

(2004) 04 MAD CK 0094
In the Madras High Court
Case No : W.P.No.13098 of 1998

A. Lawrance

APPELLANT

Vs

The Deputy General Manager/Zonal Manager Reviewing
Authority Central Bank of India and Others

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 04 MAD CK 0094

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : K.Alagiriswamy for R. Kannan, for the Appellant; M.S. Kandaswami, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner was appointed as Small Scale Industries Officer in the B Grade on 25.02.1970 in the respondent Bank. After a period of six years of service, he was selected and posted as "C" Class Branch Manager on 16.06.1976. While he was working as "C" Class Branch Manager at Aloor Branch in Kanyakumari District, a charge sheet dated 25.1.1982 was issued. He was also issued with another charge sheet dated 14.5.1982, followed by the 3rd charge sheet dated 11.1.1983. For the disposal of the Writ Petition, the nature of charges are necessarily to be detailed. Following are the nature of the charges:

Charge sheet dated 25.1.1982:

- a) Abused official position.
- b) Exposed Bank to risk by sanctioning Loans/advances without adhering to lending norms.
- c) Allowed advances far in excess of his powers.
- d) Advance allowed when credit proposals were still under consideration of

divisional office (DO)

- e) Advance to members of same family for same or similar purposes.
- f) Advance to some party for more or less the same /different purpose on different dates.
- g) In cash credit A/c. no stock statements were obtained, not detailed or proper.
- h) Legal report of title deeds not obtained Where obtained no R.O. approval. Waived Obtaining of legal report without permission of higher authorities.
- i) End use of loan not ensured in some accounts,
- j) No display of Name Boards.
- k) In many accounts, no insurance

Charge sheet dated 14.5.1982

- a) Invoices, receipts, R.C. book duplicate keys were not obtained in respect of loans for purchase of vehicles;
- b) Loan amount not paid directly to suppliers Genuineness of receipt not verified;
- c) Margin not maintained in jewels loans, loans exceeded market value of jewels. Individuals loans ceiling also exceeded. Loans given on different dates to some party exceeding individual ceiling limit;
- d) No RC book in respect of Boat advances;
- e) Accommodation loans were allowed to adjust Previous loans.

Charge sheet dated 11.1.1983:

Loans were allowed by charge sheeted Officer

To the borrowers for purchasing Second hand 7 lorries already owned by them.

2. An enquiry was ordered in respect of all the charges and the Enquiry Officer submitted his report on 19.6.1985 holding that 11 out of 14 charges were proved. Accepting the said report, by order dated 24.7.1985, the Disciplinary Authority/Regional Manager of the respondent Bank, imposed the punishment of reduction to lower stage in time scale by two stages.

3. The petitioner preferred an appeal to the appellate Authority/Assistant General Manager. By order dated 22.1.1986, the appellate Authority confirmed the order of the Disciplinary Authority.

4. The Deputy General Manager/Zonal Manager in the capacity of Reviewing Authority, issued a show cause notice dated 7.8.1986, directing the petitioner to show cause against the proposal to impose a penalty of dismissal for Charge No.1 of Charge sheet dated 25.1.1982 and other punishments for other charges. The said show cause notice was issued, exercising the powers under Regulation

4(h) of the Central Bank of India Officer Employee's (Discipline and Appeal) Regulations, 1976. The petitioner was asked to submit his explanation within 15 days from the date of receipt of the said show cause notice. In the said show cause notice, the Reviewing Authority has also charged that the petitioner had violated the norms "with an intention to extend undue favour to the party". The petitioner was served with the show cause notice on 18.8.1986. The petitioner sought for extension of time in his letter dated 21.8.1986. The Reviewing Authority, however rejected the said request by order dated 4.9.1986 and imposed the punishment of dismissal. To impose the said punishment, the Reviewing Authority came to the conclusion that the petitioner abused his power and also acted "with mala fide intention to extend undue favour to the parties". The Reviewing Authority also found that the petitioner " had accommodated the party in an irregular manner". The Reviewing Authority also found that " It can very well be inferred that no prudent Manager will grant such reckless advance without any consideration"

5. Questioning the order of the Reviewing Authority, the petitioner filed W.P.No.10907/1986. This Court by order dated 11.7.1994 allowed the said Writ Petition. The learned single Judge in fact found that the Reviewing Authority in order to enhance the punishment, had taken into consideration of the charge that the petitioner had received consideration and had shown undue favour to the customers when the same was not the charges issued to the petitioner either on 25.1.1982 or on 14.5.1982 or on 11.1.1983. The learned Judge found that it is a new charge and therefore, the Reviewing Authority was not competent to enhance the punishment on the altered charge. Accordingly, set aside the order of dismissal. The respondent Bank questioning the order of the learned single Judge filed appeal in W.A. No.1446/1994. A Division Bench by order dated 12.8.1997 dismissed the appeal. For dismissal, the Division Bench while agreeing with the finding of the learned single Judge as to the altered charge and the enhancement of punishment was only on the altered charge, has also found that the petitioner though asked for time to submit his explanation, he was not granted opportunity and therefore, the order of the Reviewing Authority was in violation of principles of natural justice. Not satisfied with the same, the respondent Bank preferred SLP before the Supreme Court in SLP No.27796/1997. After granting leave the SLP was heard in Civil Appeal No.73 of 1998. The said Civil Appeal was disposed by the Supreme Court on 12.1.1998. As much reliance is placed on either side, the said order is reproduced as under:

Special Leave granted

Heard counsel for the parties. It appears to us when the Reviewing Authority issued a show cause notice proposing enhancement of punishment on the respondent No.1, it was only desirable to give delinquent officer a reasonable opportunity to file his reply by allowing time as prayed for since such opportunity was not given there was justification on the part of the High Court to set aside the order passed by the Reviewing Authority. But in facts of this case, it appears

to us that the High Court should have also given a direction to the Reviewing Authority to reconsider the proceedings after giving the respondent delinquent officer an opportunity of being heard. We, therefore, modify the order of the High Court by directing that the respondent will submit his reply to the show cause notice within three weeks from today. The Reviewing Authority thereafter will consider the same and pass reasoned order. The appeal is disposed of accordingly. No cost."

6. Pursuant to the order of the Supreme Court, the Reviewing Authority afforded an opportunity to the petitioner to show cause as to the very same charges, which were communicated to the petitioner on 7.8.1986. Though the petitioner submitted his explanation including questioning the power of the Reviewing Authority to alter the charges, the Reviewing Authority found that there was no alteration of charges and accordingly, found the petitioner guilty of all the charges and imposed the penalty of reduction in rank in 19 stages in the time scale of basic pay i.e. basic pay of Rs.1,800/- to Rs.740/- Further the Reviewing Authority held that the petitioner will not earn any increment during the period of such reduction till his retirement. Questioning the above order, the petitioner has filed the present Writ Petition.

7. Mr. K. Alagiriswamy, learned Senior Counsel appearing for the petitioner would submit that the order of the Division Bench of this Court in holding that the Reviewing Authority did not have power to enhance the punishment on the altered charge, was not interfered by the Supreme Court except in remanding the matter on the ground that the petitioner was not given an opportunity of being heard before passing the order by the Reviewing Authority. In the absence of interference on the said finding by the Supreme Court, it is not now open to the Reviewing Authority to come to a different conclusion viz., that the charges were not altered and such finding is contrary to the findings of this Court. Hence, the impugned order is unsustainable.

8. Mr. M.S. Kandaswamy, learned counsel appearing for the respondent Bank would on the other hand contend that when the order of the Supreme Court directed the Reviewing Authority to reconsider the matter after affording opportunity to the petitioner for the show cause notice, it must be held that the Reviewing Authority was entitled to consider all the questions without reference to the findings of the Division Bench of this Court. Only in that view of the matter, the Reviewing Authority exercised the power to hold that there was no alteration of charge while Reviewing Authority issued the show cause notice dated 7.8.1986. Hence, the learned counsel submitted that no interference is called to the order of the Reviewing Authority.

9. I have given due consideration to the above submissions.

10. Mr. K. Alarigiswamy, learned Senior Counsel would contend that the Supreme Court remanded the matter to the Reviewing Authority only taking into consideration of the fact that the petitioner was not given opportunity before the

enhanced punishment was imposed. The Supreme Court did not set aside the order of the Division Bench of this Court but only modified the said order insofar as the failure on the part of the Reviewing Authority to grant opportunity to the petitioner. When the Apex Court did not interfere with the findings of the Division Bench in holding that the Reviewing Authority had altered charges and the same has become final and in such event, the finding of the Reviewing Authority after remand that there was no alteration of charge is totally contrary to the orders of the Division Bench. The order of the Supreme Court has been extracted in the earlier portion of this order. Their Lordships have taken into consideration of the fact that "when the Reviewing Authority issued a show cause notice proposing the enhancement of punishment on the Respondent No.1, it was only desirable to give delinquent officer a reasonable opportunity to file his reply by allowing time as prayed for since such opportunity was not given there was justification on the part of the High Court to set aside the order passed by the Reviewing Authority". However, considering the fact that having found that the petitioner was not given opportunity before the order was passed by the Reviewing Authority, Their Lordships observed that "the High Court should have also given a direction to the Reviewing Authority to reconsider the proceedings after giving the respondent delinquent officer an opportunity of being heard". In that view of the matter, Their Lordships only modified the order of the High Court by directing the petitioner to submit his reply to the show cause notice and with further direction to the Reviewing Authority to consider the same and pass reasoned order". The finding of the Division Bench as to the show cause notice dated 7.8.1986 is not disturbed by the Apex Court. By the said finding, the Division Bench of this Court has held that by the said show cause notice the Reviewing Authority had altered the charges warranting major penalty of dismissal. In the absence of any interference of the said finding by the Apex Court, it must be held that the Reviewing Authority cannot go beyond the said finding while reconsidering the matter after remand. As necessary implication and also by fact that the Supreme Court has specifically observed that the Reviewing Authority issued show cause notice proposing the enhancement of punishment, reconsideration of the Reviewing Authority even after enhancement of punishment, must be only on the basis of the initial charge sheets and not on the basis of the charge sheet dated 7.8.1986.

11. In this context, the findings of the Division Bench of this Court as to the show cause notice dated 7.8.1986 need reference. This Court on finding that the Reviewing Authority issued the show cause notice not only calling the petitioner to explain as to the proposed enhancement of punishment on the basis of the three charges issued initially but also added a new charge viz., that he had violated the norms with an intention to extend undue favour to the party. In view of the above categorical finding, can it lie in the mouth of the Reviewing Authority to contend that there was no alteration of charges. In this connect it is also relevant to point out the finding of this Court as to the observation of the Reviewing Authority while passing the order of enhancement of punishment of

dismissal. This Court has specifically found that the Reviewing Authority came to the conclusion that the petitioner abused his power and also acted "with mala fide intention to extend undue favour to the parties", the petitioner had accommodated the party in an irregular manner", and that it can very well be inferred that no prudent Manager will grant such reckless advance without any consideration". By the impugned order, the Reviewing Authority has also endorsed the abovesaid findings of the erstwhile Reviewing Authority while inflicting the punishment sought to clarify that it would not amount to altering the charges but it would amount to give additional reasons for sustaining the original charges. This finding of the Reviewing Authority in the impugned order is totally unsustainable as the issue as to the alteration of charges has already concluded by the order of this Court and the Reviewing Authority has no power to reconsider the same except to consider the enhancement of punishment only on the basis of original charges.

12. The nature of charges contained in Charge Sheets dated 25.1.1982, 14.5.1982 and 11.1.1983 was already extracted in the earlier portion of this order. The petitioner was inflicted with the punishment of reduction in lower stage in the time of scale of pay by two stages in respect of Charge No.1 of charge sheet dated 25.1.1982. In respect of other three charges the petitioner was inflicted with the punishment of censure. For the two charges contained in Charge sheet dated 14.5.1982 the petitioner was inflicted with the punishment of censure only. In respect of the only charge in Charge sheet dated 11.1.1983, the petitioner was inflicted with the punishment of reduction to a lower stage in the time scale of pay by one stage. However, it was ordered that the consolidated punishment of reduction to a lower stage in time scale of pay by two stages. The above punishment was confirmed by the appellate Authority. The Reviewing Authority on the basis of the show cause notice dated 7.8.1986 imposed the punishment of dismissal which shall be a disqualification for future employment for Charge No.1 of charge sheet dated 25.1.1982. For the 2nd charge he was imposed with reduction by four stages in the time scale of pay and for each 3rd and 4th charge he was imposed with the punishment of reduction by two stages in the time scale of pay. For charge No.3 of charge sheet dated 14.5.1982, the petitioner was imposed with the punishment of reduction by two stages in the time scale of pay and for Charge No.3 of charge sheet dated 14.5.1982, the petitioner was imposed with the punishment of dismissal which shall be a disqualification for future employment. The punishment of dismissal was imposed on the charge No.1 of charge sheet dated 25.1.1982 viz., abused official position and Charge No.3 of charge sheet dated 14.5.1982, viz., margin not maintained in jewels loans, loans exceeded market value of jewels. Individual loans ceiling also exceeded. Loans given on different dates to some party exceeding individual ceiling limit.

13. In this context, it is useful to refer Regulation 18 relating to the power of the Reviewing Authority. Notwithstanding anything contained in these Regulations, the Reviewing Authority may call for the record of the case within six months of

the date of the final order and after reviewing the case pass such orders thereon as it may deem fit" Provided that

(i) If any enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in clauses (e) (f),(g) or (h) of Regulation 4 and an enquiry as provided under Regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Regulation 6 and thereafter consider the record of enquiry and pass such orders as it may deem proper:

(ii) If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Regulation 6, the Reviewing Authority shall give show cause notice to the Officer Employee as to why the enhanced penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the Officer Employee"

14. In terms of the Regulation No. 18, the Reviewing Authority is entitled to call for the records within a period six months from the date of final order and is entitled to review and pass orders. In terms of first proviso to the said Section, the Reviewing Authority is of the opinion that the punishment should be enhanced and such punishment is a major penalty, as specified in Clauses (e),(f), (g),or (h) of Regulation 4, he shall direct an enquiry to be held in accordance with the provisions of Regulation 6 and thereafter considering the report of the Enquiry Officer, pass orders. When the regulations are specific contemplating a further enquiry in the event the Reviewing Authority proposes to inflict the enhanced punishment of major penalty, imposition of major penalty without there being any further enquiry would be contrary to the Clause I of Regulation 18. As already pointed out for Charge No.1 of charge sheet dated 25.1.1982 and Charge No.3 of charge sheet dated 14.5.1982, the petitioner was initially inflicted with minor penalty which is now sought to be enhanced to major penalty of dismissal. In that event the Reviewing Authority ought to have directed fresh enquiry conducted on those charges before inflicting major penalty of dismissal.

15. In terms of Second Proviso, in the event, the Reviewing Authority decides to enhance the punishment in case enquiry was already held, he shall give show cause notice to the Officer Employee as to the enhancement of penalty. A plain reading of the above Regulation shows that in case where an enquiry was held, the Reviewing Authority is only entitled to issue a show cause notice to the Officer Employee as to the enhancement of penalty, except such power, there is no power under the said Regulation for the Reviewing Authority to alter the charges. Even when charges were issued to an Officer Employee and in the event, the Reviewing Authority found that no enquiry was held on such charge or charges, he can only direct the enquiry to be held again and after considering the report of the Enquiry as well as the records he can pass orders. In view of the above Regulation, there is no scope for the Reviewing Authority to alter the charge much less to enhance the punishment on the basis of the altered charges.

In view of the above, I am of the view that the petitioner has to succeed on both the grounds that the Reviewing Authority has exceeded his jurisdiction in considering the alteration of charges as well as imposing enhancement of major penalty of dismissal without there being any enquiry.

16. Accordingly, the petitioner is entitled to succeed in the Writ Petition. The Writ Petition is allowed and the impugned order is set aside. No costs.