(2018) 10 GAU CK 0005

In the Gauhati High Court

Case No : Civil Writ Petition No.4564 Of 2016

Mokshada Sharma Kataki APPELLANT

Vs

Assam Gramin Vikash Bank And 5 Ors RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Citation : (2018) 10 GAU CK 0005

Hon'ble Judges : L.S. Jamir, J

Bench : Single Bench

Advocate : R Rahman, M Choudhuryr

Final Decision : Dismissed

Judgement

1. By this writ petition, the petitioner is challenging the Order dated 30.05.2015 issued by the General Manager and Disciplinary Authority of Assam

Gramin Vikash Bank by which the petitioner was imposed the penalty of compulsory retirement in terms of Regulation 39.1 (b) of the Assam Gramin

Vikash Bank (Officers and Employees) Service (Amendment) Regulations, 2013.

2. Heard Mr. K. Sarma, learned counsel for the petitioner as well as Mr. S. Dutta, learned Senior Counsel appearing for the respondent Nos. 1 to 4.

3. Mr. K. Sarma, learned counsel for the petitioner submits that the petitioner was appointed in the Assam Gramin Vikash Bank (herein after â??the

Bankâ?) in 1984 and served in different branches of the Bank. While serving as Assistant Manager, Scale â?" I at the Dhemaji Branch of the Bank,

he was placed under suspension with immediate effect by an Order dated 14.09.2012 in contemplation of a Disciplinary Proceeding for certain act of

gross misconduct alleged to have been committed by him at the Bankâ??s Dhemaji Branch. The Disciplinary Proceeding was initiated against the petitioner with as many as 11 (Eleven) charges. A show cause notice dated 28.03.2013 was served upon the petitioner on the charges of improper

functioning of his duties in dealing with Central Sector Scheme of National Bank for Agricultural and Rural Development (NABARD) under â??Pig

Developmentâ? Scheme for recommending loan application of beneficiaries to the General Manager (Credit) for sanctioning loan. The petitioner

submitted reply on 27.04.2013 denying all the charges.

â??Thereafter, by a Communication dated 09.05.2014, charges were framed against the petitioner and the petitioner was asked to submit written

statement of defence. The petitioner submitted the written statement on 26.05.2014. Thereafter, not being satisfied with the reply made by the

petitioner a Departmental Proceeding was initiated against him by appointing the Enquiry Officer and Presenting Officer by an Order dated

16.06.2014. On expression of inability to conduct the enquiry by the appointed Presenting Officer, another person, namely, Ananta Hazarika, Manager,

Assam Gramin Vikash Bank, Regional Office, Lakhimpur was appointed as the Presenting Officer by an Order dated 13.08.2014. Thereafter, the

Departmental Enquiry started on 12.09.2014 and concluded on 27.10.2014. The Enquiry Officer submitted report on 30.11.2014 after one month of his

retirement. The petitioner made a reply against the Enquiry Report dated 10.02.2015 and thereafter, the Disciplinary Authority passed the Order dated

30.05.2015 imposing the penalty of compulsory retirement from service. Thereafter, the petitioner preferred an appeal before the Appellate Authority

on 22.06.2015 but the said appeal was also dismissed by an Order dated 13.05.2016.

4. Learned counsel for the petitioner submits that the Enquiry Report dated 30.11.2014 was submitted by the Enquiry Officer after one month from

the date of his retirement. Therefore, when the Enquiry Officer submitted the Enquiry Report he became functus officio in view of his retirement and

therefore, the Disciplinary Authority could not have accepted or acted on the Enquiry Report made by the Enquiry Officer after his retirement.

5. Learned counsel for the petitioner submits that in the charges levelled against the petitioner a number of persons have been mentioned as

beneficiaries, in whose names the loan was allegedly recommended for sanction but none of those persons has been examined at the time of the

Disciplinary Proceeding. Further, in the charge issued, 7 Witnesses have been named. However, only one witness was examined, that too improperly and he was also not a beneficiary. Further, the Enquiry Officer had examined one Ashwini Dutta as the Main Witness but his examination was not in accordance with the procedure and nothing has been established from the evidence against the petitioner. In the examination of MW-1, the Presenting Officer had directed the MW-1 to exhibit only some documents. Therefore, the charges levelled against the petitioner is not tenable in law and is liable to be set aside. It is also submitted that in the Departmental Proceeding, the principles of natural justice was not fully complied with. Learned counsel for the petitioner also submits that the Enquiry Officer started the proceedings on 12.09.2014 and completed the same on 27.10.2014 which would indicate the bias attitude of the Enquiry Officer in favour of the Management inasmuch as the enquiry was completed within a period of one and a half months, that too without examining the prime witnesses nor any persons mentioned in the charge.

6. Learned counsel for the petitioner also submits that in the affidavit-in-opposition filed by the respondents it is alleged that due to the gross negligence on the part of the petitioner, the Bank has incurred a loss of Rs. 18.32 Crores, however, no charge was framed on the loss incurred by the Bank against the petitioner nor any evidence was adduced or any finding was given to that effect in the Enquiry Report. It is submitted that the charges framed against the petitioner has not been proved and that the charges were also fake in nature. Therefore, the Disciplinary Authority on the basis of the Enquiry Report could not have imposed the major punishment of compulsory retirement. It is also submitted that the petitioner has only recommended the loan applications after due verification of the Senior Manager who has sanctioned the loan. Therefore, if there was any connivance between the petitioner and the Senior Manager, both should have been inquired together. However, the petitioner and the Senior Manager were inquired separately and therefore, the petitioner, was not in a position to exactly know the charges brought against the Senior Manager and the same has highly prejudiced the petitioner and therefore, the Enquiry Report dated 30.11.2014 also deserves to be set aside. It is submitted that the Disciplinary Proceeding conducted by the Enquiry Officer is not in accordance with law and therefore, the Enquiry Report as well as the punishment

imposed upon the petitioner stands vitiated and the same deserves to be quashed and set aside. Learned counsel submits that the petitioner is a family

holder having 2 (Two) minor school going children and therefore, taking the worse view of the matter and also considering that the Disciplinary

Proceeding was not conducted in accordance with law, any penalty apart from the penalty of compulsory retirement could have been imposed upon

the petitioner.

7. Mr. S. Dutta, learned senior counsel appearing on behalf of the respondents on the other hand submits that the petitioner was working as Assistant

Manager and his allotted duties and responsibilities were to see Credit (Loans/ Advances) related works including pre-sanction and post-sanction

appraisal, follow up/monitoring and recovery of loans and advances etc. He submits that the pre-sanction appraisal of credit is the most important task

before sanction of loans and advances. The sanctioning authority cannot apply his discretion unless and until it is recommended by the Officer looking

after the credit portfolio. However, no pre-sanction field visits were done by the petitioner and therefore, the petitioner had recklessly flouted the Bank

Rules, thereby, incurring heavy loss upon the Bank.

8. Learned senior counsel for the respondents further submits that the allegation of violation of the principles of natural justice is also not tenable

inasmuch as there was no noting of the Disciplinary Proceeding that the petitioner was not heard in the proceedings nor any complaints were made by

the petitioner of not being given an opportunity of being heard at any point of time during the enquiry. Learned senior counsel submits that the Enquiry

Proceedings were held on 12.09.2014, 26.09.2014, 16.10.2014, 17.10.2014, 18.10.2014 and 27.10.2014 within the tenure of the Enquiry Officer. After

completion of the Enquiry Proceedings and on completion of formalities that were to be complied with by the Enquiry Officer, the Enquiry Report was

submitted. However, the submission of the Enquiry Report by the Enquiry Officer after his retirement would not vitiate the Disciplinary Proceeding

inasmuch as the Enquiry Proceedings were completed within the tenure of the Enquiry Officer.

It is submitted that the Departmental Enquiry was instituted under the appropriate provisions of the Assam Gramin Vikash Bank (Officers and

Employees) Service (Amendment) Regulations, 2013. The findings of the Enquiry

Officer were passed on evidence produced and witness examined

of both the sides. Further, the severity of the punishment is considered to be commensurate with the gross negligence and misconduct of the petitioner

due to involvement of huge public money amounting to a sum of Rs. 18.32 Crores. It is also submitted that at the time of the Disciplinary Proceeding,

the petitioner did not come up with any witness and therefore, at this stage, the petitioner cannot turn round and challenge the Disciplinary Proceeding

as not being done in accordance with law. He therefore, submits that the decision of the Bank should not be interfered with unless the same is found

to be illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or

moral standard. He submits that the Bank survives on the trust of his clientele and its constituents. The petitioner was serving as an Assistant

Manager, Scale â?" I and such position is a matter of great trust. Therefore, the petitioner was expected to act with absolute integrity and honesty

while discharging his duties. Therefore, the dereliction of duty on the part of the petitioner has been viewed seriously by the Bank, more particularly

when the Bank had incurred a heavy loss of Rs. 18.32 Crores. The petitioner is required to maintain good conduct and discipline and to act to the best

of his judgment in performance of his duties or in exercise of powers conferred upon him. The Bank cannot function properly and effectively if the

Officers and Employees do not observe the prescribed norms and discipline. In the present case, he submits that the petitioner having flouted all the

Bank Rules which is proved in the Enquiry Report, the present writ petition deserves to be dismissed.

9. I have considered the submissions made by the learned counsel for the parties.

10. The first ground upon which the learned counsel for the petitioner has strongly stressed that the Enquiry Report dated 30.11.2014 was submitted

only after the retirement of the Enquiry Officer has been taken into consideration. A perusal of the records would indicate that the enquiry was held

on 6 days, namely, 12.09.2014, 26.09.2014, 16.10.2014, 17.10.2014, 18.10.2014 and 27.10.2014. These dates were all within the tenure of the Enquiry

Officer, There is no dispute that the Enquiry Report was submitted after the retirement of the Enquiry Officer, however, considering the fact that the

Enquiry Proceedings were completed within the tenure of the Enquiry Officer, this Court is of the considered opinion that simply submitting the

Enquiry Report after the retirement of the Enquiry Officer would not vitiate the Departmental Proceeding. It is also important to note that the penalty

of compulsory retirement was not imposed by the Enquiry Officer but the same was imposed by the General Manager and Disciplinary Authority of

the Bank. Therefore, this Court is of the considered opinion that it was well within the competence of the General Manager and Disciplinary Authority

of the Bank to have accepted the Enquiry Report dated 30.11.2014 as a valid report and to have acted upon the same. In that view of the matter, the

first ground taken by the learned counsel for the petitioner falls.

11. The proceedings of the Departmental Enquiry has also been considered by this Court which is annexed to the writ petition as Annexure 8. A

perusal of the same does not indicate any recording of any complaints made by the petitioner that he has not been given an opportunity of hearing.

Infact, from the proceedings it is seen that the petitioner had participated in the Disciplinary Enquiry and that he has also cross examined MW-1.

During the Disciplinary Proceeding no objections has also been raised with regard to production of witnesses by the petitioner.

12. The Enquiry Report dated 30.11.2014 has also been considered by this Court. Charges No. 1, 2 and 5 were found to be proved. Against Charge

No. 3, the petitioner had admitted that he recommended the proposal without field verification. Against Charge No. 4, it is found that the petitioner

made no pre-sanction verification of the proposed units. Importantly, against Charge No. 7, it was proved that the 3 borrowers mentioned in the

charges were students and against Charge No. 10, it was proved that the petitioner had taken bribes from the borrowers against sanction of loan. A

consideration of the same would indicate gross misconduct on the part of the petitioner who was a Bank Officer.

13. In the present case, the petitioner was holding a position of trust where honesty and integrity were inbuilt requirements and in the opinion of this

Court, the matter should be dealt with firm hands and not leniently. In the case of State Bank of India vs. Bela Bagchi reported in (2005) 7 SCC 435,

the Honâ??ble Supreme Court has held that the Bank Employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner.

14. In the case of Karnataka SRTC vs. M. G. Mittal Rao reported in (2012) 1 SCC 442, the Honâ??ble Supreme Court has held as under :

â??25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be

considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in the case

of loss of confidence, reinstatement cannot be directed.â??

15. In the case of T. N. C. S. Corporation Ltd. & Ors. Vs. K. Meerabai reported in (2006) 2 SCC 255, the Honâ??ble Supreme Court has held that

the scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible and loss of confidence is the primary factor and not

the amount of money misappropriated.

16. In the present case, this Court is of the considered opinion that there are some relevant evidence in support of the conclusion made by the Enquiry

Officer in his report dated 30.11.2014 and therefore, this Court does not find any reason to interfere with the Enquiry Report nor with the order dated

30.05.2015 passed by the General Manager and Disciplinary Authority of the Bank imposing the penalty of compulsory retirement.

17. In the facts and circumstances of what has been discussed hereinabove, there is no merit in the writ petition and is accordingly dismissed.

18. No cost.

