
(2014) 03 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 4093 of 2001

L.K. Parmar Ex. Manager

APPELLANT

Vs

Panchmahals Vadodara Gramin Bank

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 GUJ CK 0095

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Hasmukh C. Patel and Mr. Rajkumar Chaumal, for the Appellant;
Darshan M. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged order dated 6.12.2000 passed by the Chairman of the respondent - Bank dismissing the petitioner from service as also the order passed by the appellate authority confirming the order of dismissal. It appears that the petitioner was earlier permitted to withdraw this very petition by order dated 2.7.2002 with liberty to make representation to respondent bank. However liberty was reserved in the said order to revive the petition in case of any difficulty. Order dated 2.7.2002 reads as under: Before hearing of this matter commences, the learned advocate for the petitioner states that he intends to make a representation before the concerned Bank with regard to the dispute raised in this petition. On that ground, he seeks permission to withdraw this petition. The permission is granted. The petitioner is directed to make a representation on or before 10th July, 2002 and as and when the same is made the respondent Bank shall take it into consideration and give its decision on or before 25th August, 2002. The petition stands disposed as withdrawn with a liberty to the petitioner to revive the same in case of difficulty by filing a simple note. Direct Service is permitted.

It appears that pursuant to the said order, the petitioner made representation to the appellate authority of the bank. The appellate authority then considered such representation of the petitioner and also gave hearing to the petitioner in the meeting of the Board of Directors held on 9.8.2002. The appellate authority consisted of following members of the Board of Directors: 1. Chairman of the Bank.

2. Asstt. General Manager (DDM, Panchmahal), NABARD.

3. Regional Manager, Bank of Baroda, Panchmahal Region.

4. Dy. Regional Manager, Bank of Baroda, Baroda Region.

5. Director, DRDA, Vadodara (Govt. of Gujarat).

2. The order passed by the appellate authority after considering the representation of the petitioner and after hearing the petitioner is found placed at page 134. In the last paragraph of the order, it is stated that all the members of the Board including Chairman are changed except NABARD Nominee Director. Thus, the Chairman who had passed order of dismissal against the petitioner was different than the Chairman who participated in the meeting of the Board of Directors.

3. I have heard the learned advocates for the parties.

4. Learned Advocate Mr. Hasmukh C. Patel appearing for the petitioner submitted that the charges levelled against the petitioner for which departmental inquiry was held were just about some lapses - acts of negligence in the matter of dealing with the loan applications and there is no charge of misappropriation of any amount by the petitioner. Mr. Patel submitted that considering the nature of charges, it was not a case of imposing harsh punishment of dismissal. Mr. Patel submitted that out of total 242 cases, the petitioner was served with charge sheet only for 12 cases. Mr. Patel submitted that looking to the long tenure of service of the petitioner, the petitioner ought not to have been dismissed from service as for 12 cases, the petitioner was alleged to have committed some lapses. Mr. Patel submitted that the petitioner was served with the charge sheet only after the petitioner left charge from the Bank at Chundadi Branch. Mr. Patel submitted that all throughout audit was made out and during the audit, no lapse on the part of the petitioner was found. Mr. Patel submitted that the appellate authority has not properly dealt with the appeal of the petitioner as required by Regulation 32 of the Staff Service Regulations, 1992 ("the Regulations" for short). Mr. Patel submitted that after the petitioner was intimated about the decision taken by the appellate authority, the petitioner pointed out that the petitioner was not given full opportunity of hearing the appellate board and demanded that the appellate board may reconsider the whole issue considering the nature of charges levelled against the petitioner. Mr. Patel submitted that the petitioner worked for the lowest strata of the society and as a manager of the bank, he always discharged his duties in the best interest of the bank and,

therefore, the punishment of dismissal imposed upon the petitioner is disproportionate to the gravity of the charges. Mr. Patel thus urged to allow the petition.

5. Learned Advocate Mr. Darshan M. Parikh appearing for the respondent bank submitted that in regular departmental inquiry conducted against the petitioner, the charges were proved against the petitioner. Mr. Parikh submitted that the charges against the petitioner were of serious nature and as per the finding recorded by the inquiry officer, the petitioner had not only acted against the interests of the bank but also caused financial loss to the bank. Mr. Parikh submitted that the petitioner has not been in a position to point out any infirmity in the decision-making process during inquiry. Mr. Parikh submitted that in fact, the petitioner is estopped from challenging the order of dismissal passed against him since the petitioner had withdrawn his petition and he was just given liberty to revive the petition, Mr. Parikh submitted that after the petitioner was permitted to withdraw his petition, the petitioner was given full opportunity the appellate board again, and the appellate authority has recorded that considering the nature of the charges proved against the petitioner, the punishment of dismissal is not disproportionate. Mr. Parikh submitted that since the inquiry officer found that the charges against the petitioner were proved and since the petitioner is held to have acted against the interests of the bank, the impugned order of dismissal passed against the petitioner has rightly not been interfered with by the appellate authority. Mr. Parikh submitted that in absence of any infirmity in the decision-making process during inquiry, and the disciplinary authority as well as by the appellate authority having considered the nature of charges while imposing penalty of dismissal, this Court would not like to interfere with the impugned order of dismissal which was confirmed by the appellate authority. He thus urged to dismiss the petition.

6. Having heard learned advocates for the parties and having perused the record of the petition, it appears that the petitioner was departmentally proceeded for the following charges:

1. You extended finance to borrowers under crop loan by altering land records/ loan documents thereby showing more holding of land and extended more finance in various loan accounts shown in Annexure: I. Hence, you tempered with bank's important documents for accommodating loanees and thereby you misutilized your position as a Manager.

In majority crop loan Accounts, Ekrarnama was not obtained from borrowers for keeping with concerned loan papers. Further, lien was not noted on land holding of the borrowers.

2. In loan L/F. No. 10/255, land was in the name of Fatabhai Khimjibhai Bamanian. Further, Smt. Shantiben, wife of Kalsing Fatabhai Bamanian was defaulter in loan Account L/F No. 12/71 for Buffalo. However, crop. loan of Rs. 10,100/- was sanctioned and disbursed to Mr. Kalsing Fatabhai Bamanian, son of

Fatabhai Khimjibhai Bamanian on 28.6.1996.

While disbursing second installment of loan to Mr. Kalsing on 21.7.1995, amount of loan disbursed was credited directly in the loan Account of Wife of Kalsing and thereby the said loan Account of Buffalo was settled out of disbursement made in crop loan.

3. The previous loan Accounts of either the borrower or their family members were not regular. However, new finance was sanctioned and disbursed. The details of such loan Accounts is stated in Annexure: II.

4. In several cases, previous loan Accounts were not regular. However, new Loan was sanctioned and disbursed to such borrowers who had settled their previous/old loan Accounts from the amount of new loan Accounts. The details of such loan Accounts is given in Annexure: III.

5. In several borrowal accounts loan for purchase of buffaloes/bullocks/bullock carts was disbursed under IRDP to enable them to generate sources of income and to bring their standard of income and to bring their standard of living above poverty line. After the loan disbursement, considerable amount was credited to either regularise the over due loan Accounts of beneficiaries or credited few days of loan disbursement. This transpires that the end use of loan is not verified and that the same is utilised for other personal purpose.

The aforesaid transactions were made just for book adjustment and thereby you had wrongly tried to excel the advances port folio and to show good recovery performance.

Hence, you in connivance with the loan beneficiaries mis-utilized bank's fund/ Government's funds and did the acts prejudicial and injurious to the bank's interest as well as nation's interests.

The list of such beneficiaries is given in Annexure : IV.

6. Loan Amount of Rs. 6000/- for purchase of bullock cart was disbursed in each of the following 6 loan accounts on 12.1.1996.

Loan L/F Nos. 7/105, 132, 133, 145, 148 and 178.

On the next day i.e. on 13.1.1996, the dealer had withdrawn the abovesaid amount ! of loan disbursement i.e. Rs. 6000 x 6 = Rs. 36,000/-. The equal amount was credited in S.B. Account of Smt. Jetliben Vira J. Baria L/F No. 6/154 on the same day i.e. 13.1.1996.

It appears from the transactions that and use of loan was not verified and loan was disbursed for adjustment and that you assisted the third parties to create fund by fake transactions and thereby misutilized banks fund and Government subsidies.

7. In respect of several loan Accounts, payment to dealers was made through head office advice (which is being utilized only for bank's inter branch

transactions) against Bank's norms. The details in this regard is given in Annexure: V.

The transactions do not tantamount to genuine business transactions and were created for assisting the dealer for making fake dealings.

8. In several borrowal Accounts, loan for non agricultural purposes was disbursed under Government sponsored programmes. After the loan disbursement, sizeable amount was created to SB Deposits Account or loan account of concerned beneficiaries on the same day or after a short period of loan disbursement.

Further in 8 loan accounts for jute work, disbursement of Rs. 10,000/- was made in each Account. However, Rs. 9000/- were credited before two days of disbursement in 7 SB Accounts and Rs. 8000/- were credited in 1 SB Account of concerned borrowers.

The aforesaid transactions were made just for book adjustment and thereby you had wrongly tried to create fake transactions and to show good performance by increasing level of deposit and advances. Hence you misled the higher authorities You in connivance with the loan beneficiaries misutilised Government's funds and dis the acts prejudicial to the bank's interest as well as nation's interest.

The list of such beneficiaries is given in Annexure : VI.

9. During the last days of January, 1996 and first half of February, 1996, as many as 30 loan applications for new well and oil engine were sanctioned by you. Originally, the taluka authorities had recommended loan for new well only. However, oil engine was added in the said loan applications later on after making addition/alterations therein, without the authority or authentication of the concerned agency.

Out of above said 30 loan accounts, deficiencies were noticed in 13 loan accounts as shown in Annexure VII.

10. Earlier, loans for oil engine/new well were granted to 3 borrowers to whom again for the same purpose loans were granted before the expected life period of oil engines as shown in Annexure: VIII for giving them undue benefit of Government's subsidy and bank's loan.

11. Mr. S.R. Parmar, the then full time regular messenger - cum sweeper of Chundadi branch belongs to village Pipalia which is located outside service area of the branch. You however had sanctioned loan for oil engine and engine room to Mr. S.R. Parmar under IRDP on 20.11.1995. Despite the fact, Mr. Parmar is the employee of our bank and his income was on the branch records, his annual income was wrongly stated as Rs. 7000/- to consider him as IRDP beneficiary. Pre-inspection report and statement Nos. PVGB 11-12 were not prepared and attached with loan papers. Further, NOC of the concerned banks were not obtained.

Out of total loan of Rs. 17500/-, Rs. 10,000/- were disbursed for oil engine and

Rs. 7500/- were disbursed for engine room. Further, 50% subsidy was credited in the said loan account.

You were fully aware that Mr. S.R. Parmar was actually not a IRDP beneficiary. You, however, misutilized your position as a Manager and assisted him to wrongly avail Government subsidy.

Further, you had sanctioned and disbursed loan of Rs. 18000/- for Kirana shop to Mrs. Chandrikaben Sureshkumar Parmar (wife of Mr. S.T. Parmar, FTRM), on 13.11.1995 under Direct Loan Scheme. In this loan account also though the village was out of service area of our Chundadi Branch, NOC of the concerned banks were not obtained. Annual income of the family was wrongly stated as Rs. 6200/-. The licence of the shop was not obtained. Mr. S.R. Parmar, the spouse of Mrs. Chandrikaben S. Parmar had also availed crop loan from the branch. Despite that the said details was not mentioned.

Further, Rs. 7500/- disbursed for engine room on 22.1.1996 in the loan Account of Mr. S.R. Parmar were credited in the loan Account of his spouse for Kirana shop.

The abovesaid loans were sanctioned by you though you were not empowered for the same. (The powers to sanction advances to staff relative are delegated to Chairman/General Manager). Hence, you acted ultra vires to your powers. Further, you had not cared to obtain post sanctioned of Head Office.

12. On account of your intentional mala fide acts as above, recovery of over due is not forthcoming in almost all the loan accounts which has resulted in huge amount of Non Performing Assets over Rs. 1 crores. Further, your said acts made the borrowers much indebted beyond their capacity to repay. Your such an irresponsible act tarnished the image of the bank in the eyes of Bank's customers.

Hence, you had extended loan to borrowers by gross negligence, violating bank's set norms and without verifying the use of credit and Government's fund. the loan proposals were not properly scrutinized and credit worthiness of applicants were not ensured. As a branch Manager, you misutilised the powers delegated to you for wrong transactions and also to facilitate the borrowers to get undue advantage of Bank's credit and Government subsidies.

The aforesaid alleged acts of omission and commission, if proved, would tantamount to gross misconduct under Panchmahals Vadodara Gramin Bank Staff Service Regulation, 1983. Therefore, on the basis of the said allegations, following charges are levelled against you.

1. You did not take all possible steps to ensure and protect the interest of the bank. In fact, you took such steps and did such acts of omission and commission which were derogatory, detrimental, prejudicial and injurious to the interest of the bank.

2. You showed gross negligence and indifference in discharge of your duties.
3. You did not discharge your duties with utmost integrity and honesty but in fact, did such acts of lack of probity on your part.
4. You did not maintain discipline in all transactions and in discharging your duties as a Manager. In fact, you misused and abused your position as a Manager of the Branch.
5. You did not perform your duties with devotion and diligence and violated and flouted the rules of the bank.
6. You committed acts of breach of trust.
7. By your acts of misdeeds, you tarnished the image of the bank.
8. You did acts of unbecoming of a bank officer.

7. It is not the case of the petitioner that the petitioner was not given any opportunity before the inquiry officer. From the inquiry report page 22 annexure B, it appears that the charges were proved against the petitioner with the help of the witnesses and the documents proved against the petitioner. On the basis of the finding recorded by the inquiry officer, the disciplinary authority - Chairman of the Bank passed order against the petitioner on 6.12.2000 dismissing the petitioner from service with immediate effect as per Regulation 30 of the Regulations. It appears from, the order of dismissal that the disciplinary authority has considered the finding recorded by the inquiry officer, representation made by the petitioner and also the aspect of proportionality of punishment. In paragraph 6 of the order of dismissal at Annexure-E, the Disciplinary Authority has observed that considering the nature of charges proved against the petitioner and other extenuating circumstances, it was of the opinion that the continuation of the petitioner in service was not in the interest of the bank.

8. As stated above, after the petitioner was permitted to withdraw the petition to make representation to the respondent bank, the petitioner made representation vide letter dated 23.7.2002 which was considered by the appellate authority. Petitioner was called for hearing by the appellate authority. It appears that the appellate authority considered the representation and heard the petitioner for again deciding the appeal of the petitioner against the order of dismissal. From the order of the appellate authority, it appears that the appellate authority has considered the nature of charges proved against the petitioner and also the aspect of quantum of punishment imposed upon the petitioner. The appellate authority in its order at page 131 has observed in para-G as under:

G. Keeping in view the gravity of charge proved and considering the prima facie and extenuating circumstances including huge loss of around Rs. 1.50 crores which is very high as compare to Bank's yearly profit around Rs. 1.00 crore. The image of the Bank is also adversely effected. Considering the above, the Board of

Directors unanimously regretted the representation of Mr. L.K. Parmar to reinstate him in Bank's service and upheld the decision of the Board of Directors in their meeting dated 17th February, 2001 (Agenda No. 3.6) viz. to reject the appeal of Mr. L.K. Parmar against dismissal order and the order of Disciplinary Authority was confirmed. (All the members of the Board including Chairman are changed except NABARD Nominee Director).

9. It is required to be noted that the above consideration by the appellate authority was after this Court permitted the petitioner to withdraw the petition and directed the respondent bank to consider the representation of the petitioner.

10. From the order of dismissal as also from the order passed by the appellate authority, the Court finds that after due procedure of departmental inquiry, the punishment was imposed and proportionality of punishment was considered in the context of nature of charges proved against the petitioner.

11. In above view of the matter, the impugned order of dismissal passed by the disciplinary authority and confirmed by the appellate authority do not call for any interference while exercising the powers under Article 226 of the Constitution of India. For the reasons stated above, this petition is dismissed. Rule is discharged.