(2003) 03 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 6963 of 2001

G. Ramakrishnan APPELLANT

Vs

The Chief Regional Manager, Madurai Region and Appellate Authority, Bank of India, Madurai Regional Office and The Deputy Chief Regional Manager, Madurai Region and Disciplinary Authority, Bank of India, Madurai Regional Office RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Citation : (2003) 03 MAD CK 0039

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : V. Illanchezian, for the Appellant; John, for Ramasubramaniam and Associates, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner joined the services of the respondent Bank of India in the year 1981 as Subordinate Staff. He applied for

India Card while he was working at Madurai Branch of the respondent bank in the year 1994. The card was issued during the month of

November 1995. Later the petitioner was issued with such cards during the years 1997 and 1998. The card was used by the petitioner in violation

of terms and conditions by exceeding the monetary limit and consequent delayed payment and default, which resulted in Charge Memo dated

17.12.97. By the said charge memo the petitioner was informed that he would be permitted to submit his explanation. On the same day, without

waiting for any explanation, a charge sheet was issued on the ground that the petitioner has committed gross misconduct doing act prejudicial to the interest of the bank in terms of para 19.5(j) of the Bipartite Settlement dated 19.10.96. The said paragraph reads as under:-

doing any act prejudicial to the interest of the bank of gross negligence or negligence involving or likely to involve the bank in serious loss.

Further, on the same day, the second respondent appointed G. Narayanan as Enquiry Officer to enquire into the charges framed against the

petitioner. Of course, without there being any explanation called for, an enquiry was conducted and the enquiry report dated 28.3.2000 was

submitted holding that the charges levelled against the petitioner were proved. Based on the said enquiry report, the petitioner was called upon to

submit his explanation and the petitioner also submitted his explanation on 11.1.2000. Not satisfied with the explanation, by order dated

13.6.2000 of the second respondent, punishment of stoppage of next three increments was passed. Challenging the said order, the petitioner filed

an appeal to the first respondent which was also rejected, but the punishment of stoppage of three increments was modified as one of stoppage of

two increments.

2. Mr. V. Illanchezian, learned counsel for the petitioner would contend that the impugned order suffers from violation of the principles of natural

justice inasmuch as the respondent had taken action against the petitioner on one day by issuing the charge memo, charge sheet and appointing the

enquiry officer. (2) In any case, the use of India Card over and above the monetary limit would not amount to any misconduct as while using the

said card, the relationship of the petitioner and the respondent is only as customer and the bank and not as an employee and employer. In such

event, the punishment cannot be imposed on the petitioner. Moreover, the entire amount availed by the petitioner over and above the ceiling limit

has also been paid and there is no loss to the bank.

3. Mr. John for M/s Ramasubramaniam Associates, learned counsel appearing for the respondents, on the other hand, would submit that the

procedure adopted by the respondents in initiating disciplinary proceedings was in terms of paragraph 521(10)(a) of the Sastry Award as modified

by the Desai Award in bipartite settlement dated 19.10.66 and further the memorandum of settlement dated 10.4.2002/27.5.2002. The learned

counsel would further submit that merely because the petitioner had repaid the

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excess amount availed through India card, that will not absolve the

petitioner from disciplinary proceedings.

4. To appreciate the rival contentions, the relevant paragraph relating to the initiation of disciplinary proceedings could be extracted. The

disciplinary proceedings initiated against the petitioner are governed by Chapter 13 paragraph 521(10)(a) of Sastry Award which reads as

follows:-

An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the

circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his

explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer

conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in

his defence. He shall also be permitted to be defended by a representative of a registered union of bank employees or, with the bank''s permission,

by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

5. It is not in dispute that the Sastry Award was modified by Desai Award in Bipartite Settlement dated 19.10.66 and the application of the

modified award is not in dispute. It is also not in dispute that the modified Desai Award is applicable to the respondent bank. Paragraph 19.12

relates to the procedure to be followed by the respondent bank in the case of any disciplinary proceedings being initiated against an employee. For

the purpose of disposal of this writ petition, the relevant paragraph is extracted hereunder:-

19.12 The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the

circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his

explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer

conducting the enquiry, to cross-examine any witness on whose evidence the

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charge rests and to examine witnesses and produce other evidence in

his defence. He shall also be permitted to be defended.

6. It is also not in dispute that the said Desai Award was adopted by a further Memorandum of Settlements dated 10.4.2002/27.5.2002 by the

Management of 52 ''A'' Class Banks including the respondent bank. Paragraph 12(a) of the said settlement relates to the procedure to be adopted

by the respondent bank while initiating the disciplinary proceedings and the same reads as follows:-

The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the

circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his

explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer

conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in

his defence. He shall also be permitted to be defended.

7. It is not in dispute that paragraph 521(10)(a) of Sastry Award read with 19.12 of Desai Award read with paragraph 12(a) of the Memorandum

of Settlements dated 10.4.2002/27.5.2002 empower the respondent bank to issue charge memo, charge sheet and also to constitute an enquiry by

appointing an enquiry officer simultaneously. All that the respondent should ensure is that the delinquent should be given sufficient time to enable

him to prepare and give explanation as also to produce any evidence before the enquiry officer. Factually in this case, the petitioner after receipt of

the charge sheet dated 17.12.97 participated in the enquiry and only after the orders as to punishment were made, the petitioner has raised this

ground. In my considered view, the petitioner cannot raise this ground at this point of time, as the respondent bank was right in issuing charge sheet

and directing enquiry to be conducted by appointing an enquiry officer on the same day in terms of the clauses governing such procedure under

various awards and settlements. Hence, I reject the first contention of the learned counsel for petitioner.

8. Coming to the next submission of the learned counsel for petitioner, it is to be

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seen that the petitioner while he was working as Subordinate staff

in the Oddanchatram Branch, he was issued with India Card during November 1994 with spending limit of Rs. 10,000/-. It is the case of the

respondents that by using the said card, the petitioner made heavy purchase by violating the terms and conditions of the agreement relating to the

said card to the tune of Rs. 1,28,985/- until February 1997. When this was noticed, the respondent bank hotlisted the said India card during

February 1997. It is not in dispute that the entire amount availed by the petitioner was repaid. A request was made by the petitioner for issue of

fresh India Card. Accepting the same, the respondent bank issued another India Card to the petitioner during April 1997 within a period of two

months of the hotlisting of the earlier card. It is the further allegation that the petitioner again utilized the said card over and above the ceiling limit by

various purchases to the tune of Rs. 93,500/- upto November 1998. It is not in dispute that the India Card issued during April 1997 was also

hotlisted during August 1997 on the ground that the petitioner used the said card over and above the spending limit, but was issued with a fresh

card during May 1998 valid upto November 1998 and another card valid upto December 1998. It is not the case of the respondents that the

petitioner failed to repay the amount enjoyed by him through India card from February 1997. When for the first time the India card was hotlisted,

the respondent bank had admittedly issued fresh cards to the petitioner during April 1997, May 1998 and again during November 1998. In such

circumstances, after the above conduct of the respondents, the disciplinary proceedings have been initiated under paragraph 19.5(j) of Bipartite

Settlement dated 19.10.66 which reads as under:-

doing any act prejudicial to the interest of the bank of gross negligence or negligence involving or likely to involve the bank in serious loss.

9. In my considered view, when admittedly the petitioner had made good the amount which he overdrew by using the India Card, there is no

question of serious loss to the bank in this case. Moreover, the petitioner cannot be said to have committed a misconduct in the capacity of the

employer of the bank, but only as a customer, as the concession given to an employee on certain terms and conditions, if violated, cannot be

brought under any one of the clauses of misconduct. It would utmost amount to

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breach of conditions of the agreement. The respondent themselves

have either issued fresh cards or renewed the expired cards on more than four times even though there were overdrawals by the petitioner through

India cards. When such renewals were made, the respondents were aware that it is only the violation of the conditions of India Card, which could

be either ignored or condoned in the event the amount of overdrawal is repaid to the bank. In such circumstances, in my considered view, the

disciplinary proceedings and the impugned orders of punishment cannot be sustained. Accordingly, the impugned orders are set aside and the writ

petition is allowed. No costs.

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