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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 09.08.2024

ORDER PRONOUNCED ON : 23.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.2427 of 2017

P.Nalladurai ... Petitioner

/Vs./

1.The Executive Director,
Punjab National Bank,
Personnel Administration Division,
Head Office, New Delhi,
(Reviewing Authority).

2.The General Manager,
Personnel and Administration Division,
Punjab National Bank,
Head Office,
New Delhi (Appellate Authority).

3.The Deputy General Manager,
Punjab National Bank,
F.G.M. Office,
Royapettah High Road,
Chennai – 600 014 (Disciplinary Authority). … Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of

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the 1st respondent pertaining to the order issued in PAD/HO/DAC/21454 dated 28.07.2015, the Order issued by the 2nd respondent in PAD/HO/DAC/21454 dated 31.12.2014 and the Order of the 3rd respondent in his proceedings No.NIL dated 24.06.2014 and quash the same and all consequential orders and to consequently direct the respondents herein to grant all consequential service and monetary benefits including declaring that the petitioner is deemed to have retired from services in the appropriate post as on 30.06.2014 and grant all Terminal and Pensionary Benefits.

For Petitioner : Mr.M.Sathish Rajan

For Respondents : Mr.P.Raghunathan for
M/s.T.S.Gopalan and Co.

* * * * *

ORDER

This writ petition is filed to call for the records on the file of the 1st respondent pertaining to the order issued in PAD/HO/DAC/21454 dated 28.07.2015, the Order issued by the 2nd respondent in PAD/HO/DAC/21454 dated 31.12.2014 and the Order of the 3rd respondent in his proceedings No.NIL dated 24.06.2014 and quash the same and all consequential orders and to consequently direct the respondents herein to grant all consequential service and monetary benefits including declaring that the petitioner is deemed to have retired from services in the appropriate post as on 30.06.2014 and grant all Terminal and Pensionary Benefits.

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2.The petitioner joined the service of the respondent bank as a Clerk and Godown keeper in the year 1980. The petitioner was promoted as a Senior Manager in the year 2012. The petitioner's case was that while he was working as a Senior Manager in Sankari West branch of the respondent bank, he was asked to bring the original FDR/documents along with other documents pertaining to a fraud committed by his predecessor in the said branch for production before the CBI, ACB, Chennai on 12.11.2012. According to the petitioner, while he was travelling with the original documents for production in the office of CBI, ACB, Chennai on 12.11.2012, he lost the same in transit. The petitioner filed an FIR with the police authorities regarding the loss of the original documents. The petitioner stated that the loss of the documents was purely accidental and not intentional and in no way connected with the fraud committed by the erstwhile Senior Manager. Thereafter the respondent suspended the petitioner on 16.11.2012. It is stated that the petitioner preferred an appeal against the suspension order and by order dated 29.11.2013, the suspension was revoked. Subsequently, the disciplinary proceedings were initiated and culminated in the impugned orders. The petitioner therefore filed

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the writ petition challenging his dismissal from service.

3.The respondents filed their counter stating the background of facts leading to the suspension of the petitioner and subsequent disciplinary proceedings conducted against him. According to the respondents, the petitioner was grossly negligent in handling very sensitive documents which were required in connection with a fraud case resulting in siphoning of Rs.12 Crores, at Sankari West branch, and which case was under investigation by the CBI. The respondent, ergo, stated that the petitioner's gross negligence resulted in the loss of original documents which were to be produced before the CBI as important evidence in the fraud case. The respondents further stated that though the petitioner was directed to proceed to Chennai, for production of original documents before the CBI, ACB, Chennai, the petitioner instead of proceeding straight to Chennai, travelled to Madurai to meet his wife, supposedly ailing at Madurai. Only after the loss of the documents, the petitioner informed the AGM Circle office, Chennai that the documents were lost in transit at Madurai. The respondent stated that the enquiry officer after consideration of the entire

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evidence rightly concluded that the charges against the petitioner were proved. Based on the enquiry officer's report the punishment of dismissal was imposed on the petitioner. According to the respondents the punishment imposed was proportionate to the gravity of misconduct committed by the petitioner. The respondents therefore stated that there were no merits in the writ petition and the same deserved to be dismissed.

4.The only point canvassed by the learned counsel for the petitioner before me was that, the punishment of dismissal imposed by the respondent Bank for the misconduct of negligence and disobedience of instructions of the higher official was grossly disproportionate. The learned counsel submitted that the loss of original documents was neither wilful nor intentional, but accidental only. The learned counsel further submitted that the petitioner had to proceed to Madurai before leaving for Chennai, with the original documents, because his wife was ailing. The learned counsel submitted that subsequent to the loss of original documents, the CBI investigated on the petitioner's role in the fraud and concluded that there was no culpability on the part of the petitioner. The learned counsel further submitted that the enquiry before the CBI was also not prejudiced as the lost documents which were stored digitally were produced

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before the CBI. The learned counsel submitted that in the light of the aforesaid facts and also considering the petitioner had put in 34 years of blemishless service, the impugned orders deserved to be set aside.

5.The respondents on the other hand submitted that the petitioner cannot deny his negligence in handling the original documents. The learned counsel further submitted that the petitioner was working as a Senior Manager and was very well aware that there was a huge fraud in the said branch where Rs.12 Crores was siphoned off. The fraud got adverse publicity to the bank denting its image in the eyes of the public. The learned counsel further submitted that considering the critical nature of the documents and the responsible post held by the petitioner, the loss of documents cannot be brushed aside as mere accident. The learned counsel submitted that the disciplinary authority, appellate authority and also the review authority on appreciation of the entire materials placed before them rightly imposed the punishment of dismissal from service and therefore, this Court should not interfere with the punishment.

6.I have heard both the learned counsels and I have perused the materials

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placed on record.

7.That there was a serious fraud committed by the predecessor of the petitioner in the Sankari, West Branch, of the bank is not denied by the petitioner. In the said fraud an amount of Rs.12 Crores was siphoned off and CBI enquiry was initiated. The petitioner was brought to the Sankari West branch, on 05.10.2012, and assumed charge as Senior Manager. As the Senior Manager, the petitioner was in complete charge of the assets of the Bank including, documents pertaining to the deposits of the Board, the “Fixed Deposit Receipt” allegedly tendered for premature encashment by the Board, the alleged letter requesting for premature encashment issued by the Board, vouchers pertaining to the transfer of the proceeds of the deposit to the account at State Bank of India, Palayamkottai etc., in relation to the CBI case. On 09.11.2012, the petitioner was requested to produce the aforesaid vital documents before the CBI, ACB, Chennai. It is the petitioner's case that, the petitioner before proceeding to Chennai with the vital documents had to go to Madurai to visit his ailing wife. While travelling in the bus *en route* to Madurai, he kept the said documents in the luggage holder of the bus, and the same were lost. The petitioner immediately lodged the complaint regarding the loss of documents, to

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the police on 12.11.2012. The respondent bank immediately issued the suspension order on 16.11.2012 to the petitioner for his negligence in missing the vital documents. On the request of the petitioner, the suspension was revoked and thereafter disciplinary proceedings were initiated by issuing a charge sheet. The enquiry proceedings ended and the enquiry offficer based on the evidence led by the petitioner and the respondent bank found that the charges were proved. The petitioner was given an opportunity to show cause against the enquiry officer's report, and the petitioner gave his explanation, but, as the explanation was found to be unsatisfactory, the punishment of removal from service in terms of Regularization 4(1) of the Punjab National Bank Officer Employees (D & A) Regulation 1977 was imposed. The petitioner unsuccessfully challenged the punishment order before the appellate authority and the revisional authority. Aggrieved by the impugned orders the petitioner filed the above writ petition for the aforesaid relief.

8.Now the point for consideration is whether the punishment imposed by the respondent bank should be interfered with by this Court. The enquiry officer has categorically found that the charges were proved. The learned counsel for the petitioner submitted that as no loss was caused to the bank and also as no

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harm was caused to the CBI enquiry, the punishment was disproportionate to the misconduct and therefore it deserved to set aside. The learned counsel for the petitioner further submitted that contention of the petitioner that the loss of documents was only accidental and not intentional was fortified by the action of the CBI in giving a clean chit to the petitioner on his role in the fraud. It is seen that the petitioner was entitled to reimbursement for travel by flight, train, private car etc, but the petitioner for reasons best known to him chose public transport. The petitioner did not deny that he was eligible for reimbursement of flight charges or private transport charges. While so, the petitioner ought to have exercised extra caution while dealing with confidential documents. Moreover, the petitioner with the confidential documents, instead of proceeding directly to Chennai, took a detour to Madurai, even without informing the higher officials. It was during his travel to Madurai that the documents were lost.

9.The Hon'ble Supreme Court Judgment in the case of *Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer* reported in *(2003) 8 SCC 731,* explained the term "Negligence" as follows:

> *"...Though there is no statutory definition, in common parlance 'negligence' is categorised as either composite or*

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contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not."

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10.This Court in the case of United India Insurance Company Limited Vs. A.Kiruba Jonapark Rani and Others reported in 2023 SCC Online Mad 2269, followed the said Judgment.

11.From the above it is clear that negligence is failure to observe care as required under the circumstances of the case. The background of facts narrated above clearly establish that the documents were sensitive documents in relation to a fraud case under investigation by CBI. If the position of the petitioner as a Senior Manager of the bank and the sensitivity of the documents meant for production before CBI are considered, then the scale of diligence adopted by the petitioner will only lead to an inference of negligence and cannot be brushed aside as mere accident. The petitioner, for reasons only known to him, chose to travel by public transport, despite prudence suggesting that he should have travelled by air or private car, especially when he was eligible for travel reimbursement. I am therefore of the view that it is a case of gross negligence and not mere accident.

12.The learned counsel appearing for the petitioner relied on the Judgment

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in the case of Managing Director State Bank of Hyderabad Vs. P.Kata Rao reported in 2008 (15) SCC 657, wherein it is stated that this Court can interfere with the punishment. In my view the facts of the case are completely different. Therefore, the said Judgment cannot apply to the facts of the case.

13.The Hon'ble Supreme Court in the case of *Kerala Solvent Extractions Ltd. Vs. A.Unnikrishnan and Another* in paragraph No.10 held as follows:

> *“We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial*

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mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

14.The petitioner was holding the post of Senior Manager in the nationalised bank and he was entrusted with the entire assets of the bank as Branch Manager. The petitioner's failure to exercise caution while handling the vital documents resulted in loss of original documents needed in connection with a fraud case. The loss of sensitive documents by the petitioner as Senior Manager of the branch was unbecoming of his position and therefore the respondent cannot be blamed for loss of confidence in the petitioner. I am therefore of the view that the punishment imposed by the respondent is not disproportionate to the proved misconduct. I find no merits in the writ petition.

15.The learned counsel appearing for the bank referring to the Bank's Rules submitted that the petitioner can make a representation to the Board and the Board on consideration of the representation may exercise its discretion in favour of the petitioner as he worked without blemish for 34 years. The

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petitioner is given liberty to make a representation to Board within a period of two (2) weeks from the date of receipt of a copy of this order. The Board on receipt of the petitioner's representation shall pass orders on merits and in accordance with law, within a period of four (4) weeks from the date of receipt of the representation. The Board while passing order's shall take into consideration, the petitioner's unblemished service of 34 years.

16.The writ petition is dismissed with the above direction. However, there shall be no order as to costs.

23.09.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-speaking order
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To

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Punjab National Bank,
Personnel Administration Division,
Head Office, New Delhi,

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(Reviewing Authority).

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N.MALA, J.

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PRE-DELIVERY ORDER IN
W.P.No.2427 of 2017

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