
(2012) 04 BOM CK 0127
In the Bombay High Court
Case No : Writ Petition No. 2511 of 1995

Adinath Jadhav

APPELLANT

Vs

Chief General Manager (Appointing Authority) State Bank of India, New Administrative Building, Madam Cama Road, Bombay-400001, General Manager (Operations) (Disciplinary Authority), S.B.I. Disciplinary Proceeding Department, Bombay L.H.O., Bombay-400001 and Dy. Managing Director (Personnel) State Bank of India, Madam Cama Road, Backbay Reclamation, Bombay-400001

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 32(4), 50(3)

Citation : (2012) 5 ALLMR 108 : (2013) 1 BomCR 414 : (2012) 134 FLR 138 : (2012) LLR 929

Hon'ble Judges : P.B. Varale, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.A. Kalbande, for the Appellant; R.M. Bhangde, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner has questioned the order of punishment dated 13.09.1993 inflicting upon him the penalty of removal from services after departmental inquiry, and the Appellate order dated 04.05.1994 passed by the Deputy Managing Director (Personnel), as Appellate Authority, maintaining it. The petitioner was an officer working in MMGS-II (i.e. Middle Management Grade Scale-II) with the respondent State Bank of India, which is one of the Scheduled Bank. Nature of his work shows that he was holding post of confidence. Service of charge-sheet and conduct of departmental inquiry, or then order passed by the Disciplinary Authority and Appellate Authority are not in dispute. Shri Kalbande, learned Counsel appearing for the petitioner has assailed the

punishment of removal from service on the ground that vital documents demanded by the petitioner during the pendency of the departmental enquiry were not served/supplied to him, the findings recorded by the enquiry officer are perverse and though the enquiry officer did not find that all charges were established, the disciplinary authority without following the procedure prescribed, has held that all charges are established. He contends that Rule 50[3] of the State Bank of India (Supervising, Staff) Service Rules, expressly expect the disciplinary authority to record its reasons for differing with the findings of the enquiry officer and to extend an opportunity in this respect. Last ground raised by him was absence of notice before imposing punishment and its quantum.

2. While elaborating these grounds, the learned Counsel for petitioner has taken us through the charge-sheet and also through the enquiry report to show how the receipts received by borrower from contractors for completing digging work, were relevant and it's non production has thus affected the findings recorded by the enquiry officer. He contends that in absence of those receipts, petitioner could not effectively cross examine the prosecution witnesses or defend himself. He further states that there was twice change of the enquiry officer and last change brought in one Guru Rao in that capacity. The earlier officer Shri Naigaonkar, was changed on the ground of alleged infirmities in conduct of the departmental enquiry. Shri Guru Rao, after assuming the charge, examined Shri S.S. Lasurkar, as additional witness, but then he was shown as defence witness. Because of this mischief, petitioner could not cross examine said witness - Lasurkar. He has also taken us through the comments handed over by petitioner after receipt of the enquiry report, to show that how finding on each charge runs contrary to either the logic or then the material available on record.

3. He has invited attention to the enquiry report to show that is found to be not substantiated by the enquiry officer. However, the disciplinary authority has proceeded as if that charge is also established. This has been done without extending to petitioner an opportunity, as contemplated by Rule 50[3] of the above Rules, and hence the application of mind by the disciplinary authority is bad. Lastly he has relied upon the judgment reported at AIR 1991 SC 471 (Union of India. vrs. Mohd. Ramzan), to state that as petitioner was not given second show cause notice and an opportunity about quantum of punishment to be inflicted, the enquiry is vitiated. To point out the course of conduct open to the disciplinary authority when it disagrees with the findings of the enquiry officer, he has taken us through the judgment reported at Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . He has also relied upon the judgment reported at AIR 1995 SC 2155 (Ratanlal Sharma vrs. Managing Committee, Dr. Hari Ram Higher Secondary School and others) to urge that though some contentions purely on law were not raised before the appellate authority, still the same can be raised before this Court for the first time. The appellate order is also urged to be erroneous, as that authority has not considered all grounds raised by the petitioner to assail the findings of disciplinary authority. The judgment of Hon''ble Apex Court reported at Narinder Mohan Arya Vs. United India Insurance Co. Ltd.

and Others, is relied upon for this purpose. At the end the learned counsel states that had petitioner continued in service he would have reached the age of superannuation in 2002.

4. Shri Bhangde, learned Counsel appearing for respondents has taken us through the report of Inquiry Officer and the order of Disciplinary Authority to urge that the Disciplinary Authority has not in any way recorded a finding, contrary to findings of Inquiry Officer. According to him, it is only a use of different words and slight change in approach, which has created confusion. He points out the treatment given to the issue of misconduct by Inquiry Officer while concluding his report and in that light the consideration by Disciplinary Authority. He further states that there is only one charge in the charge-sheet and all other components given therein are sub-heads or part of that charge.

5. In so far as supply of documents is concerned, he again relies upon charges as leveled and findings as reached, to show that the receipts given by contractor to borrowers were not relevant at all and hence its alleged non supply or non production, has not affected inquiry in any way.

6. In relation to ground no.3 of the charge about obtaining excess disbursement, he points out only explanation is of calculation error, which has not been substantiated. He further points out that ground IV about non utilization of leave fare concession clearly shows that petitioner did not produce necessary receipts and therefore, he had no defence. He further contended that if the petitioner wanted to examine, he could have examined one of the borrower by name Shri Hage his witness. He relies upon provisions of above mentioned Rules to demonstrate that there is no provision for issuing any notice on quantum of punishment. He has also contended that in past petitioner was punished by withholding of two increments. He therefore, prays for dismissal of petition.

7. Perusal of charge-sheet shows that it is divided into two columns. In left column under the head charges, without giving any serial no. the misconduct falling under Rule 32 (4) of the Service Rules (supra) has been pointed out. On right hand side its details are given under the head grounds on which the charges based. Those grounds are having serial no. 1 where under 3 distinct events are mentioned as A, B, C. Thereafter there is ground (I) where again there are two heads under clause (a), (b); then ground (II) where there are 3 heads i.e. (a) to (c); then ground (III) where there are 8 heads (a) to (h). Thereafter there are 3 more distinct heads mentioned at Sr. No.2, 3 and 4. This arrangement therefore, shows that various event and same type of misconduct leading to formation of charge are described separately as grounds.

8. The report of Inquiry Officer shows separate consideration, ground wise in his respect. Ground 1 (A) is found not proved. The other grounds are considered in paragraph 7 onwards to find out whether each component is proved. Ground 1 (B), is held to be proved in paragraph 8. The Inquiry Officer deals with ground 1 (C) and his conclusions as recorded in paragraph 9.4 shows that both it's

component are proved. In paragraph 10 he has dealt with ground no.2 and held that ground no.2 is not proved. In paragraph 11 he has dealt with ground no.3 and held it as proved. In paragraph 12 he has dealt with ground no.4 and found it proved. At the end, he has recorded his findings by dividing charge into four components. These four components mentioned by him are not exactly the same as are given in charge-sheet. It is this report which has been looked into by the Disciplinary Authority.

9. The Disciplinary Authority has given its comment and those comments are as under:

The inquiring Authority has held the charge as proved to the extent that the charged officer failed to discharge his duties with devotion and diligence. However, I deserve that although the allegation regarding acceptance of illegal gratification has not been found to have been proved, the allegations mis-utilisation of LPC facility and disbursement of consumer loan to himself in excess of the sanctioned amount, for personal gains proved at the enquiry, certainly reflects on honesty and integrity of the charged officer. I therefore, held the charge as a whole as proved.

10. The Disciplinary Authority expressly mentions the findings of Inquiry Officer that the allegations regarding acceptance of illegal gratification have not been proved. It has referred to other heads on which charge was based and then concluded that charge, as a whole has been proved. This paragraph does not show that the Disciplinary Authority has held that charge of accepting illegal gratification is also established. On the contrary it only mentions that charge as given in column no.1 of charge-sheet has been wholly established due to its objections on honesty and integrity of petitioner.

11. The provision of Rule 50(3) of the Service Rules as also law, as explained by Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, cannot be debated. However, here as the Disciplinary Authority has not held that the charge of illegal gratification has been proved, we do not find said law relevant.

12. The judgment in case of Union of India and others Vs. Mohd. Ramzan Khan, deals with amendment of Article 311 of Constitution of India. The said judgment is also considered by Constitutional Bench judgment of Hon''ble Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The Hon''ble Apex Court has explained that where departmental inquiry is conducted by Inquiry Officer and not by Disciplinary Authority and the Disciplinary Authority is required to act upon report submitted by such Inquiry Officer, the service of report prepared by Inquiry Officer on delinquent - employee with opportunity to such delinquent to have his say on such findings constitutes an integral part of principles of natural justice. Hon''ble Apex Court has also laid down that even if there is no express provision in service rules or law, as it is a requirement of natural justice, the employer has to follow this procedure. Here that procedure has been followed and petitioner was given copy of inquiry report and he has

also offered his comment upon said report. Thereafter the Disciplinary Authority has passed order of punishment after going through those comments. The law as laid down by Hon''ble Apex Court does not contemplate an opportunity on quantum of punishment. The service rules do not prescribed any such opportunity. Hence, contention of petitioner on these lines is misconceived.

13. Though both the sides have argued at length about perversity of necessary to go into those details in writ petition. The petitioner has made a grievance that third Inquiry Officer Guru Rao has examined Shri S.S. Lasurkar as a witness for defence, though in fact he was a witness for prosecution. It was open to petitioner to challenge this procedure before Shri Guru Rao and if he wanted to cross-examine said witness Shri Lasurkar, he could have moved appropriate application even for that purpose. It is to be noted that Shri Lasurkar, was mentioned as defence witness by present petitioner. In this situation though Shri Lasurkar has not been in fact examined by present petitioner as his witness, unless and until petitioner shows resultant prejudice, that fact itself is not sufficient to vitiate the departmental inquiry. The judgment of Hon''ble Apex Court reported in State Bank of Patiala and others Vs. S.K. Sharma, clinches the controversy in this respect.

14. The arguments on perversity if accepted, may at the most show that some events of charge (some ground of charges) are not established. The non supply of receipts to petitioner by itself is again not sufficient to hold that the findings are perverse. The ground no.2 and 3 in charge-sheet are as under:

(a) You sanctioned and disbursed the advances without carrying out pre-sanction survey. The report of the Bank''s supervisor as required, was not recorded on the reverse of Form No. II (v).

(b) Viability of the scheme was not examined. Pre-development and post-development cropping pattern was not given.

(c) The debt service ratio was not calculated/considered.

(d) You did not obtain letter from MSEB sanctioning power connection for the electric motor.

(e) Estimate for the excavation of well was not obtained.

(f) You failed to carry out post sanction of the assets created.

(g) The loans sanctioned to Sarvashri S.S. Lasurkar and S.N. Patond were not reported to the controlling authority.

(h) Shri S.S. Lasurkar who was granted loan on 9.4.87 had neither sunk the well nor purchased electric motor pump.

2. On 12.12.86 you sanctioned a demand loan of Rs. 12,955/- to Shri S.P. Bhagwat, Agricultural Assistant, for purchase of the Rajdoot Motor Cycle violating the maximum permissible limit of Rs. 7,000/- under the scheme. You also failed

to submit control return to the controlling authority.

3. You were sanctioned a consumer loan of Rs.8,360/- by the controlling authority for purchase of a VCR. However, you disbursed to yourselves the loan of Rs.9,360/- i.e. in excess of the sanctioned limit.

4. You were sanctioned an advance of Rs. 3,000/- to enable you to avail of LFC facility. You took the advance on 4.5.87. You were also sanctioned encashment of leave and an amount of Rs. 3,665.40 was credited to your SB A/c on 11.5.87. You submitted your traveling expenses bill on 29.8.1987 to your controlling authority for sanction. However, you failed to produce satisfactory evidences for having performed the journey. You repaid the advance in installments. You have however not refunded the amount of leave encashed. Thus you have not only mis-utilised facility but also tried to gain monetary benefit out of it.

15. The findings recorded on these charges are urged to be perverse, because according to petitioner withdrawal of excess amount of Rs.1000/- by him was an inadvertent. He has also urged that excess amount withdrawn by him was re-deposited, though nobody had raised a question about it. The contention is that petitioner had necessary funds to offer as margin money as petitioner must be presumed to have received his salary on or before 25th February, 1997. It is urged that this salary was enough to enable him to pay the margin money of Rs. 1891/-. It is further pointed out that amount of Rs. 1000/- withdrawn in excess, was deposited within six days. These facts pleaded by petitioner are not sufficient to show that it was an inadvertent error. Once excess withdrawal or disbursement to himself by petitioner was accepted, burden was upon him to show that error or mistake and prove it by clinching evidence. He has not made any such effort and on the contrary, he has only relied upon a presumption that he must have received salary on 25th February, 1997. The finding of Inquiry Officer therefore cannot be said to be perverse on the strength of such argument.

16. On ground no.4, he has commented that for going to Shirdi he was not obliged to travel by railway upto Manmad and by alternate mode of transport to reached there. His defence was as expenses incurred on taxi fare were within his entitlement, the employer could not have raised any objection. However, he could not furnish any receipt issued by car/taxi owner for such journey. The Inquiry Officer as also Disciplinary Authority has found that it was necessary for petitioner to travel by approved taxi service. We do not find it necessary to go into that aspect, as petitioner has after objection was raised, refunded the amount of LFC but that refund would not absolve him of the charge. He did not refund the leave encashment secured by him for availing that LFC. The petitioner has not given vehicle number by which he traveled and he has also furnished other details to show that he really went to Shirdi. The findings reached by Inquiry Officer on this account cannot be said to be perverse.

17. The other material shows that he did not carry out pre-sanction inspection before loan disbursement. Heavy work load is given the reason. Granting loan in

excess is also another head which is found to have been proved. In view of this material and findings which cannot be labeled to be perverse, we are not referring to other heads to which Shri Kalbande, learned Counsel had invited our attention. In the case of departmental inquiries, it is a settled law that even if one of the misconduct is established and it is of serious nature, the courts cannot interfere in the quantum of punishment. The Hon"ble Apex Court in State of Orissa Vs. Bidyabhushan Mohapatra, and Union of India (UOI) Vs. Sardar Bahadur, had laid down law very clearly in this regard. In view of this, we find that punishment of removal from service inflicted upon officer like petitioner cannot be said to be unjustified or disproportionate. We do not find any case made out for interference in exercise of writ jurisdiction. Petition is therefore, dismissed. No costs.