
(2016) 10 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No.59702 of 2005.

Gopal Ji Tripathi - Petitioner @HASH State Bank of India and Others

Date of Decision : 17-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
State Bank of India (Officers Service) Rules, 1992 — Rule 19(3), Rule 50(4), Rule 67(j), Rule 68, Rule 93

Citation : (2016) 11 ADJ 306 : (2017) 1 AllWC 364 : (2017) 1 ESC 52 : (2017) 152 FLR 550

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Srivastava-III, JJ.

Bench : Division Bench

Advocate : Ashok Nath Tripathi, Advocate, for the Petitioner; Vipin Sinha and Jayant Banerji, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Tarun Agarwala, J. - The petitioner has questioned the dismissal order dated 15.1.2003 as well as the appellate order dated 6.5.2005 by which the petitioner's appeal was rejected.

2. The facts leading to the filing of the present writ petition is, that the petitioner at the relevant moment of time was posted as the Branch Manager in State Bank of India, Manauri Bazaar Branch in District Kaushambi from 18.1.1998 to 7.12.1999. Thereafter, the petitioner was posted in the same capacity in Daraganj Branch in District Allahabad from 19.1.2000 to onwards.

3. It may be stated here that by an order dated 16.4.1996 the services of the petitioner was extended till he reached the age of 58 years, i.e., till 9.3.2001 subject to good health and satisfactory service. The petitioner was given a second extension by another order dated 18.4.2001 extending the service from 10.3.2001 to 9.3.2003. It has also been stated that under the Rules framed by the bank, an employee/officer who retires in the middle of the month is allowed to continue till the end of the month. Accordingly, the petitioner's services was extended till 31.3.2003.

4. On 20.3.2003 the petitioner was served with a charge sheet alleging that during the period he was posted as the Branch Manager at Manuri Bazaar Branch and Daraganj Branch between 1998 to 2003, the petitioner failed to discharge his duties with utmost honesty, integrity, devotion and diligence and acted in a manner unbecoming of an officer, which was highly detrimental to the bank's interest and in violation of Rule 50(4) of the State Bank of India Officers Service Rules (hereinafter referred to as the Rules). The charges which were levelled against the petitioner are extracted here under:-

"The charges in brief are as under:-

Manauri Bazar Branch:

Charge No.1:

You have sanctioned/disbursed loans in reckless manner under Bank's regular schemes and Govt. sponsored schemes. Majority of these loans have turned Non Performing Assets and bank is likely to suffer substantial loss.

Charge No.2:

You have sanctioned/disbursed loans in collusion with the middlemen and without ensuring and use of funds, consequently assets were not created in majority of the cases. Most of the assets financed by you were supplied by Shri Gyan Chandra Kesarwani alias Bachha Mahajan and Shri Ram Singh irrespective of kind of assets. You are alleged to have taken illegal gratification through these middlemen.

Charge No.3:

You have sanctioned many PMRY loans in Agriculture and SIB Segments. You committed serious irregularities in sanction/disbursement of these loans, as a result of which bank is exposed to substantial loss.

Daraganj Branch

Charge No.4:

You have not made post-disbursement inspections and subsequent periodical inspections as a result of which many loan accounts sanctioned/disbursed by you have turned into Non-Performing Assets and the bank is exposed to substantial loss."

5. The inquiry under Rule 68 of the Rules was conducted in which the petitioner was given a full opportunity to defend himself. Upon the completion of the inquiry proceedings, an inquiry report was submitted, which was considered by the disciplinary authority, based on which, a dismissal order dated 15.10.2004 was passed. The petitioner, being aggrieved, preferred an appeal, which was rejected by an order dated 6.5.2005. The petitioner, being aggrieved by the impugned orders, has filed the present writ petition challenging the dismissal order on various grounds.

6. We have heard Sri Ashok Nath Tripathi, the learned counsel for the petitioner and Sri Jayant Banerji, the learned counsel for the respondent bank.

7. The learned counsel for the petitioner contended that in the instant case the dismissal order has been passed with retrospective effect, which is impermissible and cannot be done and consequently the dismissal order is bad in law and is liable to be quashed. In support of his submission, the learned counsel has placed reliance upon a decision of the Supreme Court in *State Bank of Patiala and another v. Ram Niwas Bansal (Dead)* through legal representatives, 2014 (12) SCC 106.

8. In order to appreciate the submission of the learned counsel for the petitioner, we find that the charge sheet was issued on 20.3.2003 and the petitioner was due to retire on 31.3.2003. The disciplinary authority was of the opinion that it was not possible to conclude the disciplinary proceedings prior to the petitioner's retirement and, accordingly, sought approval from the Managing Director for continuance of inquiry proceeding after retirement in terms of Rule 19(3) of the Rules. An office note dated 21.3.2003 was put up by the Deputy General Manager (Vigilance) for approval of the continuation of the disciplinary proceeding under Rule 19 (3) of the Rules before the Managing Director, which was approved by the Managing Director on the same date. For facility, Rule 19(3) of the Rules is extracted hereunder:

"19(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

9. Based on the said order of the disciplinary authority, the appointing authority issued an order dated 24.3.2003 indicating that in terms of Rule 93 of the Rules the disciplinary proceeding would continue even after the petitioner ceased to be in bank's services and would be deemed to be in the bank's services only for the limited purpose of continuance and conclusion of the said disciplinary proceedings. The disciplinary authority after considering the inquiry report and other factors passed the dismissal order dated 15.10.2014. The operative portion of the order is extracted hereunder:

"After applying my mind independently and considering the gravity of lapses proved against you, I have decided to impose upon you the penalty of dismissal from the Bank's Service in terms of Rule 67(j) of State Bank of India Officers' Service Rules read with Rule 68 *ibid*. I order accordingly. This order shall be effective from the date your services were ceased."

10. A perusal of the operative portion indicates that disciplinary authority held

that the penalty of dismissal of the services of the petitioner was passed which would be effective from the date his services were ceased, that is to say w.e.f. 31.3.2003. In this light, the learned counsel for the petitioner submitted that in view of the decision of the Supreme Court in Ram Niwas Bansal's case (supra) the dismissal order could not be made with retrospective effect.

11. Having heard the learned counsel for the petitioner, we find that the dismissal order is not with retrospective effect. The order of dismissal has been passed "in presenti", but would be made effective from the date when his services were ceased, i.e., from 31.3.2003. The Supreme Court in Ram Niwas Bansal's case (supra) no doubt held that the disciplinary authority has no power to pass an order of dismissal with retrospective effect, but the same is not applicable in the instant case, inasmuch as, the continuation of the petitioner's services, after superannuation was limited only for the purpose of completion of the disciplinary proceeding and did not confer any kind of benefit upon the petitioner beyond the date of superannuation. The concept of deemed continuance in service was only for the limited purpose of completion of the departmental inquiry and did not have the effect of extending the period of service beyond the retirement date. The order of dismissal in the instant case was only passed after finalisation of the departmental proceeding.

12. The Supreme Court in Ram Niwas Bansal's case (supra) had clearly held that even though the order of dismissal had a retrospective effect, the same would not invalidate the order of dismissal and that no undue benefit could be given to the said delinquent. In the instant case, the position remains the same. The order of dismissal has been passed "in presenti" though it has been made effective from the date when the petitioner ceased to be in service. Since the petitioner had superannuated on 31.3.2003, the extension of service was only for the purpose of finalisation of the departmental proceedings and did not entitle the petitioner to any benefit beyond the date of retirement. The contention, thus raised by the learned counsel for the petitioner, fails on this score.

13. It was next urged that the petitioner was granted an extension of service in the year 1996 on account of satisfactory service, which was again extended in the year 2001. It was contended that since the service was extended on the ground of satisfactory service, any irregularity, if any, committed by the petitioner prior to 2001 could not be considered. The submission of the learned counsel for the petitioner in this regard is patently misconceived. The irregularities committed by the petitioner has nothing to do in so far as granting extension of service is concerned. The extension of service was not granted on account of past satisfactory service. The extension of service was subject to the condition of continued good health and satisfactory service, namely, that if during the extended period of service, satisfactory service was not found the respondents had a right to renew such extension. The contention of the learned counsel for the petitioner in this regard is patently misconceived and is rejected.

14. The learned counsel for the petitioner contended that the disciplinary

proceeding after the retirement of an officer could only be extended by an order of the Managing Director under Rule 19(3) of the Rules. It was contended that no such order has been passed by the Managing Director. This contention of the learned counsel for the petitioner is patently erroneous and misconceived, inasmuch as, we find that a note, dated 21.3.2003, was placed by the Deputy General Manager(Vigilance) for continuation of the disciplinary proceeding against the petitioner after the date of retirement. This note was duly approved by the Managing Director in terms of the Rules of 1993.

15. The learned counsel contended that the charges mentioned in the charge-sheet are not specific and are vague and consequently on this ground the charge sheet is liable to be quashed and all proceeding initiated pursuant to it are also liable to be quashed. In support of his submission, the learned counsel has placed reliance upon a decision of the Supreme Court in Divisional Forest Officer, Kothagudem v. Madhusudan Rao, 2008(3)SCC 469. The submission of the learned counsel for the petitioner in this regard is patently misconceived.

16. We find that four charges as extracted above have specified the irregularities committed by the petitioner for which elaborate details have been given subsequently in the charge sheet, which makes it apparently clear that the charges are not only specific, but gives details of the irregularities committed by the petitioner with regard to the disbursement of the loan. Thus, the contention that the charges are not specific and vague is patently erroneous.

17. It was next urged that the disciplinary authority as well as the appellate authority have not applied its mind nor any independent reason has been given while passing the order of dismissal. This submission of the learned counsel for the petitioner is patently erroneous, inasmuch as, we find from the impugned orders that the authority not only considered the objections raised by the petitioner, but also considered the findings of the inquiry officer and thereafter came to the conclusion that the charges stood proved and the gravity of the misconduct entailed an order of dismissal. We are of the opinion that the authorities have applied their mind and reasons were given while passing the impugned orders.

18. It was next urged that the charges do not relate to the petitioner and that it was the duty of the Field Officer to look into all these aspect who should have been made responsible rather than the petitioner. In this regard the petitioner has dwelt at length the duties of the Branch Manager as well as the duties of the Field Officer and contended that the petitioner could not have been made guilty for the lapses committed by the Field Officer.

19. The contention of the learned counsel for the petitioner in this regard is patently erroneous. The petitioner being the Branch Manager is over all responsible for the sanction of the loan. A specific finding has been given that the loan sanctioned was bogus and was given for ulterior purposes. One of the duties of the Branch Manager is to ensure the scrutiny of the applications for loans and

is required to analyse the proposals. The Branch Manager also has to ensure follow up action, which in the instant case was lacking.

20. We are of the opinion that the petitioner being the Branch Manager could not contend that he was not responsible and that the loans were processed and recommended by the Field Officer, which he had mechanically approved. In our opinion, the Branch Manager is required to ensure proper scrutiny of the applications, which in the instant case was lacking.

21. It was last urged by the learned counsel for the petitioner that the petitioner had discharged his duties with utmost honesty, integrity, devotion and diligence and had done nothing which was unbecoming of an officer and that no loss was resulted to the bank. It was also urged that the proof of loss were never found by the inquiry officer and, therefore, the impugned order of dismissal was totally unwarranted. In this regard we find that the Supreme Court in *Disciplinary Authority-cum-Regional Manager and others, 1996 (9) SCC 69*, held-

"It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organization-every officer/employee is supposed to act within the limits of his authority. If each officer/ employee is allowed to act beyond his authority, the discipline of the organisation/ bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long

period and involving innumerable instances-is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No.9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practise, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No.8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24."

22. In view of the aforesaid, we find that no case for interference is made out in the impugned orders.

23. The writ petition fails and is dismissed.