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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.01.2025

ORDERS DELIVERED ON : 12.02.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.20121 of 2009

K.Balasubramanian

... Petitioner

Vs.

1.Bank of Baroda rep.by
the Chairman & Managing Director
Central Office, Baroda Corporate Centre
'G' Block, C-26, Bandra – Kurla Complex
Bandra (East), Mumbai – 400 051.

2.Reviewing Authority
and Chairman and Managing Director
Bank of Baroda Central Office
Baroda Corporate Centre
'G' Block, C-26, Bandra – Kurla Complex
Bandra (East), Mumbai – 400 051.

3.Appellate Authority and Executive Director
Bank of Baroda, Baroda Corporate Centre
'G' Block, C-26, Bandra – Kurla Complex
Bandra (East), Mumbai – 400 051.

4.Disciplinary Authority and General Manager
Bank of Baroda, Southern Zone
90, C.P.Ramasamy Road
Alwarpet, Chennai – 600 018.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the fourth respondent bearing no.SZ:VIG:F212;35/66 dated 23.01.2008 and the impugned order of the third respondent bearing no.nil dated 28.07.2008 and quash them consequently directing the first respondent to reinstate the petitioner with all attendant benefits.

For the Petitioner : Mr.Sharath Chandran
for Ms.V.Srimathi
For the Respondents : Mr.Anand Gopalan
for M/s Agam Legal

ORDER

A.The Writ Petition:

This Writ Petition is filed challenging the impugned order of the 4th respondent dated 23.01.2008 imposing the punishment of dismissal from service and the order of the 3rd respondent dated 28.07.2008 dismissing the appeal filed by the petitioner and confirming the punishment and to consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

B.Brief Facts:



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2. The brief facts relevant to the disposal of the Writ Petition are that the petitioner herein joined the services of the 1st respondent - Bank in the year 1973 as a Clerk. Thereafter, he was elevated to the officer's cadre and was promoted to Scale - III in the year 1991. While so, he worked as Branch Manager at *Tiruvattiswaranpet Branch, Chennai*, between March 2002 and May 2005. During the said period, it is stated that he has granted about 450 housing loans and he was also granted an award for the said purpose. However, a charge memorandum was issued against the petitioner on 31.08.2006. The issuance of the charge memorandum is that there were many irregularities in respect of 127 housing loans that were granted by the petitioner as the Manager of the Branch. The allegations of misconduct are given in the article of charge, and the details concerning every loan were furnished in the statement of imputation of allegations. By a communication dated 09.10.2006, the petitioner requested perusal of certain documents as allegations were levelled about as many as 106 accounts. The petitioner was permitted to go through the documents. Thereafter, on 27.11.2006, the petitioner submitted his detailed explanation to the charges. The petitioner denied every misconduct in detail and submitted that he has taken every effort to safeguard the interests of the bank. The explanation was not



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accepted and enquiry officer was appointed. The enquiry officer after holding an enquiry and after recording oral and documentary evidence submitted his report dated 13.10.2007 holding that the charge was proved. A further show cause notice was issued on 13.10.2007 enclosing the copy of the enquiry report and an opportunity was given to the petitioner to submit his further explanation if any. The petitioner submitted his further explanation.

2.1. The disciplinary authority considered the same and found that there were several omissions and commissions on the part of the petitioner amounting to misconduct. The allegations against him were proved. The bank incurred loss even after auctioning certain assets. In view thereof, the Bank imposed the punishment of dismissal from service. Aggrieved thereby, the petitioner preferred an appeal, the 3rd respondent being an appellate authority again considered the findings of the disciplinary authority and the grounds of appeal and rejected the appeal and confirmed the punishment. Aggrieved by which, the petitioner is before this Court.

C.The Submissions:-



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3. Heard, *Mr.Sharath Chandran*, the learned counsel appearing on behalf of the petitioner and *Mr.Anand Gopalan*, learned counsel appearing on behalf of the respondents - Bank

3.1. *Mr.Sharath Chandran*, the learned counsel for the petitioner while trying to take this Court through the merits of the charges would first submit that the relevant period was a time where the banks competed to disburse more and more housing loans and targets were given to the branches and, when the petitioner sanctioned and disbursed so many loans, he was even given an award for the said purpose. Merely because some of the persons obtained loan and failed to repay the same in time, cannot be a ground for taking action against the petitioner. The statements made during the enquiry, in the disciplinary officer's order and the appellate authority's order regarding the loss, are unsustainable, as the proceedings for recovery are a continuing process. In many cases, the proceedings are still pending, and in several instances, amounts have been subsequently recovered.

3.2. The learned counsel would thereupon draw the attention of this Court to the information obtained by the petitioner under the Right to Information Act.



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By drawing the attention of this Court to the confidential communication dated 19.06.2006, he submits that the respondents themselves have noted that no adverse remarks were made against the petitioner in his past actions. Thereafter, by pointing out to the letter of the Chief Vigilance Officer and the annexure contained therein, the learned counsel would point out that originally the disciplinary authority had proposed punishment of compulsory retirement as per Regulation 'H'.

3.3. It seems that an opinion from the vigilance authority was sought for and by an order dated 18.12.2007 etc.. The vigilance authority which had over turned the said proposed punishment and had directed imposition of higher punishment by holding that by the proven charges, huge loss was caused to the Bank and that the penalty does not appear to be proportionate for the gravity of misconduct. Thereafter revised proposal was submitted on 24.12.2007 by the disciplinary authority thereby proposing to impose the punishment of dismissal from service. Thereafter, by a communication dated 12.01.2008, the vigilance authority has concurred with the punishment of dismissal from service which shall ordinarily be a disqualification for future employment. It is only thereafter,



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the order of punishment was passed.

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3.4. The petitioner was kept in dark concerning the initial proposal of the punishment of compulsory retirement as well as over turning of the same by the vigilance authority. When the disciplinary authority took into account the letter from the Chief Vigilance Officer, stating that the punishment of compulsory retirement was insufficient and that a more appropriate punishment, commensurate with the gravity of the charges, should be imposed, this material was never supplied to the petitioner. As a result, the petitioner was deprived of the opportunity to submit an explanation regarding the same. Thus, the disciplinary authority decided to rely on some material behind the back of the petitioner, the same violates the principles of natural justice.

3.5 In this regard, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Nagaraj Shivrao Karjagi Vs. Syndicate Bank and another***¹, whereby the circular issued by the Ministry of Finance, Department of Economic affairs requesting the banks to consult and abide by the advise of the Central Vigilance Commission was held to be bad in law. In

¹ (1991) 3 SCC 219



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paragraph No.16 of the said Judgment, it was specifically held that the power of the punishing authorities in departmental charges is governed by statutory regulations. It is a quasi judicial power and has to be exercised by the appropriate authority. It must be as per the judicial discretion of the disciplinary authority. They cannot act under the dictation of the Chief Vigilance Commission or the Central Government. The learned counsel more particularly relied upon paragraph Nos.16 to 19 of the said Judgment.

3.6. Thereafter, the learned counsel would place reliance on the Judgment of the Hon'ble Supreme Court of India in ***State Bank of India and Others Vs. D.C.Aggarwal and Another***² more specifically paragraph Nos.4 to 6 of the said Judgment to contend that if the confidential document forms the foundation of the punishment, it is a material obtained behind the back of the delinquent official and without his knowledge or without supplying copy to him, if the order of punishment is passed then the same would be illegal.

3.7. The learned counsel would then rely upon the Judgment of the Hon'ble Supreme Court of India in ***Oriental Bank of Commerce and Others Vs. S.S.Sheokand and Another***³ taking this Court through paragraph No.20 of the

² (1993) 1 SCC 13

³ (2014) 5 SCC 172



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said Judgment, he would submit that any material which comes into the decision making process against an employee cannot be denied to him. He would further rely upon the Judgment of this Court in ***Shagul Hameed Vs. The Chairman, Pandyan Grama Bank and Others***⁴ more specifically relying upon paragraph No.20 to contend that an external authority like Chief Vigilance Commission cannot dictate the disciplinary authority in matters of punishment. Even regarding intra office Vigilance Department, the learned Single Judge of the Andra Pradesh High Court has held in the ***Saibaba Vs. The Bank of Baroda and Ors.***⁵ once the disciplinary authority was fettered by an advise tendered by the Chief Vigilance Officer, then the punishment is unsustainable. Therefore, he would submit that the impugned order of punishment is liable to be set aside.

3.8 Thereafter, pointing out to the findings of the appellate authority in internal page 4 of its order, he would submit that the appellate authority was carried away by the facts which are mentioned therein as if police complaints have been lodged in respect of more than 35 accounts etc., which were factually incorrect. The information furnished to him under the RTI would falsify the said findings of the appellate authority. There is no material available for such factual

⁴ (2014) SCC OnLine Mad 4236

⁵ (MANU/ AP/0556/1994)



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conclusions that are recorded in the appellate authority's order. Therefore, the appellate authority's order is perverse and is based on incorrect materials and thus suffers of non application of mind.

3.9. *Per contra*, Mr.Anand Gopalan, the learned counsel appearing on behalf of the respondent – Bank would submit that firstly, the Judgments that are relied upon by the learned counsel for the petitioner would relate to the proposition of interference by an external agency such as the Central Vigilance Commission. In the instant case, it was not referred to the Central Vigilance Commission, but advise was sought by the Vigilance Officer of the Bank itself. The said Vigilance Officer who is also in the rank as that of the disciplinary authority has given his opinion on consultation and even then has not mandated or suggested any punishment and after consultation it is only the disciplinary authority who decided to impose the punishment and as such there is no violation of any principles of natural justice in the instant case.

3.10. As far as the appellate authority's findings are concerned, he would submit that while it is true that the same are not factually correct, but still the



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decision was made on several grounds and was not dependent on the said facts alone. In view thereof, he would submit that this is a case where in respect of certain loans even the advise of the panel counsel as well as the valuer has been ignored by the petitioner. Therefore, the case of the petitioner does not deserve any consideration by this Court.

D.Findings of this Court:-

4. I have considered the rival submissions made on either side and perused the material records of the case.

4.1. As far as the first contention made by the learned counsel for the petitioner is concerned, firstly it can be seen that in the Judgment of the Hon'ble Supreme Court of India in *Nagaraj Shivrao Karjagi's case* (cited supra), the Hon'ble Supreme Court held that the third party agencies such as Central Vigilance Commission or the Central Government cannot dictate terms. It is essential to quote the relevant portion in paragraph No.19 which reads as follows:-

“The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the



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misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's Judicial Review of Administrative Action, 4th edn., p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters.”

4.2. Next in the case of ***D.C.Aggarwal's case*** (cited supra) it can be seen that the Central Vigilance Commission in its advisory had disagreed with the findings of the Enquiry Officer and found that the charges 1 to 4, 8, 11 to 13 should also be held as proved. When that report was taken into consideration by the disciplinary authority, it was held that the said confidential documents formed the foundation of the conclusions reached by the disciplinary authority and therefore, the punishment was interfered.

4.3. In ***Oriental Bank of Commerce's case*** (cited supra) also on a perusal of paragraph No.20, it can be seen that when the disciplinary authority has made up his mind to impose a minor penalty, that was also indirectly communicated to the petitioner in the sense that it was informed to the High Court in the earlier set of proceedings that the Bank was considering imposition of minor penalty. Thus,



the decision making was not with the disciplinary authorities consideration alone. Secondly, it is also the case of consultation of an external agency, viz., Central Vigilance Commission. In that context, it has been held that when earlier it was informed to the High Court that the Bank was considering the imposition of minor penalty and thereafter a material in the form of the CVC report has gone into the decision making process then, the interference of the punishment was held to be proper.

4.4. Similarly, the Judgment in *Shagul Hameed's case* (cited supra) also it was an external agency to interfere in the decision-making process. However, in the instant case, there was no involvement of any external agency. The matter was not referred to the Central Vigilance Commission. Therefore, it cannot be said that there was interference by any third party or any external agency. The question of furnishing the copies of the said documents should be considered only in the context of violation of principles of natural justice. It can be seen that the very purpose of issuing a second show cause notice, after completion of the domestic enquiry is that if the findings of the Enquiry Officer is in favour of the delinquent employee, then the delinquent employee can put forth such arguments



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and submissions by way of his further representation to persuade the disciplinary authority to accept the findings that are in his favour. If the findings of the enquiry authority are against the delinquent employee, then he can put forth such arguments dissuading the disciplinary authority from agreeing with the Enquiry Officer and praying to exonerate him from the charges. He can also put forth the mitigating facts if any as to the quantum of punishment. Once the employee makes such further representation, unless there is a mandatory in rule that the third show cause notice shall also be issued on the quantum of punishment, there was no question of hearing the delinquent employee on the quantum of punishment.

4.5. After considering the further explanation of the delinquent employee in response to the show cause notice, and to ensure checks and balances, if there is an internal mechanism within the respondent Bank to consult the vigilance department, and if, in that consultative process, two authorities exchange confidential communications regarding the initial proposal for one punishment and the vigilance authority suggesting that a more stringent punishment could be imposed, and thereafter the disciplinary authority decides to impose a more



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stringent punishment, then in that case, there is no violation of the principles of natural justice, as the petitioner was not entitled to be heard on the quantum of punishment. Therefore, I hold that there is no violation of any principles of natural justice and all the Judgments which are relied upon by Mr. Sharath Chandran are on different facts and circumstances which would lead to violation of principles of natural justice.

4.6. indeed, the Judgment of the Hon'ble Andra Pradesh High Court in *Saibaba's case* (cited supra) is under similar circumstance, but on a reading of the Judgment of the Hon'ble Supreme Court of India in *Nagaraj Shivrao Karjagi's case* (cited supra) more specifically paragraph Nos.16 and 17, the Hon'ble Supreme Court has considered the directives issued by the Ministry of Finance, where under it held that the view of the Central Vigilance Commission should be strictly adhered to by the disciplinary authority and in that context, the Hon'ble Supreme Court considered that even if the Bank has made a self imposed rule to consult the Central Vigilance Commission, in every disciplinary matter, it does not make the commission's advise binding on the punishing authority. It is only in this context held that the directions of the Ministry of Finance completely



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fetters the unrestricted quasi-judicial power on the disciplinary authority. It cannot be extended that a consultation with an Officer in the same organisation in another department would also be a similar fetter, and therefore, I am unable to agree with the findings of the Andra Pradesh High Court in this regard. Therefore, I reject the first ground raised on behalf of the petitioner.

4.7. In the order passed by the appellate authority, in Page No.4 of the order, it reads thus and it is extracted hereunder:-

“In this context I observe as under:-

As regards his contention that no fraud has been detected except in one account out of 450 accounts which he had financed during his tenure, I observe that till date, out of the alleged 102 accounts, police complaint has been lodged in respect of more than 35 accounts wherein fraud has been reported with reference to take salary certificates. Impersonation was also reported in one case wherein the borrower himself has filed a police complaint against the builder in respect of the housing loan sanctioned to him. As such, the claim of Mr.Balasubramanian that no fraud has been reported except in one account is far from truth.”

4.8. On going through the entire proceedings, there was no such case of reporting fraud or lodging of police complaints concerning 35 accounts. This Court also adjourned the matter by allowing the learned counsel appearing on behalf of the Bank to explain the above considerations by the appellate authority. The learned counsel is not in a position to produce any material or support the



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said findings of the appellate authority. In view thereof, even though many other grounds have been taken into account when the appellate authority has taken into account certain facts which turned out to be non-existent and incorrect, then taking into consideration of such irrelevant/incorrect facts vitiates the order of the appellate authority and thus, the appeal of the petitioner has been dismissed without proper application of mind. In view thereof, I am of the view that the order of the 3rd respondent, being the appellate authority dated 28.07.2008 is liable to be set aside and the matter be remitted to the 3rd respondent for consideration afresh.

E.The Result:-

5. In the result, this Writ Petition is partly allowed on the following terms:

(i) The order of the 3rd respondent /appellate authority dated 28.07.2008 in the matter of appeal dated 28.02.2008 preferred by the petitioner – *Mr.K.Balasubramanian*, E.C.No.16418 is quashed;

(ii) The matter is remanded back to the appellate authority for consideration of the appeal afresh. It would be open for the petitioner to raise all



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the other contentions except the one which is answered above in this Writ

Petition before the appellate authority and the appellate authority shall consider the same on its own merits in accordance with law. The petitioner shall also be granted the opportunity of personal hearing before the disposal of the appeal;

(iii) The entire exercise shall be completed by the appellate authority within a period of eight weeks from the date of production of the web copy of this order, without waiting for the certified copy;

(iv) No costs.

12.02.2025

Neutral citation: Yes

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To

1.The Chairman & Managing Director
Bank of Baroda, Central Office, Baroda Corporate Centre
'G' Block, C-26, Bandra – Kurla Complex
Bandra (East), Mumbai – 400 051.

2.Reviewing Authority
and Chairman and Managing Director
Bank of Baroda Central Office
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3.Appellate Authority and Executive Director

Bank of Baroda, Baroda Corporate Centre

'G' Block, C-26, Bandra – Kurla Complex

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4.Disciplinary Authority and General Manager

Bank of Baroda, Southern Zone

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D.BHARATHA CHAKRAVARTHY, J.,

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