
(2006) 08 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 1509 of 1995

Mr. Akshay P. Patel

APPELLANT

Vs

Chairman and Managing Director and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 08 GUJ CK 0044

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : B.P. Tanna, for Petitioner 1 and Tanna Associates for Petitioners 1.2.1, 1.2.2 and 1.2.3, for the Appellant; P.J. Davawala, for Respondent 2 and K.N. Raval, for Respondent 3, for the Respondent

Judgement

Anant S. Dave, J.—This petition, under Article 226 of the Constitution of India, is filed by Shri P.K. Patel, at the relevant point of time serving with Respondent No. 1 Bank, challenging the order dated 12.10.1994 passed by the General Manager, (Appellate Authority), Respondent No. 2 herein by which order dated 15.11.1990 passed by the Disciplinary Authority (Deputy General Manager) Respondent No. 3 herein, dismissing the petitioner from the services came to be confirmed. That later on the petitioner expired and subsequently the legal heirs 1/1, 1/2 and 1/3 of the petitioner were brought on record as per order dated 29.10.2002 in Civil Application No. 5492 of 2002.

2. The petitioner has prayed for quashing and setting aside both the impugned orders dated 15.11.1990 dismissing the petitioner from services, as confirmed by the Appellate Authority vide order dated 12.10.1994, mainly on the ground that procedure followed by the Disciplinary Authority in conducting departmental inquiry is illegal. The charges levelled against the petitioner are devoid of any substance and the findings of the inquiry officer are based on no evidence. No financial loss is caused to the Bank and submissions of the delinquent-petitioner herein with regard to his defence are not properly dealt with.

3. The short facts, as emerged from the record, are as under:

The petitioner late Shri P.K. Patel, Ex-Branch Manager, serving at Sami Branch, Respondent No. 1, was charged vide charge-sheet dated 29.08.1987 as per Regulation Rules of Dena Bank Officer Employees (Discipline and Appeal) Regulation 1976. The charges, levelled against the petitioner as per charge-sheet dated 29.08.1987, are as under:

1. Acting beyond discretionary powers in a manner detrimental to the interest of the Bank and/or
2. Violation of Bank's rules/procedures and/or
3. Doing act/s of involving or likely to involve the Bank in heavy financial risk/loss and/or
4. Doing act/s prejudicial to the interest of the Bank and/or
5. Act/s unbecoming of Bank officer

That the above charges levelled against the petitioner were in the backdrop of violation of discretionary powers delegated to the Branch Manager who had charged low rate of interest, disbursed Kharif and Rabi crops at a time, without ensuring end use of loan, disbursed loan to defaulters of Co-operative Societies, granted crop loans without recommendations from Agricultural Officer, without creating charge on loan and verifying even loan extract form 7/12.

Inquiry officer after considering explanation dated 12.02.1988, not being satisfied with the same, decided to hold departmental inquiry and submitted his report and findings, by which the petitioner was found guilty of imputation Nos. 1,3,4, 5, 6, 8 and 9. So far as imputation Nos. 2 and 7, no concrete material was found implicating the petitioner.

By the inquiry authority, on 16.07.1990, the order of dismissal dated 15.11.1990 came to be passed and thereafter, S.C.A.No. 8417 of 1990 was preferred before this Court and the order of dismissal was quashed and set aside by order dated 05.08.1991. Against which, respondent No. 1 Bank filed SLP (Civil) No. 16274 of 1991 before the Hon'ble Supreme Court of India, which came to be allowed and the order of the High Court was quashed and the respondent Bank was directed to proceed with the inquiry, from the stage and Supreme Court directed the authority to initiate proceedings where the inquiry report was required to be supplied. Accordingly, report was supplied to the petitioner and thereafter appeal was preferred before the Appellate Authority by the present petitioner on 22.03.1994 and after elaborate discussion of the report of the inquiry officer, order passed by the Disciplinary Authority against the delinquent, on the grounds stated in the memorandum of appeal, the Appellate Authority passed reasoned order and upheld the order of disciplinary authority and ultimately, the dismissal order of the petitioner came to be confirmed on 12.10.1994 by respondent No. 1.

4. Being aggrieved and dissatisfied with the aforesaid order, initially the

petitioner and after his demise, the present petition is prosecuted by his legal heirs which were brought on record as per the order dated 29.10.2002 passed in Civil Application No. 5492 of 2002.

5. Shri Nikhil Kariel appearing for Mr. B.P. Tanna, learned advocate for petitioner No. 1 raised various contentions and drawn attention of the Court to all nine charges levelled against the delinquent and explained the circumstances. According to him, following are the nine charges levelled against the delinquent.

i. He has disregarded the guidelines conveyed vide Head Office Circular No. 317/52/85 dtd.6.7.85 and have granted/disbursed crop loans to various borrowers in violation of discretionary powers delegated to the Branch Manager and referred in Annexure "A".

ii. He has also charged low rate of interest in sanctioning loans to various borrowers and referred in Annexure "B".

iii. The proposals recommended by Agriculture Officer/RSC, Patan for Kharif and Rabi crops were disbursed by him at a time and totally disregarding the guidelines of the Bank for the aspects of period/time and mode of disbursement. The end use of the sanctioned/disbursed loan was also not ensured. Reference Annexure "C".

iv. He also granted/disbursed crop loans to borrowers referred in Annexure "D" though they were the defaulters of co-operative societies thereby ignoring the guidelines of the Bank i.e. regarding obtaining of No Due Certificate from other Financial Institutions.

v. He also sanctioned/disbursed the crop loans to various borrowers whose proposal have not been recommended by concerned Agril. Officer/RSC. The said cases are referred in Annexure "E".

vi. He also failed to create the charge on land held by the borrowers who were granted/disbursed crop loans.

vii. He has also failed to take proper documents while sanctioning/disbursing the loan i.e. 7/12 extracts were not obtained. Left hand thumb impression of borrowers were obtained on the documents but have not been identified or attested separately. Reference Annexure "F".

viii. He has sanctioned crop loan for Rabi season without ensuring about the irrigation facilities and inspite of not having recommended/processed by Agril. Officer of concerned RSC. The information regarding cropping pattern was not obtained and proposals were processed and sanctioned by him. Reference Annexure "G".

ix. He has granted/disbursed crop loans inspite of knowing about scarce rains and drought conditions prevailing in the area.

According to him, the delinquent had not violated any guidelines and considering

the geo-climatic condition of the area, he had sanctioned, loan at a time for two seasons i.e. Kharif and Rabi. He has also submitted that thus, ceiling limit of Rs. 15,000/- for sanctioning the loan is not violated by him.

So far as second charge is concerned, it is about charging low rate of interest in sanctioning loans. According to the learned advocate for the petitioner it is not true since in loan accounts in the leisure, 14% of the interest in was mentioned. However in D.P. notes rate of interest was wrongly mentioned and the said charge is also not proved.

So far as charge No. 3 is concerned, it is about disbursing of loan to the farmers without there being any recommendations by the Agricultural Officer, for two seasons simultaneously. He has submitted that he had taken proper care and his assumption was based on his experience and the climatic condition prevailing in the area, and, therefore, the loan was disbursed, at a time for two seasons.

So far as charge No. 4 is concerned, grant/disbursement of loan to defaulters of Co-operative Societies, ignoring the guidelines of the Bank and not obtaining no due certificate from other financial institutions, he has submitted that it is also contrary to the record and he had obtained no due certificate.

So far as charge No. 5 is concerned, recommendations of crop loans to the farmers whose proposals have not been recommended by concerned Agricultural Officer, he has submitted that there may be some discrepancies but there was no intention on the part of the delinquent to cause any loss to the bank.

So far as charge No. 6 is concerned, to grant/disbursement of the crop loans to the borrowers without creating charge of the loan and another charge of not taking proper document i.e. 7/12 extracts and proper verification of irrigation facilities and knowledge to scarce rains and drought conditions prevailing in the area are concerned, he has submitted that all the above charges, for which no material is available, are based on the presumption of the concerned officer.

Lastly he has submitted as such there is no financial loss to the Bank, no allegations of mala-fide or any ill-intention on the part of the delinquent, considering his length of service of about 28 years, the order of punishment of dismissal is harsh and disproportionate, which requires to be quashed.

He has also submitted that even grounds raised in his appeal memo before the Appellate Authority, the same is also not considered in its correct perspective and confirmation of the dismissal order by the Appellate Authority is also the case of non-application of mind and genuine explanation of the delinquent of each and every charge and incorrect findings recorded by the Inquiry Officer, as believed by the Disciplinary Authority were not considered, and therefore even the order of Appellate Authority is also arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India which requires to be quashed and set aside in exercise of powers under Article 226 of the Constitution of India.

On behalf of the petitioner, learned advocate Shri Nikhil Kariel has relied upon various authorities viz. B.C. Chaturvedi Vs. Union of India and others, in a decision between Union of India and Ors. v. B.C. Chaturvedi and submitted that there are certain factors to be considered before arriving at a decision to merit the punishment and if the punishment shocks judicial consignment, in exceptional cases, the Court can exercise the powers under Article 226 of the Constitution of India. He has also relied upon another decision in the case of Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, and submitted that if the punishment of dismissal is imposed for misconduct like negligence, major penalty like dismissal may not be imposed and lastly he has also relied upon another decision reported in Ranjit Thakur Vs. Union of India (UOI) and Others, and submitted that judicial review is open in the case when punishment is not commensurate with the gravity of offence and if it is excessively hard and vindictive powers under Article 226 of the Constitution of India can be exercised.

6. Against the submissions of Shri Nikhil Kariel, Ms.Parinda Davawala, learned advocate appearing for the respondent Bank, submitted that the findings recorded by the Inquiry Officer are based on material and evidence fairly scrutinized, analyzed and discussed and confirmed by the Disciplinary Authority as well as the Appellate Authority do not require any interference in exercise of powers under Article 226 of the Constitution of India. She has submitted that there are concurrent findings as such against the delinquent and even in his service tenure of 28 years, the delinquent was issued five charge-sheets and different kinds of penalties, and, therefore, on that ground also, the orders impugned do not require any interference of this Court. Ms. Davawala learned advocate appearing for the respondent bank has drawn attention of the Court on merit of the subject matter and submitted that the action of the delinquent was contrary to the guidelines as reflected in the circular dated 06.07.1985 and sanctioned the loan beyond the monetary ceiling limit of Rs. 15,000/-. According to her, as per said circular, per agricultural season, the loan should not exceed more than Rs. 10,000/- per borrower. In the present case, above ceiling limit was not adhered to and at a time, the borrowers were sanctioned and disbursed loan beyond the ceiling limit.

She has also submitted that loan was sanctioned beyond the discretionary powers to 28 borrowers and other acts of omission and commission, totaling of Rs. 17.50 lacs. So far as regarding loan rate of interest of D.P. Note, as reflected at least 19 cases (Rs. 2.35 lacs) sanctioned and disbursed Kharif and Rabi crop at a time, in 32 cases (Rs. 1.70 Lacs) and in 88 cases to defaulters of Co-operative Societies (Rs. 7.43 lacs) and thus committed irregularities dehors the guidelines of the Bank.

According to her, the findings recorded by the Inquiry Officer, charge Nos. 2 and 7 were not proved but other charges were established. The Inquiry Officer has given elaborate reasonings and the same cannot be said to be perverse or even

against the weight of the evidence on record. She has further submitted that as directed by the Appellate Court, the Inquiry Officer, report was supplied to the delinquent and the concerned Appellate Authority has also given elaborate reasonings for not accepting the appeal of the delinquent. According to her, paras:3, 4, 5 and 6 of the order in Appeal dated 12.10.1994 clearly indicate that the Appellate Authority has scrutinized the material and the defence of the delinquent was once again considered and it is the case of the proper application of mind which do not warrant any kind of intervention by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

7. Ms. Davawala learned advocate appearing for the respondent bank has relied upon Bank of India and Another Vs. Degala Suryanarayana, , in the case of Bank of India v. Degala Suryanarayana and submitted that in the matter of departmental inquiry, strict rules of evidence are not applicable and does not open for the High Court to exercise powers under Article 226 of the Constitution of India by re-appreciating the evidence as recorded by the Inquiry Officer. She has further relied on decision reported in Apparel Export Promotion Council Vs. A.K. Chopra, in the case of Apparel Export Promotion Council v. A.K. Chopra and submitted about quantum of punishment in the departmental inquiry, High Court can not interfere with the punishment inflicted by the disciplinary authority after scrutiny of evidence. In furtherance of above submission, she has relied upon decisions in the case of Sub-Divisional Officer, Konch Vs. Maharaj Singh, and submitted that when the findings arrived at in the departmental inquiry are accepted by the Disciplinary Authority and confirmed by the Appellate Authority or the Tribunal as the case may be, High Court will not re-appreciate the entire evidence and disturb the findings. She has submitted that the role of the High Court under Article 226 is and of a Supervisor Authority and not as an Appellate Authority. Lastly, she has submitted that even in a given case, if punishment appears to be shockingly disproportionate, the Court is duty bound to give reasons to say that how the punishment imposed is disproportionate to gravity of charges, held proved against the delinquent.

8. Having heard the learned Counsel for the parties and on perusal of the record of the case, it transpires that charges levelled against the petitioner are proved. Not only that, but, disciplinary authority has passed reasoned order. After considering the report of the Inquiry Officer, reply to the Show Cause Notice given by the delinquent and considering that even Appellate Authority, after considering all the grounds raised in the appeal preferred by the delinquent against the order of disciplinary authority, has passed reasoned order, in opinion of this Court do not require any interference in exercise of powers conferred under Article 226 of the Constitution of India. Now it is settled law that extra ordinary powers under Article 226 of the Constitution of India cannot be exercised in upsetting the findings of Inquiry Officer, confirmed by the disciplinary authority and the appellate authority as well, unless the findings are grossly perverse. In the present case, considering the overall facts, it cannot be said that findings of the Inquiry Officer based on documentary as well as oral

evidence are in any manner perverse or contrary to law and even orders passed by the Disciplinary Authority and the Appellate Authority are containing elaborate reasonings after giving opportunity to the petitioner of hearing and that new compliance of procedure of natural justice and, therefore, I do not find any reason to exercise powers under Article 226 of the Constitution of India.

9. Even preliminary scrutiny of the findings of Inquiry Officer as reflected in the Inquiry report indicate that so far as Charge No. 1 is concerned, the delinquent was to exercise his discretionary power as per the guidelines laid down for conduct of business of the bank. In case of Manager of a small bank, powers conferred was not more than Rs. 15,000/- per agricultural season for sanctioning the loan and it was to be exercised judiciously. Thus, from the record it is established that the delinquent has crossed the above ceiling of Rs. 15,000/- for sanctioning the loan for a particular agricultural season and without forwarding proposal to higher authority had sanctioned crop loan.

(i) Not only that, but, even charge No. 2 with regard to charging low rate of interest in sanctioning loan is also proved. With regard to this charge, explanation of the delinquent that he had wrongly mentioned rate of interest at lower rate in DP notes, but practically charged proper rate of interest is also not convincing, in case when proceedings of recovery are initiated by the bank, normally Court passes judgment as per the interest mentioned in the DP note which would have resulted into financial loss.

(ii) So far as Charge No. 3 is concerned, documentary evidence indicates recommendations of sanctioning crop loans for two seasons i.e. Kharif and Rabi and this action is also contrary to law and guidelines of the banks are not followed in this regard.

(iii) So far as Charge Nos. 4 and 5 are concerned, it is reflected that the delinquent has ignored the guidelines with regard to obtaining No Due Certificate from other financial institutions before sanctioning and disbursing the crop loans. The explanation of the delinquent in this regard is also contrary to record of the case inasmuch as NOC was obtained only in cases of April-May, 1985 and not for July to September, 1986 when the loans were sanctioned and disbursed. Even, Agricultural Officer had not recommended cases for sanctioning of loan but even then, the delinquent had sanctioned and disbursed the crop loan which indicate that there were discrepancies in sanctioning and disbursement of the loan. Even the delinquent has confessed in his written explanation dtd.12.2.1988 to the reply to the charge-sheet that he had not created charge on the land and thus, overall conduct of the delinquent establish that he had performed his duties contrary to guidelines issued by the bank.

10. The above findings were confirmed by the Disciplinary Authority while passing the order of dismissal and found that delinquent has acted beyond discretionary power and in a manner detrimental to the interest of the bank in violation of rules and procedures of the bank in advancing loans to farmers and

also acted in the manner prejudicial to the financial interest of the bank, and therefore, petitioner came to be dismissed from service. The above order is also confirmed in the appeal and the Appellate Authority has also once again discussed all the charges and explanation given by the delinquent and had come to the conclusion that in the inquiry charges were proved against the delinquent and even considering the past record of the delinquent that he was given five charge-sheet and different kind of penalties, it was not a case for even considering for awarding lesser penalty and appeal was rightly rejected by the order dtd.12.10.1994.

11. That while deciding the subject matter of the petition I have taken into consideration reported decision of 2003 (4) SCC 364 in case of Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar, while a delinquent is a bank officer, the Apex Court has observed that a bank officer is required to exercise higher standard of honesty and integrity. In Para:14 the Apex Court has held that:

A bank officer is required to exercise higher standards of honesty and integrity. Even officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. It is no defence to say that no loss or profit had resulted when the officer/employee acted without authority. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the respondent were not casual in nature and were serious.

12. Having considered the above aspect and the law laid down by the Apex Court in Bank of India and Another Vs. Degala Suryanarayana, in the case of Apparel Export Promotion Council Vs. A.K. Chopra, and Sub-Divisional Officer, Konch Vs. Maharaj Singh, , I do not find it proper to interfere with punishment inflicted upon the delinquent in exercise of powers conferred under Article 226 of the Constitution of India and even as per law laid down by the Apex Court in various cases in the case of B.C. Chaturvedi Vs. Union of India and others, , in the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., and in case of Omkumar v. Union of India reported in 2001 (2) SCC 386, until the punishment inflicted upon the delinquent is shockingly disproportionate or is totally arbitrary, powers under Article 226 of the Constitution of India cannot be exercised by altering the punishment inflicted by the Disciplinary Authority arrived on the basis of well reasoned findings. That case laws pressed into service by learned Counsel for the petitioner for intervention by this Court to quash the impugned orders or modify the same on ground of quantum of punishment, are not applicable in view of clear findings of facts recorded by Inquiry Officer on the basis of evidence scrutinized by him and accepted by Disciplinary and Appellate Authorities.

13. In the present case, even the Appellate Authority has found that during the

service tenure of 28 years, the petitioner was served five charge-sheets and even penalty was also imposed, and therefore, no case is made out to interfere with the quantum of punishment inflicted by the Disciplinary Authority. The Apex Court in the case of Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar (Supra) in Paras:11 and 12 held as under:

Para:11:- It is settled that the court should not interfere with the administrator's decision unless it was 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 standards. In view of Wednesbury principle the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

Para:12:- Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

In view of the above I do not find any reason to alter or reduce the punishment of dismissal inflicted upon the petitioner in exercise of power under Article 226 of the Constitution of India.

14. As stated earlier, I do not find any justification to quash the impugned orders on any of the grounds including the same being arbitrary and/or unreasonable and therefore violative of Article 14 of the Constitution of India and even no justification come forth for interfering with the punishment of dismissal already awarded by the Disciplinary Authority and confirmed by the Appellate Authority, and therefore petition stands rejected with no order as to costs. Rule is discharged.