**(2015) 10 DEL CK 0110**

**In the Delhi High Court**

**Case No :** LPA 34/2010

P.K. Mudgil — APPELLANT

Vs

Union of India and Others — RESPONDENT

**Date of Decision :** 15-10-2015

**Acts Referred:**

**Citation :** (2015) 10 DEL CK 0110

**Hon'ble Judges :** Pradeep Nandrajog and Mukta Gupta, JJ.

**Bench :** Division Bench

**Advocate :** Piyush Sharma, Advocate, for the Appellant

**Final Decision :** Dismissed

## Judgement

Mukta Gupta, J.—P.K. Mudgil (since deceased) while working as Branch Manager of State Bank of Indore (in short the Bank) at Gwalior was charge-sheeted on the allegations of recklessly giving overdrafts to 8 different concerns at various points of time. It was found that in all the 8 accounts where overdraft facility was granted, no opinion report was complied, no assessment need based requirement was done, nor sanction from head office before granting the advances was sought, nor post-facto confirmation was obtained and no security documents were obtained in most of the cases. After enquiry the disciplinary authority imposed the penalty of removal from service on March 19, 1986 and the appeal filed against the said order was also dismissed. Besides filing the appeal before the appellate authority P.K. Mudgil had also preferred a writ petition before this Court being W.P.(C) No. 1974/1987 seeking quashing of the order of removal from service and reinstatement, however since during the pendency of the writ petition the appeal was also dismissed the writ was accordingly amended. During the pendency of the writ petition P.K. Mudgil passed away thus his legal heirs were substituted. The writ petition was dismissed by the learned Single Judge vide the impugned order dated August 10, 2009 hence the present appeal.

2. Before the learned Single Judge P.K. Mudgil inter alia pleaded that there was

non-supply of material documents, delay of 6 years in initiation of enquiry proceedings, the enquiry report suffered from non-application of mind, the order of appellate authority was non-speaking and the penalty of removal from service was highly excessive. All these grounds were negated by the learned Single Judge. It was held that it was the case of the Bank that during the audit irregular advances made by P.K. Mudgil were detected and only after the said inspection, auditing and analysis of documents the charge-sheet could be issued, the process being long it cannot be held that there was undue and unexplained delay in instituting the enquiry proceedings which has prejudiced P.K. Mudgil. The enquiry report was found to be a well-reasoned report having assessed the material evidence on record and the appellate order was not required to be reasoned in view of the fact that it affirmed the findings of the disciplinary authority. The learned Single Judge did not find the penalty of removal from service disproportionate in view of the charges proved against P.K. Mudgil and the fact that the Bank had also affected the recovery of alleged loss. As regards the non-supply of the documents i.e. copies of the monthly returns learned Single Judge noted that the monthly returns were only in the nature of information and were furnished for statistical purpose only and P.K. Mudgil could not satisfy as to what prejudice was caused to him. The learned Single Judge noted that the allegations against P.K. Mudgil was of giving overdraft facility without taking security documents and he has not been able to satisfy how he extended the said facility which exceeded his power and thus non-supply of documents if any did not vitiate the enquiry proceedings.

3. Before this Court in the appeal all the above-noted grounds are pleaded however during the course of arguments learned counsel for the appellant restricted his claim only to non-supply of four documents i.e.

"(a) Monthly returns

(b) Sanction memo of head office regarding the loan granted to Shri M.M. Khendelwal.

(c) Taking over report of Shri M.N. Sharma.

(d) Special audit report of Shri Telang submitted on the overdraft at Lakshar Branch."

4. It is urged that when these documents were sought vide letter dated August 09, 1985 the Presenting Officer stated that these documents were not available and thus due to delay in issuance of charge-sheet valuable documents were denied to P.K. Mudgil which resulted in miscarriage of justice.

5. Learned counsel for the respondent admitted that these four documents as noted above were not available, however he pleaded that it was for P.K. Mudgil to establish how the four documents he sought were relevant and non-supply thereof caused prejudice to him. It is urged by learned counsel for the respondent that appellant has admitted 2 out of 5 charges at serial No. 1 and 4

 

and qua another charge-sheet where proceedings have not commenced four charges were admitted. Thus P.K. Mudgil was not only liable for those 2 charges but qua the other 4 charges as well. Further opportunity to inspect the records was granted to the appellant which he failed to avail.

6. Though P.K. Mudgil had not been able to show any prejudice however it would be appropriate to sieve through the allegations to find out whether non-supply of document as noted above has caused prejudice to P.K. Mudgil. During the enquiry the bank proved that P.K. Mudgil was empowered to grant CA overdraft facility upto Rs. 7500/- only till August 1979 which was subsequently enhanced to Rs. 15000/- only. The enquiry revealed that P.K. Mudgil sanctioned overdraft beyond his power as under:--

"i. Shri Ramesh Chandra Saxena, Current Deposit A/c No. R-55 which was opened on January 05, 1979 without any initial deposit was granted an overdraft at Rs. 15,000/- on the same date.

ii. Shri Rajendra Agrawal, Current Deposit A/c No. R-57 which was opened on February 07, 1979 and permitted overdraft at Rs. 14,700/- on February 16, 1979 and before granting overdraft, no security document was obtained.

iii. M/s. All India Sales Agencies, Current Account No. A-54 opened an account on October 10, 1979 and an overdraft at Rs. 9766-38 was granted without obtaining security documents.

iv. M/s. Balakrishna and Brothers, Current Account No. B-64 opened an account on February 23, 1979 and overdraft at Rs. 19750/- was created without any security document being obtained.

v. M/s. Rovin Agencies, Current Account No. R-73- Account was opened on April 04, 1980 and an overdraft at Rs. 19900/- was created on April 07, 1980 without obtaining any security documents.

vi. Shri Narendra Pratap Singh Jadon, Current Account No. N-23- the account was opened on December 13, 1979 and an overdraft at Rs. 3900/- was created which was further increased to the extent of Rs. 5500/- on December 28, 1979.

vii. Smritee Enterprises, Current Account No. S-97 was opened on September 17, 1979 and an overdraft at Rs. 59500/- was created without obtaining any security documents.

viii. M/s. Khandelwal Builders, Current Account No. K40- the account was opened on August 28, 1978 and an overdraft at Rs. 4962.20 was created which was increased to Rs. 63067.10 by the end of the year 1978 and Rs. 3,09,703.49 by the end of 1979. The account opening form was also not verified and account was un-introduced."

7. As noted above, all these allegations proved during the enquiry were based on documents and none of the documents as sought by P.K. Mudgil was relevant to disprove the allegations as noted above. In terms of the material on record, the

 

Inquiry Officer framed the following charges against P.K. Mudgil:--

"Charge No. (i) Contrary to the Bank''s instructions, contained in paragraph 71(v), Chapter 11 of the Bank''s Book of Instructions Volume-II, he recklessly granted overdrafts to a number of parties beyond his discretionary power.

Charge No. (ii) The overdrafts granted were reported to be running at the branch more or less on the permanent basis for which no security documents were reported to have been obtained.

Charge No. (iii) Contrary to the instructions contained in paragraph 71(iv), Chapter 11 of the Bank''s Book of Instructions, Volume II, he has not submitted control return in respect of the overdrafts granted by him, under his discretionary powers.

Charge No. (iv) In utter disregard of Bank''s laid down instructions in paragraph 25 and 26, Chapter 11 of the Bank''s Book of Instructions Volume-II, before granting overdrafts to the parties mentioned in enclosed Annexure-I, neither any opinion report on the parties was complied nor borrower''s needs were ascertained.

Charge No. (v) Due to his acts/omissions alleged as above, the Bank is likely to suffer a loss to the extent of Rs. 8,14,086.43 as detailed in the enclosed Annexure-I to this charge-sheet."

8. During the preliminary hearing, P.K. Mudgil admitted Charge Nos. (i) and (iv). Thus, the remaining charges to be proved were Charges (ii), (iii) and (v). Regarding Charge (ii) it is not the case of P.K. Mudgil that the documents as noted above would have revealed that he had taken security documents while granting overdraft except that his claim is that the sanction memo was issued by the Head Office regarding the loan granted to Shri M.M. Khandelwal. Charge (iii) relates to non-submission of the control return in respect of the overdraft and on this count, no oral or documentary evidence was led by P.K. Mudgil. Even if the monthly returns had been provided to him, it is not disputed that overdraft beyond his power was granted by P.K. Mudgil or that he submitted control return in this regard. As regards Charge (v) that the bank was likely to suffer a loss to the extent of Rs. 8,14,086.43 the case of Shri Mudgil is that he requested the bank to post him at Laskhar Branch again so that he would recover the amount of advance granted during his incumbency as Branch Manager and he was anxious to recover the same. The amount was increased due to interest application and lack of supervision of subsequent incumbents. Be that as it may, none of the documents sought would have disproved the said allegation. The special audit report of Shri Telang which was not available even if had taken a lenient view on this aspect is no ground to exonerate P.K. Mudgil.

9. It is well settled that the appellant has to demonstrate prejudice on account of non-supply of material documents and having not substantiated the same, the enquiry proceedings cannot be set aside. (See Chandrama Tewari Vs. Union of

 

India (UOI) (through General Manager, Eastern Railways), , State of Tamil Nadu Vs. Thiru K.V. Perumal and others, and State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik,   ).

10. In view of the discussion aforesaid, we find no merit in the appeal. The same is dismissed.

 