



W.P.No.13701 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.13701 of 2018

Tomy G.Poovattil

... Petitioner

Vs.

1.Indian Bank,
Rep. by its Managing Director,
and CEO/Appellate Authority,
Corporate Office,
No.254-260, Avvai Shanmugam Salai,
Royapettah, Chennai 600 014.

2.The Executive Director / Disciplinary Authority,
Indian Bank,
Corporate Office,
No.254-260, Avvai Shanmugam Salai,
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 from the first respondent and quash the order of the first respondent dated 13.12.2017 and the order of the second respondent dated 19.03.2016 as illegal, arbitrary and contrary to law and consequently, direct the respondents to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.



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For Petitioner : Mr.Balan Haridas

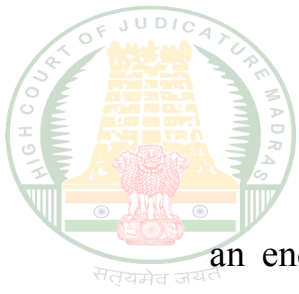
For Respondents : Mrs.Rita Chandrasekaran for
M/s.Aiyar & Dolia

ORDER

This Writ Petition has been filed to call for the records from the first respondent and quash the order of the first respondent dated 13.12.2017 and the order of the second respondent dated 19.03.2016 as illegal, arbitrary and contrary to law and consequently, direct the respondents to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

2. Heard Mr.Balan Haridas, learned counsel for the petitioner, Mrs.Rita Chandrasekaran, learned Standing Counsel for the respondents and perused the materials available on record.

3. The petitioner was working as a Deputy General Manager in the respondent Bank at Bangalore and thereafter at Calcutta. During that time, the petitioner was issued with the charge memo dated 12.05.2015. The petitioner has given his explanation, but that was not accepted and



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an enquiry has been conducted. At the conclusion of the enquiry, the petitioner was found guilty for the charges 2 to 6 and charge No.1(a) to 1(e), charge No.1(g) to 1(i) and charge No.1(f) as partially proved. The second respondent disciplinary authority had accepted the report of the Enquiry Officer and imposed the punishment of dismissal by an order dated 19.03.2016 and that has been confirmed by the first respondent by an order dated 13.12.2017.

3.1. As per the charge memo, the petitioner has been charged with negligence, failure to comply the terms and conditions for disbursement of loans and diverted the loan funds for some other purpose other than for which it has been sanctioned, failure to follow and monitor the loan accounts, failure to report frequent OCC accounts to the higher authorities, misusing the official position of the petitioner as a Branch Manager and accommodated borrowers by abusing his powers. The above incidents were said to have been taken place between 09.06.2012 to 03.06.2014.

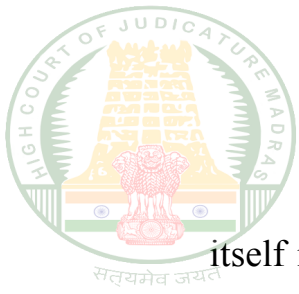


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4. The learned counsel for the petitioner submitted that the enquiry has not been conducted in a proper manner. The petitioner has not been given with fair opportunity to make his submissions before the disciplinary authority had accepted the enquiry report. It is further submitted that the loan sanction process is a three tier process and the petitioner has sanctioned loan only on the basis of the past performance of the borrower and after ascertaining his genuineness, he has sanctioned further loan. After the borrower fails to repay the loan, he has taken all possible steps in accordance with law for declaring it as a non-performing assets under SARFAESI Act.

4.1. The petitioner has no previous allegations of misconduct or any other lapses found to have been proved and these charges have been given against the petitioner with some malicious intention, in view of the misunderstanding between himself and his superior officer. The charges have been based upon the investigation report submitted by the Manager of the Vigilance Department. The investigation report stating that the unit



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itself is not in existence is totally wrong and the petitioner had produced the documents to show the existence of the unit and that was not properly appreciated. The investigation report is contrary to the records available.

5. The learned Standing Counsel for the respondents submitted that the petitioner has been given with an opportunity of hearing at each and every stage of the proceedings and it is evident from his own submissions. The investigation authority has made a local inspection and then only filed a report stating that there is no unit in the name of M/s.Health Foods ever existed in the given address. It is further found that the above address is the residential address of D.Suresh, the Managing Partner of M/s.Health Foods. It is further submitted that the Court under Article 226 jurisdiction cannot re-appreciate the evidence produced before the enquiry authority and the disciplinary authority who had given reasons as to how the charges are proved and accepted as proved. The appellate authority also applied his mind and passed a speaking order stating that the borrower has not submitted the details and the records for the amount of rent paid and there was no claim from the



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lessor. On the above discussion, he had also confirmed that no unit existed in the name of M/s.Health Foods.

6. The main thrust of the argument of the learned counsel for the petitioner is that the enquiry authority has relied on the investigation report wherein it is observed that the unit for which the loan has been sanctioned was not in existence. According to the petitioner, the unit was very much in existence and he has produced necessary documents to show the existence of the unit and the documents produced by the petitioner in this regard were not considered by the enquiry authority, disciplinary authority and the appellate authority.

7. The petitioner had produced the statement of stock summary submitted by M/s.Health Foods and pre-released audit report along with the inspection report dated 09.07.2012. It is further submitted that the loan of heavy nature should be sanctioned by the Zonal Level Credit Committee and the sanction to the loan cannot be done by the petitioner alone individually. So far as the submission with regard to denial of fair



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opportunity is concerned, it is only found that the petitioner had been given with the opportunity to offer his explanation and to participate in the enquiry and thereafter, he had also submitted his comments on the enquiry report. All these things would show that opportunity has been given to the petitioner at each and every stage and in fact, the petitioner had offered explanation containing several pages.

8. The learned counsel for the petitioner submitted that for one of the documents shown as Ex.D13, the M.W.2 had answered that he could not comment as he did not know the genuineness of it. However, one question and answer during the cross-examination cannot be viewed in an isolated manner and the whole of the evidence of the witnesses have to be appreciated. The very same witness have stated in his subsequent answers that he had given reasons for arriving at the conclusion that the charges against the petitioner were proved.

9. It is not the case of the petitioner that the enquiry report or the orders passed by the disciplinary authority and the appellate authority is a



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cryptic order without stating any reasons. The powers of this Court in interfering with the orders of the disciplinary authority and the appellate authority under the power of judicial review is very limited. The judicial review cannot be considered as an appeal and the High Court cannot assume the powers of an appellate authority to re-appreciate the evidence.

10. The review power is for the limited purpose of finding out whether the finding of the disciplinary and appellate authority are perverse and without any evidence and the punishment imposed was shockingly disproportionate. The review is only to ensure the fairness in the treatment and not to ensure the fairness on the conclusion unless there is some fundamental brevity or total perversity. So long as there are some evidence to support the conclusion arrived by the Department authority, the same cannot be disrupted during the process of judicial review. Even when there is a possibility of arriving at an another finding, that cannot be a reason to substitute the finding of the disciplinary authority.



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11. In this regard, it is appropriate to refer the judgment of the Division Bench of this Court in the case of ***G.S.Subbaraman Vs. The Indian Bank and Another (W.A.No.602 of 2021 dated 09.07.2024)***. In the said judgment, the consolidated principles emerged and the various judgments of the Hon'ble Supreme Court in the matter of disciplinary proceedings have been discussed under Paragraph No.10 and the same is extracted hereunder:

*"10. Before we go into the merits of the matter, it is appropriate to delve into the authority of the constitutional Court, as to what extent the power of judicial review can be exercised. It is pertinent to mention here that, the function disclosed by the Constitutional Court with a power of judicial review is a most potent weapon and integral part of our Constitutional system. However, what extent such judicial review could be exercised in the Administrative and disciplinary matters to be seen. In this regard, it is relevant to refer the following judgments of the Hon'ble Supreme Court in (i) **B.C.Chaturvedi Vs. Union of India** reported in (1995) 6 SCC 749, (ii) **Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava** reported in (2021) 2 SCC 612; (iii) **The Indian Oil Corporation & Ors., Vs. Ajit Kumar***



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Singh & Anr., reported in 2023 LiveLaw (SC) 478. Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."

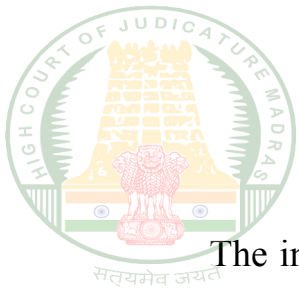
12. The learned counsel for the petitioner submitted that the above principles have to be taken only when the delinquent has admitted his guilt. It is neither the argument of the petitioner nor the argument of the respondents that the petitioner had admitted his guilt. The allegation



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against the officer are very serious in nature and the amount sanctioned as a loan was also very exorbitant. It is alleged that the petitioner had flouted the rules and favoured the borrower even without verifying the genuineness of the existence of the business unit as such.

13. The contention of the learned counsel for the petitioner is that the documentary evidence which are required to be proved ought to have been proved only by examining the witnesses and they cannot be marked as documents in their absence. The Enquiry Officer has arrived at a conclusion based on the documents which have been produced by the witnesses also. It is not the case where the Enquiry Officer had accepted only the exhibits without granting any opportunity to the petitioner to cross examine the witnesses who have spoken about the documents. In fact, in the final orders passed by the disciplinary authority he has specifically stated that during the inspection, the officials visited the spot and there were only commercial shops and it was revealed that there was no such unit in the name of M/s.Health Foods. It is further stated that the residential address of D.Suresh is shown as the unit of M/s.Health Foods.



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The inspection team has found that the family members of D.Suresh has been living there for several years and there was no unit.

14. Even though the learned counsel for the petitioner has stated that the hefty loans are usually sanctioned by the Zonal Level Credit Committee and due verifications are done before sanctioning the loan, the petitioner's role in making recommendations for sanctioning the loan cannot be dispensed. He only can make field visit and give an appraisal to the superior authorities. The allegations against the petitioner are serious in nature and the petitioner has been given with the full opportunity to participate in the enquiry. The petitioner has to make such proposals or recommendations for sanctioning loan at his level only after verifying the guidelines for recommending the sanction of the loan. As such, the evidence available on record are voluminous and speaking and it is not the case where there is no evidence and the Court wish to apply its own facts.

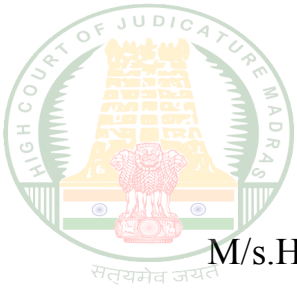


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15. The learned counsel for the petitioner submitted that the punishment imposed is disproportionate as the petitioner did not have any previous lapses noticed on his part.

16. The learned Standing Counsel for the respondents submitted that the petitioner has misused his power by thinking that he would retire shortly. All these things have been done at the fag end of his career and that cannot be viewed lightly. The petitioner cannot say that he is not involved in disbursing the loan and it is only a team effort. The base level report has been originated with the inspection made by the petitioner and his team and that cannot be ignored.

17. As there are materials available on record for the discussion to prove the fact that the unit itself was not in existence, the petitioner cannot claim that the evidence has not been appreciated in a proper manner. In fact, the appellate authority has made a categorical finding that the rent amount has not been paid by the borrower so far. So there are more than one witnesses have stated about the non-existence of



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M/s.Health Foods in the prescribed address. For the reasons best known to the respondents, they have not initiated any criminal action against the petitioner for having suppressed the important transactions.

18. As the job of this Court is not to re-appreciate the evidence and give different interpretation to the evidence which have been already subjected to the appreciation, this Court needs to travel very carefully. The Bank Officer is expected to exercise high standards of honesty and integrity as he is handling the money of the public. The report of the Enquiry Officer and the orders passed by the disciplinary and appellate authorities would speak about the merits of the matter in detail and they have not chosen to pass any cryptic orders. All these aspects have been considered by the respondents in order to arrive at a conclusion that the charges against the petitioner were proved. If a staff working in the Bank creates insecurity to the Bank, it cannot be ignored as a deviance or treated less seriously.

19. The petitioner cannot claim parity with some of the persons whose cases are identical to the petitioner for the very reason that he had



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been given with fair opportunity at each stage of the proceedings and the matter is decided only on merits. As the petitioner was not able to make out any acceptable ground, I do not find any reasons for interference.

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

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

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and CEO/Appellate Authority,
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Corporate Office,
No.254-260, Avvai Shanmugam Salai,
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