IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2023

PRONOUNCED ON : 25 .04.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.20678 of 2013

G.Vinod ...Petitioner

Vs.

1.The Deputy General Manager/Appellate Authority
Indian Bank, Head Office Vigilance Department,
Royapettah, Chennai - 600 014.

2. The Assistant General Manager/Disciplinary Authority,
Indian Bank Vigilance Department,
Circle Office, Cuddalore.

3. The Chairman and Managing Director,
Indian Bank, Royapettah, Chennai - 600 014. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records dated 30.07.2010 of the first respondent in his proceedings in CO:CUD:VIGIL:41:2009:10,dated10.07.2009 confirming the order dated 17.05.2010 passed in proceedings No.CO/CUD/VIGIL/19/2010-11 by the second respondent and quash the same directing the respondents to reinstate the petitioner with all backwages.

For petitioners : Mr.S.Sathish Rajan

For R1 to R3 : Ms.Rita Chandrasekar
for M/s.Aiyar and Dolia

ORDER

This Writ Petition is filed for issue of Writ of Certiorarified Mandamus, to quash orders dated 30.07.2010 passed by the first respondent and to direct the respondents to reinstate the petitioner with all backwages.

2. The petitioner has joined the service in the second respondent Bank as a Rural Development Officer on 28.11.1985. He was promoted as Manager on 11.04.1996 and worked at various branches of the respondent Bank and lastly he worked at Neyveli Block No.17, where he was placed under suspension alleging certain misconduct.

3. On 10.07.2009 he was served with a charge memo with following charges:-

"*1) You had issued three Asset backed cash valued Security Custody Receipts [SCRs] for US Dollars 600 Million and US Dollars 347 million respectively on 25.07.2008 in favour of International Holdings Inc., Toronto, Canada at the behest of one M/s.Viswaroop Traders(India) Private Limited, Kottayam signed by you on behalf of Indian Bank along with Mr.Amol J.Kamble,* *Assistant Manager of Sethiathope Branch based on the valuation letter dated 07.04.2008 issued by one Mr.S.Chandrasekaran Nair, who is not our approved valuer with out observing normal due diligence.*

2) You had issued a SWIFT message undertaking/Guarantee on 21.08.2008 through our Pondicherry Main Branch for US Dollars 1,44682 Billion to HSBC Bank, High Street, Slough, United Kingdom based on the above said SCRs with so many objectionable clauses and without getting approval from Head Office Legal Department and without obtaining prior clearance from our Head Office International Division.

3) You did not have any powers to issue such SCRs, SWIFT message undertaking/Guarantee. You had not maintained any records for the issuance of the said Asset backed cash valued Security Custody Receipts (SCRs) and the SWIFT undertaking/message in the branch and not collected any charges for such issuance of SCRs and SWIFT message as per HO guidelines.

4) You had failed to comply with the KYC norms while opening the current account of M/s.Viswaroop Traders (India) Private Limited and the SB account to Mr.T.G.Ramachandran, one of its Directors.

5) You had failed to conduct proper pre sanction appraisal in respect of the following advances sanctioned to M/s.Viswaroop Traders (India) Private Limited and thus failed to protect the *interest of the Bank.*

Name of the account	***Type of advance***	***Limit Sanctioned***	***Date of Sanction***	***Balance as on 30.06.2009***
1.M/s.Viswaroop Traders (India) Private Limited	Term Loan [Pre-operative expenses]	Rs.5.00 lakhs	29.04.2008	Rs.575701
2.M/s.Viswaroop Traders (India) Private Limited	Composite Loan	Rs.7.50 lakhs	28.07.2008	Rs.836747

6) You had failed to conduct post-sanction inspection and not ensured creation of assets in respect of the advances sanctioned to M/s.Viswaroop Traders (India) Private Limited. Thus you had failed to monitor the accounts properly and hence the accounts have become overdue and the Bank finds it difficult of recovery. Thus you failed to protect the interest of the Bank.

7) You had failed to conduct pre-sanction appraisal in respect of the loans sanctioned to Mr.T.G.Ramachandran, one of the Directors of M/s.Viswaroop Traders (India) Private Limited and thus failed to protect the interest of the bank.

Name of the account	***Type of advance***	***Limit Sanctioned***	***Date of Sanction***	***Balance as on 30.06.2009***
1.Mr.T.G.Ramachandran	Commodity Trade Loan	Rs.4.00 lakhs	17.04.2008	Rs.479059
2.Mr.T.G.Ramachandran	IBKC Loan	Rs.2.00 lakhs	24.04.2008	Rs.216501

8) You had failed to conduct proper post-sanction inspection and monitor the advance accounts sanctioned to Mr.T.G.Ramachandran and hence the accounts have become overdue and the Bank finds it difficult of recovery. Thus you failed to protect the interest of the Bank.

9) You had failed to take proper Memorandum of Title Deeds for creation/extension of Equitable Mortgage for the above advances as per Head Office guidelines and hence the above advances have become unsecured and the Bank finds it very difficult of recovery."

4. The petitioner has offered his explanation for the charges on 20.08.2009. Having not satisfied with the explanation of the petitioner, the respondent Bank has appointed Shri.R.Ganesh, Junior, Chief Manager-RBS, Circle Office, Cuddalore as enquiry officer on 16.09.2009. The said enquiry officer has conducted enquiry and submitted his report to the respondent bank and the same was communicated to the petitioner along with a covering letter dated 01.03.2010. The petitioner in-turn has offered his remarks on 15.03.2010. However, on 17.05.2010, the second respondent has passed final orders by imposing the petitioner with the major penalty of removing the petitioner from service. The petitioner has preferred an appeal on 11.07.2010 and the same was dismissed on 30.07.2010. Aggrieved by the same, the present Writ Petition was filed by the petitioner.

5. It is submitted by the learned counsel appearing for the petitioner has submitted that the petitioner was removed from service by imposing major penalty of removal as an vindictive action and that the Security Custody Receipts (SCR) were issued by the petitioner to the customers expecting substantial deposit in return and that they were taken back promptly when expected business did not materialise, thereby issue was resolved hence there was no financial loss to the Bank.

6. It is further submitted that the petitioner's predecessor and successor have been issuing SWIFT messages with objectionable clauses, but no action was taken against anyone of them, thereby the charge that the branch where the petitioner was working was not authorised to send SWIFT messages also should not have been recorded as proved.

7. In respect of charge No.4, it is submitted by the learned counsel for the petitioner that since borrower was already customer of the bank in other branch, the CIF Number, Memorandum of Association, Article of Association, Certificate of incorporation, Minutes of book, PAN card and other required documents are obtained by the other branch while opening the account, thereby the petitioner has

not taken any documents from the customer and hence the petitioner should not have been charged with said offence.

8. In respect of Charge Nos.5 and 6 are concerned, it is submitted by the learned counsel for the petitioner that evaluations were conducted on several occasions, and found that the disbursements were also made through Demand Draft and through RTGS as such, the end users funds were ensured thereby the bank will not face any financial loss, hence the petitioner should not have been punished with said charge.

9. In respect of Charge Nos.7 and 8 are concerned, it is submitted by the learned counsel for the petitioner that pre sanction evaluations were conducted on several occasions, and relative reports were held with respect to loan documents and that the petitioner was monitoring the account properly till he was relieved from branch, thereby petitioner should not have been punished in respect the above charges.

10. It is submitted by the learned counsel for the petitioner that even if whatever charges levelled against the petitioner are found to be proved, still imposing of major punishment of removing the petitioner from service is

shockingly disproportionate and that the petitioner is suffering from various ailments and was taking treatment in Canada, however the treatment could not be continued in Canada on account of financial problems and thereby the delay in filing this Writ Petition is neither wilful nor wanton.

11. Learned counsel representing the respondent has submitted that the enquiry officer after meticulously going through the evidence placed before him has rightly concluded that all the charges levelled against the petitioner are proved and that though there was no financial loss, on account of acts of the petitioner the bank could have sustained huge losses, and thereby irrespective of the fact that there was no financial loss, what the petitioner has done is a misconduct and thereby cannot be exonerated from the charges levelled against the petitioner and submitted the removal of petitioner from service is proper and justified.

12. Heard both sides and perused the records including judgments filed in support of the parties appearing on both sides.

13. Prior to considering submissions raised by both sides, it is to be examined the scope of this Writ Petition and the limitations in examining the

enquiry report.

14. In respect of scope of Judicial Review Learned counsel for the respondent has referred the following judgments of the Hon'ble Supreme Court:

i) In ***Deputy General Manager (Appellate Authority) and Others vs. Ajai Kumar Srivastava,*** reported in (2021) 2 SCC 612, wherein it is observed as under:

> ***"24.*** *It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

25. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:*

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. *It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.*

27. *It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere* *conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

28. *The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.*

In the case on hand there is no plea taken by the petitioner that enquiry was conducted by incompetent person, rules of natural justice have not been followed and that findings are without any evidence etc.

ii) In the ***Subrata Nath vs. Union of India and others, r***eported in 2022 Livelaw (SC) 998, Hon'ble Supreme Court of India observed as under:

"***22.*** *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the*

Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefore.

23. *Applying the law laid down above to the instant case, we are of the view that the High Court ought not to have interfered with the findings of fact recorded by the Disciplinary Authority. Charge-1 levelled against the respondent pertained to negligence and dereliction of duty attributed to him for having failed to prevent theft of 800 kgs of copper wires lying at Alif*

Nagar scrap yard under his security cover while performing duty in the late hours of 7th November, 2007 upto the early hours of 8th November, 2007. Records reveal that the Disciplinary Authority has minutely examined the entire evidence brought on record including the deposition of eight prosecution witnesses each of whom have corroborated the charges levelled against the respondent, duly supported by documentary and circumstantial evidence for arriving at the conclusion that the Articles of Charge-I stood proved against the respondent. Pertinently, the respondent did not produce any defence witness and the documents produced by him did not prove anything in his favour.

In the case on hand the petitioner wanted this Court to re-appraise the evidence recorded by the enquiry authority, which is not permissible.

iii). In the ***United Bank of India vs. Banchan Prasad Lall r***eported in 2023 LiveLaw (SC) 164, wherein it is observed as under:

"*12. In our considered view, looking into seriousness of the nature of allegations levelled against the respondent employee, the punishment of dismissal inflicted upon him in no manner could be said to be shockingly disproportionate which would have required to be interfered with by the Tribunal in* *exercise of its power under Section 11-A of the 1947 Act. At the same time, merely because the employee stood superannuated in the meanwhile, will not absolve him from the misconduct which he had committed in discharge of his duties and looking into the nature of misconduct which he had committed, he was not entitled for any indulgence. The bank employee always holds the position of trust where honesty and integrity are the sine qua non but it would never be advisable to deal with such matters leniently."*

15. Finally in another decision of the Hon'ble Apex Court, in ***State Bank of India vs. A.G.D. Reddy*** reported in 2023 LiveLaw 2023 LiveLaw (SC) 719, it is observed as under:

"36. It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re-appreciate the same and arrive at an independent finding on the evidence. This lakshman rekha

has been recognized and reiterated in a long line of judgments of this Court."

16. In view of the above referred judgments of the Hon'ble Supreme Court, it is to be examined as to whether the report of the enquiry officer is so perverse on the face of it, which necessitates this Court to interfere.

17. The petitioner in the grounds of appeal has submitted that though there were procedural lapses in dealing with certain accounts of the bank, since there is no financial loss or damage to the reputation of the bank, he should have been exonerated.

18. The petitioner was found fault with nine charges. In respect of issuance of Security Custody Receipts (in short SCRs) is concerned it is submitted that they were issued with an intention to get substantial deposits to the bank and when deposits were not received, the SCR's were taken promptly. Admittedly, the petitioner was not expected to give the SCR's for whatever may be the reason. Even though, there was no financial loss to the Bank, the Charge No.1 he has committed misconduct by issuing SCR's. Merely because SCR's were promptly taken back does not itself, absolve him from the liability. Therefore, the petitioner

cannot contend that since there was no financial loss, he has not committed any misconduct.

19. Further, he has agreed that SWIFT messages were given by him against the procedure. However, his defence is that they were being given by his predecessors and successors. There is no record in respect of petitioner contention. Even otherwise, a wrong committed by others is not an example to say that since they have committed irregularity and that since they were not questioned, he shall be exonerated. Irrespective of the fact that whether SWIFT messages were being sent by his predecessors or not, he should have followed the procedure prescribed and refused to send the SWIFT messages.

20. In respect of other charges Nos.4, 5,6,7 and 8 also it is clear that he has not followed the procedure.

21. In respect of Charge No.9 is concerned, though the enquiry officer has stated that out of four charges three charges where proved under Charge No.9, it is the contention of the petitioner that the disciplinary authority should not have held that all the three sub charges of the Charge No.9 are proved without giving any

notice since the enquiry officer has found the petitioner guilty of Charge Nos.9(a) to (c). This contention of the petitioner is not convincing. The procedure adopted by the disciplinary authority is that on receipt of the report of the enquiry officer, the report copy has been furnished to the petitioner and after accepting the explanation, the disciplinary authority has individually gone through the entire material and ultimately gave a finding that all the sub charges of Charge No.9 are proved, therefore, there is no procedural irregularity followed by disciplinary authority while finding all the charges proved against the petitioner.

22. On going through the enquiry report, the explanation submitted by the petitioner and all other connected documents filed before the Court as per the index of typed set of papers, right from suspending the petitioner until impugned order passed, this Court is of the opinion that enquiry officer has gone through the evidence placed before the Court and come to the conclusion that charges levelled against the petitioner were proved.

23. As per the dictum laid down by the Hon'ble Apex Court, this Court is not expected to go through the evidence in detail and re-appraise the evidence recorded by the enquiry officer and cannot sit like Appellate Court to give the

different finding. It is not the case of the petitioner that the finding of the equiry officer is erroneous as there was no evidence at all or the report of the enquiry officer is totally perverse and against the materials placed before the Court. It is also settled legal position that even two views are possible to the enquiry officer, this Court cannot found fault with the finding of the enquiry officer as another view is also possible.

24. In view of the discussions made above, this Court is of the view that the findings of the enquiry officer which were accepted by the disciplinary authority and consequently impugned orders passed against the petitioner finding the petitioner guilty of all charges is not perverse and thereby the same cannot be intervened.

25. In the result, this Writ Petition is dismissed. No costs.

25.04.2024

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Index : Yes/No
Citation : Yes/No

DR. D.NAGARJUN, J.
Jai

To:

1. The Deputy General Manager/Appellate Authority
   Indian Bank, Head Office Vigilance Department,
   Royapettah, Chennai - 600 014.

2. The Assistant General Manager/Disciplinary Authority,
   Indian Bank Vigilance Department,
   Circle Office, Cuddalore.

3. The Chairman and Managing Director,
   Indian Bank,Royapettah, Chennai - 600 014.

Pre-Delivery Order

W.P.No.20678 of 2013

25.04.2024