power to enhance limits to the exiting loans and the documentation ought to be completed within the time prescribed and the petitioner had followed the same, which has been approved by the internal auditor. Therefore, this allegation is also business risk and the same cannot be basis for taking disciplinary proceedings.

12. The 7th allegation is that in violation of norms and procedures had allowed temporarily over limit to M/s. Annai Velu Builders to the extent of 25.02 Lakhs on 06.05.2015 and Rs. 7.97 Lakhs on 19.05.2015, which is beyond the delegated authority and for which the petitioner failed to obtain any approval from the competent authority. The petitioner submitted that the temporary over limits to the said builders were considered on the merits of the borrower and genuineness of the business. Moreover, the account has even conducted satisfactorily and over limits were cleared in time. The petitioner further submitted that the over limits were not reported to competent authority due to oversight. It is seen that the petitioner is empowered to grant loans within 25 lakhs, but the petitioner has granted 25.02 Lakhs on 06.05.2015 and Rs. 7.97 Lakhs on 19.05.2015. If the loan is beyond the limits, then the petitioner ought to take prior permission from the regional office. The petitioner has not obtained such permission and has not intimated to the competent

authority, which indicates the petitioner has committed procedural lapse. It is seen that the temporary limit was granted and the borrower had cleared the temporary limit within the time and there is no loss to the bank. Even if it considered as lapse, the same cannot a reason to impose major punishment.

13. The 8th allegation is that in violation of norms and procedures, the petitioner failed to disburse the loan amount directly to suppliers with regard to his own housing loan account No.821868110000006 and failed to stipulate margin at each stage of disbursement and constructed two floors building without any approval of the bank. The petitioner has submitted that with bank funds he had put up ground floor and in order to accommodate his aged parents he had put up additional floor with additions funds, margin funds and funds from parents. Further the petitioner has submitted that the house is valued about Rs.55,00,000/-

whereas the bank panel valuer has projected the cost as Rs.21.39 Lakhs/- and the house is constructed in compliance with the approved plan. Therefore, this also cannot be termed as misconduct.

14. It is seen from the records that the petitioner has joined the Bank on 06.03.1991 and promoted and worked until 30.01.2018 for more than 26 years. Except for 1st charge wherein the petitioner had endorsed the cheque for Rs.25 Crores that too without proper security, but the same was withdrawn immediately and the said transaction was stopped, the other allegations the petitioner has sanctioned based on the norms and procedures. As held supra for the other charges it is only business risk and the business decision which is permissible in the banking business. Therefore, this Court is of the considered opinion that the punishment of dismissal from service is disproportionate. Moreover, there is no pecuniary loss to the Bank. Therefore, this impugned order is

quashed and the respondents are directed to reinstate the petitioner within two weeks from the date of receipt of the copy of the order. The petitioner is entitled to the consequences benefits. The respondents shall consider imposing lesser punishment for the 1st charge alone.

15. With the above directions and observation, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No

27.09.2023

Tmg

S.SRIMATHY, J

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