(2015) 10 KAR CK 0227

In the Karnataka High Court

Case No : Writ Petition No. 27110 of 2002 (S-DIS)

H.Y. Narasimha Prasad APPELLANT

Vs

The General Manager, Syndicate Bank and Others RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21
Evidence Act, 1872 — Section 162

Citation : (2015) 4 AKR 842

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

L. Narayana Swamy, J—The petitioner has filed the present writ petition seeking to quash the order dated 13.7.2001 vide Annexure-R and order dated 7.9.2001 vide Annexure-T passed by the Disciplinary Authority and Appellate Authority respectively and order dated 15.10.2001 produced at Annexure-U whereby directing recovery of Rs. 43,647/- from the petitioner towards the financial loss incurred by the Bank on account of the misconduct of the petitioner and such other reliefs.

2. The facts of the case to be stated in brief are as follows:

"The petitioner was the Branch Manager of respondent Bank at Pattadakal Branch during the period from 8.6.1996 to 2.1.1999. On 21.11.2000 when he was working at Cantonment Branch, Bangalore, he was issued with a charge sheet under Regulation 6 of the Syndicate Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976. The main charges alleged against the petitioner are as follows:

"You have fraudulently arranged in the name of Sri Basappa Rachappa Tuppad LDs for amounts aggregating to Rs. 37,200/- against his Vikas Cash Certificate of face value of Rs. 20,000/- and misappropriated/not accounted for Rs. 21,005/-

thereby gained pecuniary benefit for self and

Misusing your official position/flouting credit norms, you have extended to the above borrower crop overdraft limit of Rs. 12,000/- without proper pre-sanction safeguards and post sanction controls, thereby putting Bank''s interest in jeopardise."

3. The enquiry was initiated against the petitioner. The enquiry officer has held that the guilt so far it relates to Charge No. 1 is proved but as against Charge No. 2 it is not proved. The Disciplinary Authority considering the report, agreed with the enquiry report and ordered for dismissal of the petitioner from service. The appellate authority also concurred with the order passed by the Disciplinary Authority. Hence the petitioner is in this writ petition.

4. It is the contention of the petitioner that enquiry officer has given a go-bye to the regulations, particularly regulation 6(10) and (12) of the Syndicate Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976, hereinafter referred to as ''the Regulations'' for short, thereby right of the petitioner to defend himself has been denied. The documents sought for by the petitioner were very vital to defend himself. While the investigating officer was examined as a witness of the management, his report copy was not furnished to the petitioner. Further the letter dated 21.6.2000 written by Mr. M.G. Padmanabhan, Cashier of the Bank at the relevant point of time was also vital, which was denied to him without any basis. Bulky documents produced by the presenting officer even before starting of recording evidence. The transactions were properly and sufficiently secured from the concerned party by way of simple mortgage to the Bank. The action of the respondents holding that there is loss caused to the bank is based on no material but on surmises and conjectures. The documents prepared and produced by the management before the enquiry officer were not in his hand writing and he was in no way responsible for those transactions. There was no complaint against the petitioner by the account holder. The impugned orders are disproportionate to the gravity of charges leveled against the petitioner. Joint enquiry ought to have been held under Regulation 10 against the petitioner and Sri Mohana Horati. This has affected right of the petitioner. The entire action is violative of Article 14, 16 & 21 of the Constitution. Petitioner was not offered an opportunity to test the veracity of cashier''s statement. Non supply of documents, has affected valuable right of his defense and cross-examination has affected and the cashier''s statement has been marked. Annexures-W and Annexure-Z are got up documents and the enquiry officer has taken them on record as true documents. Hence he prays for allowing the writ petition.

5. On the other hand, the respondents have filed statement of objections contending that all the relevant documents that were sought by him have been provided before commencement of regular enquiry. The investigation report that was sought for by the petitioner was not provided since the same was not relied upon by the Bank to frame the charges. The investigation report and the letter of Sri M G Padmanabhan, cashier on 21.6.2000 are privileged documents and are

also not relied upon to frame the charges and hence the said documents were not provided. The Investigating Officer was himself examined and cross-examined. The inquiring authority specifically asked the defence to lead their evidence and in response, the defence submitted that they do not want to bring any witness and would like to make oral submissions in terms of Regulation No. 6(15) of the Regulations. Thereafter the petitioner has made his oral submissions in terms of the said regulations. The Inquiring Authority in terms of Regulation 6(18) of D & A Regulations advised both Presenting Officer and the Petitioner to submit their written briefs. Accordingly the petitioner submitted his written brief. Hence the allegation that the Inquiring Authority submitted his report on an alleged farce inquiry, is untenable. The Disciplinary Authority while imposing punishment has taken note that petitioner''s conduct of arranging LDs without the knowledge of customer and misappropriating the loan proceeds which constitute misconduct such as cheating, misrepresentation of facts, misappropriation etc., and conduct of petitioner amounted to moral turpitude. On 8.3.2001 an amount of Rs. 29,465/- was outstanding in LD 42/97 and the shadow balance as on 30.3.1998 under COD 33/97 was Rs. 10,335/-, under F.L. 6/95 was Rs. 13,475/- and under FL 5/95 was Rs. 31,985/- for which the petitioner was responsible. The appellate authority has also passed a detailed order observing that the petitioner had not brought out any valid grounds for interfering with the decision of the Disciplinary Authority. The Bank felt unsafe to retain him in the services of the Bank, which deals with public money. Action had been taken only after due process of issuing a charge sheet, holding an inquiry and giving all reasonable opportunity to him. The entire petition is devoid of merits.

6. I have heard the learned counsel for the petitioner and learned counsel for the respondents.

7. The point that arises for consideration in the present matter is:

"(a) Whether the impugned orders call for interference by this Court either on the ground that there is violation of principles of natural justice or that the punishment imposed is disproportionate?"

8. My answer would be as per the final order for the following reasons.

9. It is the main contention of the petitioner that he was not supplied the documents sought for by him thereby he was denied opportunity of effective cross-examination. The petitioner had sought for the following documents:

"(i) Report submitted by Mr. N.N. Bhat - MW-1 along with all the statements and documents which have formed the basis and which are enclosed to the said report.

(ii) Letter dated 21.6.2000 given by Mr. M.G. Padmanabhan to Sri P D Kirsoor."

10. The management examined MW-1 - Mr. N.N. Bhat, (Investigating Officer), MW-2 Sri Basappa Rachappa Tuppad (complainant) and Sri P.A. Umadi, Branch

Manager of Pattadkal Branch as MW-3. As many as 68 documents were marked as MEX-1 to MEX-68. The petitioner did not lead oral evidence either through himself or other witnesses. In Annexure-L after the evidence of the management was over, it was specifically asked to the defence whether they would lead their evidence. In response, the defence submitted that they do not want to bring any witness in support of their case, however, petitioner would like to make oral submissions. Accordingly, he was allowed to make oral submissions. The petitioner has also submitted written submissions.

11. MW-1 in his deposition identified MEX-1 to MEX-68. MEX-1 is the complaint against the petitioner that he obtained his thumb impressions and committed irregularities in his deposit account. The complainant MW-2 confirmed the facts that the petitioner had obtained his thumb impression on several blank papers on many occasions. MW-2 when he received notice from the Branch about repayment of loan, then he came to know about the loans on deposit. MW-2 has deposed that apart from FL 5/95, 6/95 and COD 19/95 he had not availed any other loan. The way and the manner in which the loans on deposit were arranged and amounts appropriated to various accounts, establishes the Loans on Deposit were arranged as per the documentary evidence MEX-8 to MEX-10. MW-2 has stated the petitioner used to obtain his thumb impression on blank papers and has alleged that the proceeds might have been taken by the petitioner. MEX-37 is the unfilled AF 551 except for LTM, which indicated that the petitioner was having the habit of obtaining blank documents.

12. MW-1 and MW-3 have stated that LD 42/97 was availed by Sri B R Tuppad in VCC 685 is still outstanding with balance of Rs. 29,465/-. The defence has not assigned any reasons for arranging the Loans on deposits without taking the borrower''s signature in the LD ledger nor could place any reasons for adjusting proceeds of LD to various loan accounts. MW-1 has stated that petitioner should have taken letters, discharge in the ledger and that the petitioner should have delivered the VCC or should have kept the VCC in the safe custody. The thumb impression of the depositor was not obtained for having delivered the VCC receipt on closure of LD 96/96. The petitioner on 29.5.1997 extended LD of Rs. 10,000/- in LD 42/97 and credited to SB 381. The vouchers, LD papers all are in the handwriting of the petitioner. The LD register did not bear the thumb impression of the depositor. MW-1 and MW-2 have deposed that the signatures were obtained fraudulently by the petitioner. So many other irregularities are pointed out in the enquiry report.

13. The defence had produced DEX-1 to DEX-7, which were the photo copies of the Attendance Register to show that the petitioner was the only person available on the specific dates and it was inevitable for him to attend clerical and cashier duties apart from managing the branch. In the cross of MW-1, the defence had produced DEX-9 to DEX-14 and cited MEX-26 and 27, debits and credits of various accounts to rebut the charges.

14. It is observed in the enquiry report that it is always mandatory to explain the

transaction to an illiterate person only on his full satisfaction and his consent regarding the transaction is very much required with proper witness. It is for the person who has explained the transaction or by the person who has identified his signature to satisfy the customer. The petitioner himself being passing officer and also being the Branch Manager failed to satisfy the borrower about his transaction. The petitioner has arranged LD on the deposit held by the branch unauthorisedly. It is admitted fact that LDs were arranged by the petitioner and the petitioner has not delivered the VCC to the complainant on closure of LD 96/96.

15. Based on the above materials and evidences, the enquiry officer came to the conclusion that the petitioner has not accounted Rs. 21,005/-. Therefore, it is clear that the enquiry officer has not based the above two documents for concluding that the guilt as against the petitioner so far as Charge No. 1 is proved. In that view of the matter, non supply of the documents sought for by the petitioner has in no way prejudiced the case of the petitioner.

16. The Disciplinary Authority has in detail considered the enquiry report and found that conduct of arranging the LDs. without the knowledge of the customer and misappropriating the loan proceeds constitute misconduct such as cheating, misrepresentation of facts, misappropriation and breach of trust and gaining pecuniary benefit at the cost of the bank besides misusing official position. The conduct of the petitioner amounts to moral turpitude. It was found that as on 9.3.2001 an amount of Rs. 29,465 is outstanding in LD 42/97 and the shadow balance as on 30.3.1999 under COD 33/97 is Rs. 10,335/- under F.L. 6/95 is Rs. 13,475/- and under FL 5/95 is Rs. 31,985/- for which the petitioner is responsible. As a deterrent punishment, petitioner was ordered to be dismissed from service.

17. Even the appellate authority while disposing of the appeal filed by the petitioner has elaborately considered the contentions of the petitioner and assigned cogent reasons for not to disagree with the order passed by the Disciplinary Authority.

18. The power of this Court under its writ jurisdiction in a matter of this nature is very limited. This Court could only interfere only when there is procedural irregularity and there is violation of principles of natural justice. After going through the detailed orders passed by both the Disciplinary Authority as well as the Appellate Authority and the manner in which the enquiry proceedings has been conducted, I am convinced that there is no violation of principles of natural justice.

19. The learned counsel for the petitioner has placed reliance on the following authorities:

"(1) Union of India (UOI) and Others Vs. S.K. Kapoor, (2011) 129 FLR 360 : (2011) 3 JT 446 : (2011) 2 LLJ 627 : (2011) 3 SCALE 586 : (2011) 4 SCC 589 : (2011) 1 SCC(L&S) 725 : (2011) 3 SCR 906 : (2011) 4 UJ 2198 : (2011)

AIRSCW 1814 : (2011) 2 Supreme 606 to the effect that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

(2) State of U.P. Vs. Shatrughan Lal and Another, AIR 1998 SC 3038 : (1998) 6 JT 55 : (1998) 5 SCALE 1 : (1998) 6 SCC 651 : (1998) SCC(L&S) 1635 : (1998) 3 SCR 939 : (1998) AIRSCW 651 : (1998) 6 Supreme 587 to the effect that preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge sheet. He must, on a request made by him in that behalf, be supplied copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. In the instant case, the witnesses whose statements were recorded in the preliminary enquiry are not examined in the enquiry. Therefore, supplying the statement of those witnesses does not arise.

(3) S.G. Nayak and Another Vs. Canara Bank and Another, (2005) ILR (Kar) 3449 : (2005) 2 KCCR 72 SN to the effect that the documents which are denied to the petitioner on the ground that the same is not in their custody makes it abundantly clear that there is an attempt to keep away the documents which probably would have supported the defence. In the present case, the documents sought for by the petitioner were not made the basis in the enquiry report.

(4) The State of Punjab Vs. Sodhi Sukhdev Singh, AIR 1961 SC 493 : (1961) 2 SCR 371 to the effect that where a privilege is claimed, the court is required to adjudicate upon its validity, the relevant provisions of the Evidence Act under which the privilege is claimed as well as the provisions of S. 162 which deal with the manner in which the said privilege has to be considered."

20. The learned counsel for the respondents placed reliance on the following authorities:

"(1) Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, AIR 2006 SC 3542 : (2006) 108 FLR 1043 : (2006) 2 JT 73 : (2006) 1 LLJ 988 : (2006) 2 SCALE 101 : (2006) 3 SCC 150 : (2006) SCC(L&S) 487 : (2006) 1 SCR 920 : (2006) 2 SLJ 285 : (2006) AIRSCW 680 : (2006) 1 Supreme 582 to the effect that non supply of documents on which enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent.

(2) Vijay Kumar Nigam (dead) through LRs. Vs. State of M.P. and others, AIR 1997 SC 1358 : (1996) 8 SCALE 591 : (1996) 11 SCC 599 : (1997) SCC(L&S) 489 : (1996) 8 SCR 544 Supp : (1997) AIRSCW 1467 : (1997) 1 Supreme 183 to the effect that the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the delinquent officer.

(3) State Bank of India and Others Vs. S.N. Goyal, AIR 2008 SC 2594 : (2008) 3 CLT 795 : (2008) 117 FLR 967 : (2008) 6 JT 398 : (2008) 3 LLJ 567 : (2008) 7 SCALE 415 : (2008) 8 SCC 92 : (2008) 2 SCC(L&S) 678 : (2009) 1 SLJ 403 : (2008) AIRSCW 4355 to the effect that the employees of the bank in particular the Manager, are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrower constitutes a serious misconduct inviting the severe punishment."

21. So far as Annexure-T order directing recovery is concerned, admittedly, Charge No. 2 is held to be not proved. Apart from that, it is not clear as to how the Bank has assessed the said amount of Rs. 43,647/- as the amount of loss caused to the Bank. The order seems to be very cryptic wanting cogent reasons. In respect of the first charge, the petitioner is held to be guilty and punished with the penalty of dismissal from service. The amount of misappropriation is Rs. 21,005/-. In that view of the matter, it is not appropriate to quash the same at this stage and direct the respondents to redo the exercise. The petitioner has put in quite a number of years service to the Bank. Taking into consideration the quantum and the punishment of dismissal inflicted upon the petitioner, I am of the view that this recovery order needs to be quashed.

22. Except stating simply that the documents sought for are not furnished to the petitioner, the petitioner has not substantiated as to how his case is prejudiced for non supply of those documents. The petitioner has not adduced any evidence and has not produced any documents in support of his defence. As a manager of the Bank, it was his duty to be trustworthy to gain the confidence of the public as the money of the public with which the petitioner was concerned and was the custodian. The petitioner has committed serious misconduct thereby the punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority cannot be said to be disproportionate.

23. The Enquiry Officer himself has observed in the enquiry report that the charges against Mr. Horati, the earlier Manager were quite grave and serious than that of the petitioner. The punishment imposed to Mr. Horati is a compulsory retirement whereas the petitioner is dismissed from service. Though it is not for this court to dictate as to how the employer should punish its erring employees, but it is required that similarly situated persons cannot be treated differently. As against a person whose charges are more severe than the petitioner, compulsory retirement is ordered whereas the petitioner is dismissed from service. This is where, petitioner is entitled to equal treatment and ought to have been ordered for compulsory retirement. Both the Disciplinary Authority and the Appellate Authority have not applied their mind as to the contention raised by the petitioner relating to discrimination in punishment. The impugned orders so far they relate to quantum of punishment are discriminatory.

24. The petitioner contends that there ought to have been a joint enquiry. Though the complainant is one and the same the accusation is quite different as

against the petitioner and Mr. Horati and therefore not conducting the joint enquiry has not caused prejudice to the petitioner in any manner. The petitioner ought to have substantiated the defence sought to be urged, but he opted to make only oral submissions.

25. In the result, this writ petition is partly allowed. The impugned orders Annexures-R and T dated 13.7.2001 and 7.9.2001 respectively are hereby confirmed except the quantum of punishment, instead of dismissal from service, the petitioner is ordered to be compulsorily retired. The petitioner is entitled to retirement benefits that flow from compulsory retirement. Annexure-U dated 15.10.2001 is hereby quashed.

