



W.P(MD)No.5213 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P(MD)No.5213 of 2016

Mayakrishnan

... Petitioner

Vs.

1.The Executive Director,
Punjab National Bank,
Head Office,
No.7, Bhikhaji Cama Place,
New Delhi.

2.The General Manager,
Punjab National Bank,
Head Office,
No.7, Bhikhaji Cama Place,
New Delhi.

3.The Disciplinary Authority / Deputy General Manager,
Punjab National Bank,
Circle Office, Indl Area Kailasapuram,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent herein in his proceedings in PAD/DAC/17795, dated 11.09.2015 and to quash the same.

For Petitioner : Mr.G.Chandrasekar

For Respondents :Mr.S.Rengasamy, Standing Counsel



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ORDER

The petitioner joined as clerk in the Punjab National Bank in the year 1980. By virtue of his service, he attained the post of Branch Manager and after serving 25 years, he retired on 28.02.2015. While in service as Branch Manager, he was served with the charge memo on 08.04.2011. The charges against the petitioner are as follows:-

“Article I

He did not discharge his duties diligently / prudently in as much as he failed to adhere to the terms of sanction in the loan account.

Article II

He failed to ensure that proper pre-sanction and post sanction safeguards are complied with in the loan account.

As a result of the above, Banks fund is proving difficult of recovery.”

2.The gist of these two charges is that while granting loans to Self Help Groups (SHG), he did not obtain the recommendations of the 'second man'. The loans had been disbursed during the period of August 2006 to June 2008. Soon after the response to the charge sheet on 29.07.2011, supplementary charge sheet was issued on 23.11.2011. The fresh charge arose thus:- loans had been disbursed to one Balaji Mahalir SHG to the tune of Rs.1

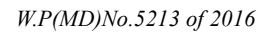


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Lakh. The authorization had been given to one T.S.Amutha. She denied that the loan had been availed by the said SHG. The petitioner was charged stating that he did not ensure the identity of Amutha. Supplementary charge sheet had been issued. The petitioner submitted a detailed response to the supplementary charge sheet.

3.On 20.01.2012, an enquiry officer was appointed. The enquiry officer conducted enquiry and submitted a report on 18.06.2012. A copy of the enquiry report was placed before the 3rd respondent disciplinary authority. The disciplinary authority accepted the enquiry report and imposed a major penalty in terms of Punjab National Bank Officers and Employees (Discipline & Appeal) Regulation, 1977 (hereinafter referred to as 'the Regulation').

4.The disciplinary authority imposed the punishment of reduction to 13 stages in time scale of pay ie., at basic pay of Rs.21,700/- till retirement ie., on 28.02.2015 with further direction that the petitioner will earn increments during the period of reduction and such reduction will have the effect of postponing his future increment in terms of Clause 4(f) of the Regulation.



“In the light of the above, I have gone through the records of the case and the final submission dated 19.06.2012 of Shri R Mayakrishnan. I find that the issues raised by Shri R Mayakrishnan vide his letter dated 19.06.2012, on the findings of the Enquiry Officer, are similar to the ones he had raised during the course of the enquiry, in his written brief and that these observations have been responded by the Enquiry Officer in his report dated 06.06.2012. I am convinced with the reasons ascribed by the Enquiry Officer in giving his findings with regard to the various imputations and articles as contained in the charge sheet. I accordingly concur with his findings in the matter.”

6. Aggrieved by the order of the disciplinary authority dated 27.08.2012, an appeal was preferred to the 2nd respondent on 03.10.2012. By an order dated 26.02.2014, the appellate authority had dismissed the appeal by giving the following reasons:-

“ 4.1.Records reveal that there were no recommendations by second man in 97 SHG loan accounts. His contentions of there



being no separate column in the application for recommendations of 2nd man are not acceptable. Further, the signature in the BC register only confirms the fact that the person signing the register is custodian of the documents. It in no way can be treated as recommendations by the 2nd man. He did not conduct independent verification regarding the number of members in each SHG but relied solely on the statement submitted by the NGO. The quantum of banks finance was also not ascertained properly. He failed to adhere to the Banks guidelines while sanctioning / disbursing loans in the account of JN 71829 Cauvery Women and JN 71838 Cauvery Women SHG 580. At the time of opening the a/c of M/s.Balaji Mahalir SHG, he failed to obtain the photo as well as the address proof of SHG members, as the proof submitted by the borrower was wrong.”

7.However, he modified the punishment as follows:-

“However, on considering the facts and circumstances I am inclined to take a lenient view in the case. Further, having regard to the nature and gravity of the charge, I am of the view that ends of justice would be met by modifying the aforesaid penalty to “Reduction to eight lower stages in the time scale of pay till the date of his superannuation ie., 28.02.2015 with further direction that he will not earn increments of pay during the period of reduction and that such reduction will have the effect of postponing the future increment” under Regulation 4(f) of PNB Officer Employees (Discipline & Appeal) Regulations, 1977.”



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8. Challenging the same, the petitioner preferred a review to the 1st respondent on 05.05.2015. The reviewing authority had dismissed the review petition on 11.09.2015 holding as follows:-

“5.I have examined the points raised by Shri Mayakrishnan in his review petition along with entire records of the case. Records reveal that that there are no recommendations by second man in 97 SHG loan accounts. The contention of the appellant that there is no separate column in the application for recommendations of 2nd man is not acceptable. Further the signature of 2nd man in the Documents & BC Register only indicate that person signing the said register is custodian of the documents and in no way convey recommendations. The petitioner did not submit process notes along with LSS to controlling office as required. Thus he concealed the fact of no recommendation of loan officer/2nd man. The statements as given by the NGO were completely relied upon and no independent verification regarding the number of members in each SHG was done by him as indicated from loan Proposals prepared by him. Further he did not obtain required documents and follow the Bank's guidelines in the accounts of JN 71829, Cauvery Women and JN 71838 Cauvery Women SHG 580 as pointed out in the Charge Sheet and SHG Members subsequently denied having ever visited the Bank Branch for executing loan documents and were also not aware of the loans raised in SHG's names. I also observe that at the time of sanction of loan he did not obtain photo and the address proof of members of



M/s Balaji Mahalir SHG. One of the members of this SHG, Smt T S Amutha denied having ever raised loan/ signed loan documents.”

9.The said order of the 1st respondent is under challenge in this Writ Petition.

10.Mr.G.Chandrasekar, learned counsel appearing for the petitioner would submit that the basic charge against the petitioner was that he had not taken signature of the 'second man' in the loan application. He would also state that infringement of the guidelines of the Bank need not have lead to imposition of major penalty, which would lead to consequences on the quantum of pension itself. He would further point out that no reasons had been given by the original authority, even though the appellate authority had given reasons, which had been confirmed by the reviewing authority. Further, prior to imposition of major penalty, the petitioner was not put on notice with respect to the proposed punishment.

11.Relying upon the judgments of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and others* reported in (1993) 4 SCC 727 and *Punjab National Bank and others Vs. Kunj Behari Misra* reported in (1998) 7 SCC 84, would submit that the



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second show cause notice on the proposed punishment was not issued to the petitioner and that the Supreme Court held that principles of natural justice will have to be read into the Regulations.

12.Mr.S.Rengasamy, learned Standing Counsel appearing for the respondents would submit that the petitioner had been given all the necessary notices as required under the principles of natural justice. The authorities competent had considered the gravity of the charges levelled against the petitioner. It is the failure on the part of the petitioner to take the signature of the 'second man' on the loan application and these aspects had been considered by the disciplinary authority and therefore, he would seek that this Writ Petition is to be dismissed.

13.He would further draw my attention to the judgment of the Supreme Court in the case of ***Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava*** reported in ***(2021) 2 SCC 612*** and would submit that the High Court, while exercising the jurisdiction under Article 226 of Constitution of India, cannot act as a appellate authority and can only interfere, if there is any violation of principles of natural justice or if the punishment is shocking to the conscious of the Court.



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14. Heard the learned counsel on both sides and perused the materials available on record carefully.

15. A perusal of the order passed by the 3rd respondent would show that after extracting the facts of the case, he had come to the conclusion that the facts had been proved. As extracted above, there are no reasons given by the original authority for coming such conclusion. It has been held by the Supreme Court and by this Court in several judgments that 'reason is the heartbeat of the order' and if there are no reasons furnished to arrive at a conclusion, the unreasoned order cannot be sustained. The requirement of granting reasons has been read into as one of the basics of principles of natural justice. Violation of the principles of natural justice by the original authority cannot be substituted by an order in an appeal or review by the superiors. Therefore, the first vitiating point I find in the order is lack of reasons by the 3rd respondent.

16. Further, the point urged by the writ petitioner has to be taken note of. The petitioner visited with the punishment on the ground that the signature and the verification by the 'second man' was not undertaken. The 'second man', who has not been unnamed in the charge sheet, was not proceeded against by



the department at all. If there is a negligence on the part of the writ petitioner in failure to take the signature of the 'second man', this implies there is a dereliction on the part of the 'second man' in not countersigning the documents. Where there are two parties involved in a proceeding, but selectively, only one person proceeded against, it is an incurable infraction of service law. It does not answer the requirements of the administrative law. Further, similarly placed persons cannot be treated dis-similarly.

17.As has been consistently held by the Courts notice prior to issuance of the proposed punishment has to be issued by the disciplinary authority and a representation of the delinquent has to be obtained. The facts of this case shows that on receipt of the reply from the petitioner, the disciplinary authority did not even give a personal hearing to the delinquent and straightaway imposed the major penalty. The requirement of the second show cause notice is a basic of principles of natural justice and this has also been violated.

18.At this stage, the learned Standing Counsel for the respondents would submit that the Regulations do not require such requirement. As held by the Supreme Court in ***Punjab National Bank's case*** cited supra, the principles of natural justice would have to be read into the Regulations.



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19. In view of the above discussions, I am of the view that it is the duty of the disciplinary authority to give reasons and the second show cause notice should have been issued to the writ petitioner and his representation should have been obtained on the proposed punishment and the disciplinary authority ought to have heard the petitioner prior to passing the order. None of these requirements have been adhered to as discussed above.

20. I have already held that violation of principles of natural justice at the original stage cannot be substituted or filled up at the appellate stage. On the aspect of punishment also when major penalty is imposed, which will have detrimental effect on the reduction of amount payable to the writ petitioner as pension, a balanced approach should have been taken by the disciplinary authority. Though a portion of the punishment has been interfered with by the appellate authority, still no reasons have been granted by the said authority for the reduction. Insofar as the reduction is concerned, though the petitioner has been a beneficiary, by such reduction, he cannot be said to be aggrieved. However, major penalty having been imposed, he is still the sufferer.

21. A careful perusal of the facts in ***Deputy General Manager's case*** referred to above shows that the petitioner therein had indulged in the act of



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defrauding the Bank. The same cannot be equated with the case of a person, who at best got accused of having ignored the guidelines issued.

22.In the light of the above discussions, I am of the view that the impugned order be quashed for violation of principles of natural justice and the matter be remitted to the 3rd respondent to hear the petitioner on the quantum of punishment and to pass a detailed order setting forth the reasons. Since the petitioner retired in the year 2015, the said exercise is directed to be completed within a period of twelve weeks from the date of receipt of a copy of this order.

23.In view of the above, this Writ Petition stands allowed. No costs.

10.11.2023

NCC : Yes / No
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