
(2015) 09 JH CK 0001
In the Jharkhand High Court
Case No : W.P. (S) No. 1320 of 2011

Om Prakash

APPELLANT

Vs

The Bank of India and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 09 JH CK 0001

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M.S. Anwar, Sr. Advocate, Afaque Ahmad, Shweta Singh and Shivani Verma, Advocates, for the Appellant; A. Allam, Senior Advocate and Nehala Sharmin, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. The Enquiry Report dated 09.06.2009 (Annexures-10 and 10/1), the order of dismissal from service dated 31.10.2009 (Annexure-11) as well as the Appellate Order dated 07.02.2011 (Annexure-14) affirming the punishment imposed upon the petitioner, are under challenge in the present writ application. Petitioner has also sought declaration that the Inquiry Report is perverse and punishment orders based thereupon are not only perverse but are grossly disproportionate to the charges proved.

3. Petitioner joined in the Bank of India on 12.09.1980. He is said to have been promoted as a Special Assistant in 1986 and on 26.06.1995, as an Agriculture Officer Junior Management Grade-I. He claims to have received appreciation letter by Deputy Zonal Manager on 19.08.1998 on the basis of good audit rating of the Branch. According to him, he has received award twice for good audit rating of the Branch between May 2003 to July 2005. He got promotion to MMD Grade-II with effect from 25.09.2004. However, he was proceeded against under

the charge sheet dated 15.01.2009 (Annexure-6) for four alleged misconduct under Articles 1 to 4. Petitioner participated in the inquiry and the Enquiry Officer in his report dated 09.06.2009 (Annexure-10 and 10/1) found him guilty on the four Articles of Charges except Article No. 1(a) and 1(c). Petitioner was asked to furnish representation on the findings contained in the Inquiry Report by letter dated 10.06.2009 (Annexure-10), which he is said to have filed. The Disciplinary Authority however on consideration of the Inquiry Report and materials adduced during the course of inquiry in which the charges were found to have been proved except Article 1(a) and 1(c), passed a consolidated penalty of dismissal which shall be disqualification for future employment under Regulation 4(j) of the Bank of India Officer Employees Discipline & Appeal Regulation, 1976 dated 31.10.2009.

4. Petitioner preferred an appeal taking various grounds and enclosing certain documents in relation to Article 1(a) which admittedly were not produced before the Inquiry Officer and also certain details of KCC accounts and refinancing with a plea to consider his case sympathetically in view of the fact that the petitioner has been an employee awarded from time to time for meritorious service and the order of dismissal from service is disproportionate. The Appellate Authority did not find any substance in his appeal and by a reasoned order dated 07.02.2011 (Annexure-14), has rejected the same and confirmed the dismissal order.

5. Learned Senior Counsel for the petitioner, in support of the challenge to the impugned orders, urged that the findings in the Inquiry Report have been arrived at without proper appreciation of evidence. The Disciplinary Authority while issuing the second show-cause notice (Annexure-10) has virtually accepted the findings of the Inquiry Officer and only resorted to a formality of asking reply before imposing the punishment. He has therefore pre-judged the guilt of the petitioner without considering his reply. The penalty order is challenged on the ground that it is non-speaking and does not deal with the defence of the petitioner at all except making a passing reference to his written statement and reply. Learned counsel has also urged that the Appellate Order is laconic, non-speaking and does not deal with the specific grounds urged in the Memo of Appeal by the petitioner. It therefore fails to comply with the requirement which the Appellate Authority is supposed to discharge. There is no consideration of the stand of petitioner by the Appellate Authority either. Learned counsel has also submitted that the petitioner has served the Bank over a period of 25 years of unblemished service, but such a harsh punishment of dismissal at the fag end of his service has been imposed which is not commensurate to the charges allegedly found to have been established. Petitioner has also crossed the age of retirement on 30.09.2014 and on sympathetic consideration, the order of dismissal should be converted to compulsory retirement so that the petitioner and his family may at least have some source of sustenance after serving the respondent Bank for his entire service career. Learned counsel for the petitioner in support of the aforesaid submission, relied upon the following judgments:

- i. G. Vallikumari Vs. Andhra Education Society and Others,
- ii. ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others,
- iii. Kameshwar Prasad Vs. State of Jharkhand and Others,
- iv. Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others,
- v.. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,
- vi. S.N. Narula Vs. Union of India (UOI) and Others,

On the ground of proportionality of punishment, he has relied upon the judgment rendered in the case of Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, .

6. Learned counsel for the respondent Bank has taken the Court to the findings of the Inquiry Officer and the penalty order to show that the charges against the petitioner were very serious in nature and it has resulted in considerable loss to the respondent Bank to the tune of Rs. 57.81 lakhs. Learned counsel has submitted that the entire charges except Article 1(a) and 1(c) were found to be proved. The charges of serious irregularities and action resulting in loss to the Bank have been duly proved against the petitioner after giving him adequate opportunity and on consideration of documentary evidence available on records in respect of banking transactions. Petitioner did not have a defence to dislodge such serious charges against him which related to processing of incomplete loan applications of borrower; writing off accounts and refinancing them by sanctioning KCC loans before/after closure of their earlier accounts in violation of NPA Management Policy of the Bank; failure to carry out verification of customer and sanction KCC loan to a Minor; sanctioning cash credit limit in ten accounts ranging from Rs. 50,000/- to Rs. 5.00 lakhs without any justification or proper inspection which has become non-performing assets. He also resorted to wrong practice to increase deposits of the branch by issuing DBD receipts out of the loans sanctioned and disbursed in 171 KCC loan accounts, five cash credit accounts and two loan accounts which were also found to have been established. He also sanctioned loans to five proponents under SGSY Scheme for retail trade and small business in which borrowers were found to be not pursuing any activity. Thus all the four Articles of Charges were proved and were of serious nature in which, on findings of guilt established against him and after giving him an opportunity to submit his representation, the Disciplinary Authority in a well reasoned order, awarded consolidated punishment of dismissal from service, which is wholly proportionate to the established charges. Counsel for the respondents Bank has also justified the appellate order on the ground that it is well speaking and it is an order of affirmance. He further submits that if Departmental Inquiry are based upon the material evidence, the Writ Court is not required to go into re-appreciation of the evidence to come to a separate finding. If an employee in a Bank is found to have been indulged in the activities which were not only irregular, but it has resulted in substantial loss to the Bank, then

punishment of dismissal from service is fully justified and this Court should not interfere in it on the ground of proportionality as the petitioner, an employee of the Bank, had not only duty towards the customer, but also the Bank and was in fiduciary relationship. He has relied upon the following judgments.

- i. State Bank of India and Others Vs. Ramesh Dinkar Punde,
- ii. State of Meghalaya and Others Vs. Mecken Singh N. Marak,
- iii. Deputy Commissioner, KVS and Others Vs. J. Hussain,
- iv. Union of India (UOI) Vs. P. Gunasekaran,

It is urged on his behalf that the impugned order does not require any interference on any such grounds.

7. I have considered the rival submissions of the parties and perused the relevant materials on record. The parameters on which the findings and punishment in a Departmental Inquiry are required to be gone into, are well laid down by the judgment rendered by the Hon''ble Supreme Court. In the case of Union of India (UOI) Vs. P. Gunasekaran, relied upon by the respondent as well, Para-13 of the said report contains the broad guidelines in the matter of exercise of powers of judicial review under Article 226 of the Constitution of India in the findings of the Disciplinary Inquiry. It is being quoted hereunder.

13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226 /227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and

material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence. Under Articles 226 /227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

8. The petitioner who was the Bank employee, was proceeded against for the charges under Memorandum dated 15.01.2009 under four broad heads of misconduct.

Article 1:- Petitioner during the period 16.07.2005 to 16.07.2007, sanctioned 294 KCC loans ranging from Rs. 10,000/- to Rs. 50,000/- aggregating Rs. 112.74 lakhs. It was alleged that while sanctioning loans, he (a) entertained intermediaries, (b) acted upon incomplete loan applications of borrower; self affidavits of borrower in respect of land possession certificate issued by the Circle Officer from intermediaries, (c) determined the scale of finance for one crop only on the basis of defective land possession certificate issued by the Circle Officer, (d) prepared DBD receipts of Rs. 10,000/- each in 171 KCC loan accounts for one year out of the loan amount sanctioned and disbursed in the accounts and kept as security, thus resorted to wrong practice to increase the deposit portfolio of the branch by issuing deposit receipts out of the loan amounts sanctioned by the branch, (e) approved and accepted compromise settlements from the borrowers in 22 NPA/Written Off accounts and re-financed them by sanctioning KCC loans before/after closure of their earlier accounts in violation of NPA Management Policy of the Bank, (f) Failed to carry out proper verification of the customer and sanctioned KCC loan of Rs. 43,000/- to a minor, (g) failed to ensure end use of funds.

Article-2:- During the period from 16.01.2006 to 19.06.2007, he sanctioned cash credit limits in 10 accounts ranging from Rs. 50,000/- to Rs. 5.00 lakhs without any justification or analyzing projected financial sales or ensuring end use of the funds by carrying out post sanction inspection and keep such inspection reports on record; prepared pre-sanction inspection reports and proposals in casual manner.

Article-3:- He resorted to wrong practice to increase deposits of the branch by issuing DBD receipts of the loans sanctioned and disbursed in (a) 171 KCC loan accounts and (b) 5 Cash Credit Accounts and 02 loan accounts.

Article 4:- He sanctioned loans to five proponents under SGSY Scheme for running retail trade and small business, but failed to carry out the pre-sanctioned inspection and keep pre-sanction reports while sanctioning loan and disbursing loan amount without preparing proposals thereby facilitated misuse of fund by transferring the entire loan amount to the saving bank account of the borrower. He also failed to ensure end use of funds by carrying out post sanction inspections.

9. In the inquiry proceeding in which the petitioner was given adequate opportunity, except Article No. 1(a) and 1(c), rest of the charges were found to be established based on the material and documentary evidence produced before the Inquiry Officer by the Presenting Officer of the Bank. It cannot be said that the findings in the inquiry were not based on any evidence. Sufficiency or adequacy of evidence cannot be gone into under the powers of judicial review, neither can re-appreciation of the evidence be done as an Appellate Authority on the findings of the Inquiry Officer. Petitioner did get an opportunity to reply to the findings in the Inquiry Report, as per Annexure-10 letter dated 10.06.2009 to which the petitioner also replied.

10. Contention of the petitioner that the findings of the Inquiry Officer have been accepted and guilt have been pre-judged, do not appeal to the Court, as the Disciplinary Authority as per the requirement of principles of natural justice, has given due opportunity to the petitioner before coming to a decision on the penalty to be imposed based upon the findings recorded in the Inquiry Report. Petitioner's reply was also considered by the Disciplinary Authority under different Articles of Charges.

11. As it appears from perusal of the order of punishment, findings arrived at in each of the Articles have been separately dealt with by the Disciplinary Authority before coming to an independent conclusion that the charges were found to be established against him. The order of punishment on that account can also be not said to be laconic as it deals with each of the charges and findings recorded on them by the Inquiry Officer. As it appears, the Disciplinary Authority did find that misconduct of the petitioner led to loss to the Bank to the extent of Rs. 57.81 lakhs. If the charges alleged against the petitioner relate not only to the irregularity of processing of the Bank accounts in sanctioning of loans, but has also caused serious loss to the Bank, punishment of dismissal from service can also be not said to be disproportionate to the misconduct. The petitioner in his appeal referred to certain documents which are not part of the Inquiry Proceeding and are of the date subsequent to the inquiry. The documents in relation to age of one Ghanshi Swansi in whose respect it was alleged that the petitioner has sanctioned loan to a minor, are found to be of November 2009. Thus, it cannot be said that the petitioner was denied opportunity to produce

these documents during course of inquiry when charges were being inquired into to arrive at a considered finding. The Appellate Authority in a reasoned order has considered the grounds urged by the petitioner as are shown in para-4 of the said order. Since the charges were of a serious nature and have been established during course of the inquiry after giving due opportunity to the petitioner, the Appellate Authority has also found no reason to take a different view as the conduct of the petitioner had resulted in substantial loss to the Bank.

12. On a question of proportionality of punishment, in exercise of powers of judicial review, the Writ Court can interfere only if the punishment is shocking to the conscience of the Court. As has been urged by the respondent Bank as well, in such matters, no leniency should be accorded to an employee who has lost the confidence of the employer bank with whom he enjoyed relationship of trust and faith. Therefore, the order of punishment cannot be said to be shocking and disproportionate to the established misconduct. On consideration of all these grounds, and for the reasons discussed hereinabove, this Court does not find any reason to interfere in the well considered findings of fact arrived at in the Inquiry Proceeding or in the impugned orders of punishment imposed upon the petitioner. Accordingly, the writ petition is dismissed.