

(2009) 10 BOM CK 0110
In the Bombay High Court
Case No : Writ Petition No. 3498 of 1994

Kishore Bomble

APPELLANT

Vs

Bank of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Bank of Maharashtra Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 3, 4, 5(1), 6

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (2010) 124 FLR 246 : (2010) 2 LLJ 466

Hon'ble Judges : F.M. Reis, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : K.K. Pathak, for the Appellant; S.S. Ghate, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The petitioner is a dismissed Branch Manager and has assailed that dismissal in present writ petition on following 5 counts; First contention is, charge-sheet as also punishment has not been inflicted by the Competent Authority; Second contention is, there was no show cause notice issued about proposed punishment; Third ground of attack is, regulation under which departmental enquiry has been conducted does not have statutory sanction; Fourth ground is, comments forwarded to the Appellate Authority by the Disciplinary Authority on appeal of petitioner were not served upon the petitioner, and last and Fifth contention is, in any case looking to the nature of misconduct proved, punishment of dismissal from service is shockingly disproportionate.

2. Perusal of order of punishment dated May 3, 1993 shows that for charge No. 1, punishment of dismissal from service has been inflicted and for charge No. 2 reduction in time scale by 5 stages i.e. from stage of Rs. 3540/- to -stage of Rs. 3060/- in pay scale has been ordered. The Regional Manager and Disciplinary Authority has in this final order also mentioned that all punishments are to run

concurrently.

3. The contention of Ms. K.K. Pathak, learned counsel appearing for the petitioner is, that the disciplinary authority who has taken action against the petitioner by issuing charge-sheet and ultimately by inflicting punishment is Regional Manager and as said Authority is subordinate to the appointing authority of petitioner, the initiation as also result thereof is adversely affected. It is contended that, this ground was specifically raised in the appeal preferred by the petitioner against the final order, but then, the Appellate Authority i.e. the Assistant General Manager has not considered the said ground at all. For this purpose, our attention has been invited to the relevant clauses in the discipline and appeal regulation for officers of Bank of Maharashtra framed in 1976. It is further stated that the disciplinary authority has on June 10, 1993 supplied copy of the enquiry report to the petitioner, but then it was after accepting the finding of the enquiry officer and petitioner was given opportunity to show as to why those findings should not be accepted for imposing punishment. However, there was no mention of quantum of punishment in the said communication, and hence petitioner did not get opportunity to submit representation about the proposed punishment, and hence punishment is unsustainable.

4. It is contended that, if a departmental enquiry is to be conducted against the petitioner, the regulations under which the same could have been conducted must have necessary statutory sanction. As these regulations do not have any such base, the (action taken in pursuance thereof is unsustainable. It is also contended that, from the order of the Appellate Authority and that after the petitioner filed his appeal, the disciplinary authority has submitted its say on that appeal memo to the Appellate Authority. It is urged that copy of the said say of disciplinary authority was never made available to the petitioner, and therefore, it constituted breach of principles of natural justice.

5. Lastly, the learned Counsel for petitioner has invited our attention to the findings as recorded by the enquiry officer and has taken us through those findings to show that in none of the charges there is even a allegation of any misappropriation or financial gain by the petitioner. It is contended that thus, the charges are only of technical nature pointing out some negligence or omission and therefore, the punishment as inflicted is shockingly disproportionate.

6. Shri S.S. Ghate, learned Counsel appearing for respondents has pointed out that the regulations governing the departmental enquiry are issued u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. He further states that the charge-sheet as also punishment are by the disciplinary authority, and as per the said regulations and the challenge in this respect is misconceived. He further argues that necessary show cause notice was issued by the disciplinary authority on June 10, 1993 and there is no requirement of calling upon the petitioner to show why a particular punishment should not be inflicted upon him. He further states that comments of disciplinary authority submitted before the Appellate Authority were not required to be served on petitioner and

the Appellate-Authority has decided the appeal on the basis of the enquiry records, after hearing the petitioner and after considering the notes of arguments filed by him. He argues that no prejudice in this respect has been demonstrated. For quantum of punishment, the learned Counsel states that misconducts proved on record are of grave and serious nature and the punishment prescribed in regulation has been imposed. He contends that in such circumstances, this Court cannot interfere with the quantum of punishment. To show the scope of judicial review in such matter, the learned Counsel has placed reliance upon the judgments of Hon''ble Apex Court reported at State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, and Damoh Panna Sagar Rural Regional Bank and Ors. v. Munnal Lal Jain 2005-I-LLJ-730.

7. Perusal of the Bank of Maharashtra Officer Employees" (Discipline and Appeal) Regulation, 1976 (hereinafter referred to as "the Regulations" for short), and its preamble clearly shows that, the said Regulations have been framed in view of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 by the Board of Directors of Bank of Maharashtra (respondents before us). In consultation with the Reserve Bank and with previous sanction of the Central Government. The Regulations therefore, possess necessary legal sanction. The stipulation in preamble has not been demonstrated to be either incorrect or false. In any case in absence of these Regulations what would have been the other service Rules or Regulations for conducting such departmental enquiry has not been brought on record. It is therefore, apparent that the challenge in this respect is not substantiated before us.

8. The Regulation No. 3 which gives [definitions in its Clause (g), defines Disciplinary Authority to mean the Authority specified in Schedule which is competent to impose on an officer/employee any of the penalties specified in Regulation No. 4. Regulation No. 4 prescribes penalties which may be imposed on such officer or employee. It prescribes minor penalties as also major penalties. Reduction to a lower grade or post/specified in Regulation No. 4(e) is major punishment. Similarly, punishment of dismissal specified in its Clause (h) is also a major punishment. It is not the case of the petitioner that, the punishment not specified in the Regulation has been inflicted upon him. Regulation No. 6 states the procedure for imposing major penalties. As per Regulation No. 5(1), Managing Director or any other Authority empowered by him can institute or direct the disciplinary authority to institute; disciplinary proceeding against an officer or employee of the Bank. Its Sub-clause (2) permits disciplinary authority to initiate such proceedings and its Sub-clause (3) states that the disciplinary authority or any authority higher than it, can impose any of the penalties specified in Regulation No. 4. It is not in dispute that in present matter, the Regional Manager, Akola has initiated/instituted departmental enquiry and has inflicted punishment after accepting the findings recorded by the Enquiry Officer. In Schedule for Scale-III employees. Regional Manager is shown as disciplinary authority. The petitioner was a Scale-III officer. It is therefore,

apparent that, enquiry against the petitioner has been instituted by and completed by disciplinary authority in terms of these Regulations.

9. The contention, that the disciplinary authority is subordinate to the appointing authority and therefore, petitioner could not have been dismissed from service by any authority subordinate to his appointing authority, is without any relevance, because in the Regulations there is no such bar. The Managing Director or then the Disciplinary Authority as contemplated in the service Regulations are empowered by law to impose punishment and hence effort of petitioner to introduce a concept which is available in government services, in these regulations cannot be sustained.:

10. Perusal of the Show cause notice dated June 10, 1993 shows that the disciplinary authority has after receipt of the enquiry officers report gone through it, and found that it,; was agreeing with it. But, then it has forwarded copy of the enquiry report along with the show cause notice to petitioner calling for his say on those findings and time of 15 days was given to him to offer his comments. It is thus obvious-from the tenor of this show cause notice that the disciplinary authority found that there was no need for it to differ with any of the findings recorded by the enquiry officer and hence called upon the petitioner to submit comments upon those findings. The show cause notice therefore, is in accordance with law. No provision in the Regulation has been pointed out to us which obliges respondents to give petitioner an opportunity in the matter of quantum of punishment. The law on the point is well settled and when the enquiry report is being acted upon by the disciplinary authority, who has not conducted the enquiry, the delinquent employee needs to be given an; opportunity as to why such report prepared by the enquiry officer should not be accepted by the disciplinary authority. The law does not require grant of opportunity in the matter of quantum of punishment. The judgment of Hon"ble Apex Court reported at Union of India and others Vs. Mohd. Ramzan Khan, , can be safely cited in this respect. We find that these requirements are satisfied in the present matter. (The contention about not granting petitioner opportunity on quantum of punishment is, therefore misconceived.

11. The order passed by the Appellate. Authority shows that it had received comments of the disciplinary authority on the appeal memo preferred by the petitioner after the impugned punishment. It also appears that copy of those comments of disciplinary authority was not served upon the petitioner. However, that by itself is not sufficient to hold that the appellate order is vitiated. The petitioner has not pointed out that the appellate authority has taken into consideration any other aspect or . fact, which is not emerging from the enquiry "papers/records. Thus by merely pointing out that the comments of the disciplinary authority on petitioners appeal memo were not made available to petitioner, the principles of natural justice are not violated and in any case the petitioner does not succeed in showing that any prejudice is caused to him. The judgment of Hon"ble Apex Court State Bank of Patiala and others Vs. S.K.

Sharma, , paragraph No. 33 cast obligation upon the petitioner to demonstrate prejudice also along with such non-compliance. However, it is difficult for us to even observe that there is any non-compliance because no statutory provision requiring the employer to serve copy of such comments of disciplinary authority is pressed into service.

12. This brings us to consideration of last point of the quantum of punishment. The judgment cited by the learned Counsel for respondents clearly shows that in such matters while considering the scope of judicial review the doctrine of proportionality or then concept of *Wednesbury* unreasonableness assume importance. In *Damoh Panna Sagar Rural Regional Bank and Ors. v. Munnal Lal Jain* (supra), the Hon''ble Apex Court has considered the case of Bank employee. He was Branch Manager who had un-authorisedly withdrawn Rs. 25,000/- for his personal use and he was held guilty in enquiry. Punishment of termination from service was therefore imposed. The High Court directed Bank to impose any other punishment other than termination. The Bank went in appeal before the Hon''ble Apex Court and Hon''ble Apex Court held that acting beyond one''s authority is by itself a breach of discipline and is misconduct and charges against the employee before it were not casual in nature and were serious. The High Court judgment was therefore, set aside and the punishment as imposed was restored. In present facts, the perusal of charges reveal that the same were under clause 3(1) and 3(3) of the Regulations. Clause 3(1) is about not taking at all times all possible steps to ensure and protect the interest of Bank and not discharging duties with utmost integrity, honesty, devotion and diligence. Clause 3(3) is about acting otherwise than his best judgment by the employee. It is alleged that petitioner committed certain acts which is unbecoming of a Bank Officer. The nature of charges briefly given in enquiry report is as under:

Shri K.N. Bombale is alleged to have committed procedural irregularities while working as Branch Manager, Dawa Branch, misuse of powers - in respect of sanction, appraisal, disbursement, follow up, documentation in respect of borrowal accounts as well as his own Housing loan account. He is also alleged of fabrication of false evidence, misrepresentation of facts, indulging in fraudulent acts, and causing loss to the Bank.

The enquiry officer has found that in respect of one Trilokchand Jain, though crop loan was disbursed, necessary insurance premium was not paid and hence after failure of crop, Bank was finding it difficult to oppose the claim of said Shri Jain. These findings of enquiry officer are not being shown to be either erroneous or perverse. Only attempt is to demonstrate that one Mr. Satkar, was also found responsible in similar circumstances in other two matters, i.e. in relation to crop loan advanced to Shri Shyambhau Yeole and Shri Dhanlal Rahangadale. However, no action whatsoever has been taken against him by the Bank. It is obvious that such type of comparison in the matter is unwarranted and cannot further the cause and case of petitioner in any way. The enquiry officer has also found that when a borrower approached for obtaining NOC after clearing entire loan, the

borrower found that there was one more disbursement in his loan account in his name, though he did not avail it and it was on account of purchase of one Cow at Bhandara Market for Rs. 6000/-. The enquiry officer has also found that column No. 7 of the vouchers prepared by the petitioner were left blank and thereby it was difficult for the Bank to prove at which place the loan documents were executed by the borrowers. There were some debit vouchers found without signatures of borrowers and margin money in relation thereto was found deposited through office voucher and that too without signature of borrower. Some blank debit vouchers duly signed by some persons on reverse on revenue stamp, were found in custody of the petitioner and he admitted to have disbursed loan to 4-5 persons whose signatures were appearing on reverse of those blank debit vouchers. The enquiry officer has found that this and other similar charges proved. We find the charges mentioned above sufficient to sustain the punishment of dismissal. In judgment of Hon''ble Apex Court at Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , in paragraph No. 14 the Hon''ble Apex Court has held that in case of such Bank officer, the proof of casual loss caused to Bank is not essential. Thus, mere possibility of loss to Bank by such conduct is sufficient.

13. In the, circumstances, we find nothing wrong with the punishment as inflicted. Writ Petition is accordingly dismissed. Rule discharged. No cost.