(2001) 10 KL CK 0081

In the High Court Of Kerala

Case No : O.P. No. 2458 of 1995 (P)

Kuttappan V.R. APPELLANT

Vs

State Bank of Travancore and Others RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

State Bank of Travancore (Officers) Service Regulations, 1979 — Regulation 50(1), 50(4), 59(1), 60(2)

Citation : (2001) 91 FLR 948 : (2001) 2 LLJ 1569

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : H.B. Shenoy and Ahok B. Shenoy, for the Appellant; M. Pathrose Mathai and Girija, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—While working as an Officer in the Ernakulam Zonal office of the first respondent bank (State Bank of Travancore), the petitioner was suspended from service as per order dated December 5, 1989. The following charges were framed against him alleging violation of Regulations 50(1), 50(4), 59(1) and 60(2) of the State Bank of Travancore (Officers'') Service Regulations, 1979:

"Regulation 50(1): In not having observed, complied with and obeyed the lawful and reasonable orders and directions of the Bank in respect of purchase and realisation of cheques and in respect of granting of advances.

Regulation 50(4): In not having taken all possible steps to ensure and protect the interests of the Bank and in not having discharged his duties with utmost integrity, honesty, devotion and diligence.

Regulation 59(1): In having borrowed money and placed himself under pecuniary obligation to persons/firms having dealings with the Bank.

Regulation 60(2): In having caused to be discounted/negotiated cheques drawn on his account without sufficient balance therein."

The enquiry pursuant to Exhibit P1 charge memo stretched over the period from December 5, 1991 to May 28, 1992, in the course of which large number of witnesses were examined and documents marked. Ultimately Exhibit P3 report was prepared by the Enquiry, Officer on January 15, 1993. The petitioner filed Exhibit P4 written statement showing cause against the punishment proposed against him based on Exhibit P3 report. Ultimately as per Exhibit P5 order dated October 11, 1993 he was removed from service. Exhibit P6 appeal filed by him before the Appellate Authority was rejected as per Exhibit P7. Exhibit P8 review petition filed before the third respondent also was dismissed vide Exhibit P9.

2. The learned counsel for the petitioner submitted that the procedure followed by the aforesaid authorities were all irregular. It is argued that the Enquiry Officer did not follow the prescribed Procedure in the matter of collection of evidence. Exhibit P9 is attacked on the ground that the opportunity for personal hearing sought in Exhibit P8 was not allowed. Counsel further submits that the disciplinary authority failed to take note of the following relevant considerations:

i) There is no finding in Exhibit P3 that there was any loss caused to the bank in consequence of the alleged misconduct on the part of the petitioner.

ii) The disciplinary authority failed to take note of the irregularities in procedure followed by the Enquiry Officer in so far as along with the memo of charges list of documents and list of witnesses were not given to him.

iii) Opportunity for taking down extracts of relevant documents was also not allowed to the petitioner.

iv) Instead of examining the management''s witnesses first the Enquiry Officer chose to examine the petitioner''s witnesses. It was also pointed out that the Enquiry Officer did not give sufficient reasons justifying his conclusions.

3. The last contention raised by the petitioner is that in any event the punishment of removal from service imposed on the petitioner is grossly disproportionate to the gravity of the allegations levelled against him and in a case of this nature, where no loss was caused to the bank, the extreme penalty of removal was unjustified. The petitioner, but for his removal, would still have 10 more years of service to reach superannuation and therefore this is a fit case where he should be reinstated.

4. Learned counsel for the respondent submitted that in a banking institution like the respondent, it is essential to maintain absolute integrity and it is not possible to carry on the work expected of a public sector bank with persons who do not maintain absolute integrity. Allowing the petitioner to continue in service would set a bad trend and would prompt similar minded persons to adopt such irregular practices for advancing their own gain. As regards the technical objections pointed out, it is submitted that this Court, in exercise of the writ jurisdiction cannot sit in judgment over the factual details contained in Exhibit P3 as though

it is an Appellate Authority and that the limited jurisdiction of this Court is only to make a judicial review as to the decision making process behind Exhibits. P3 to P9. It is reiterated that sufficient opportunity was given to the petitioner to examine all his witnesses and to bring to the notice of the Enquiry Officer all the relevant documents and that Exhibit P3 is a well considered order of the Enquiry Officer, which goes into the full details of the matters and the evidence adduced on those aspects.

5. Before proceeding to discuss the relevant case law on the point, I shall discuss the merits of the major submissions made by the learned counsel for the petitioner. As regards the contention that along with the charge, list of documents and list of witnesses were not given and that opportunity was not given for taking down extracts, it may straight away be mentioned that during the pendency of the enquiry proceedings, which stretched over a period of nearly six months, no grievance at all was placed before the Enquiry Officer pointing out the need for supplying more details or for an opportunity to examine more witnesses. No contention was also raised with regard to the priority in the matter of examination of witnesses. Having co- operated with the enquiry until its culmination, it is not open to the petitioner to turn round and challenge the propriety of the procedure followed by the Enquiry Officer.

6. As regards the contention that no loss was caused to the bank, that is a matter which may affect the punishment to be inflicted and not the sustainability of the specific charges framed against the petitioner. Even as far as loss is concerned, it is not possible to accept the petitioner''s contention. Though the total amount of loss is not given as a round figure in Exhibit P3 report, the alleged improper actions on the part of the petitioner are arrayed under various heads and those are dealt with in different paragraphs of Exhibit P3. Specific findings of each of these points are also given after discussing the evidence. For eg:- Page 67 of Exhibit P3 deals with an irregularity committed in the matter of giving certain facilities to one Ramachandra Rao, whose account was running irregularly ever since 1989. There were similar other irregularities in respect of some other accounts also. The loan mentioned in page 69 were released based on assessments and recommendations made by the petitioner himself. Substantial amounts are due from particular account holders, who have defaulted. Merely because amounts are debited against the account of the debtors, it cannot be said that no loss is caused to the Bank. May be, the figures are available in the account; but the impact of the grant of amounts to persons without proper credit will be actually felt only when recovery steps start in due course. In the circumstances it cannot be said that no loss was caused to the bank.

7. Page 72 of Exhibit P3 deals with certain bills discounted by the petitioner when presented by different persons. The debit vouchers in respect of those amounts were prepared by the petitioner and here again the actual impact of his deeds would be felt only when recovery of the amounts from the customers concerned

is tried. The same is the position with regard to the various purchases mentioned in page 78 of Exhibit P3 also. The Enquiry Officer has clearly stated that the bills purchased with Nos. 191, 307, 358, 446 and 662 of 1989 were all returned unpaid. In the circumstances it cannot be said that the bank has not suffered any loss in consequence of the irregularities committed by the petitioner.

8. Yet another contention is that the petitioner was a Field Officer. True, he was. But even Field Officers can be entrusted with office responsibilities. The details of entries made by the petitioner in the various registers and recommendations made by him show that he had played an active role in the matter of monetary transactions, which are dealt with in detail in Exhibit P3. He cannot, therefore, disown his responsibility for the irregularities by stating that he is only a Field Officer: In any case, these are not matters which are within the province of this Court to consider from the perspective of an Appellate Authority. The fact finding authority has, on sufficient evidence, found that the charges are proved and the Disciplinary Authority, the Appellate Authority and the Reviewing Authority have also found it proper to accept those findings. Suffice it to say that nothing is available before the Court to conclude that the decision making process behind Exhibits P5, P7 and P9 or the procedure followed by the authorities are in any way defective.

9. What is left for consideration is the aspect of punishment. The petitioner was holding a responsible post in a nationalised bank. While dealing with the delinquency of such officers, the authorities concerned have to bear in mind the over all national interest and the impact, the misdeeds of such officers make on the customers, The Apex Court has, time and again, reiterated the need to have a serious view of such delinquencies committed by bank officers. Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., , is a case where the defalcation took place in a Co-operative Society. After holding a domestic enquiry the four delinquent employees were dismissed. In a reference u/s 10 of the Industrial Disputes Act, the Labour Court upheld the finding of guilt. However, taking into account the past clean record of the delinquent, the Labour Court, in exercise of its discretionary power u/s 11-A of the Act, ordered their reinstatement with 25% back wages. The award was upheld by the High Court. However, the Apex Court set aside the finding of the High Court and the Labour Court and held that once an act of misappropriation is proved, may it be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. Referring to the decisions in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, and U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 , wherein similar matters are dealt with, the disciplinary action and punishment were upheld and the Court found that the impact of misconduct would be that the Management would lose confidence that the employee would truthfully and faithfully carry on his duties. It also held that in case of proved misappropriation, there is no question of considering past record, that it is in the discretion of the employer to consider the same in

appropriate cases and that even the Labour Court cannot substitute the penalty imposed in such cases.

10. Many more authorities were cited before me by either side, but I do not think it necessary to go into all of them in view of the clear finding of the Apex Court as aforementioned.

11. The Original Petition, in the circumstances, is without merit and it is accordingly dismissed.

