(2017) 09 AHC CK 0008

In the Allahabad High Court

Case No : 16458 of 2007

Rajesh Mishra APPELLANT

Vs

Union Of India Through Its Secretary, & 4 Others RESPONDENT

Date of Decision : 12-09-2017

Acts Referred:

Central Bank of India Officer Employees (Conduct) Regulations, 1976, Regulation 3 -
Central Bank of India Officers Employees (Discipline and Appeal) Regulations, 1976, Regulation 6(3)

Citation : (2017) 09 AHC CK 0008

Hon'ble Judges : Amreshwar Pratap Sahi, Rajiv Lochan Mehrotra

Bench : Division Bench

Advocate : Ravi Shankar Prasad, Umesh Narain Sharma, Sahab Tiwari

Final Decision : Allowed

Judgement

1. The present writ petition has been preferred by the petititioner for quashing the impugned order dated 3.2.2006 dismissing the petitioner from service on the basis of the inquiry report dated 21.12.2005, and the order dated 4.8.2006 in appeal affirming the impugned order, with a further request to reinstate him in service and pay him salary and other benefits regularly alongwith arrears with effect from 13.10.2004.

2. The facts of the case in brief are that the petitioner is an employee of the respondent bank. On 6.4.1977 a society known as Central Bank of India Employees Salary Earners Cooperative Societies Ltd. (hereinafter referred as ''the society'') was constituted and registered at Meerut under the provisions of the Cooperative Societies Act for the welfare of the salaried employees of the bank working in the State of Uttar Pradesh. The aims and objects of the society was to accept deposits through savings, current and fixed deposits and to disburse loans to the members of the society. The account of the society was opened in the branch office of the respondent bank at Meerut and all mandatory

transactions of the society were carried out through the said account. The management of the society is entrusted to the elected members of the Sanchalak Mandal/executive body and as per bye laws the Sanchalak Mandal / executive body had the sole right to grant loans and advances to its members. The society elected the petitioner as its Secretary on 30.12.2000. On 6.10.2004 and 7.10.2004 a news item was published in the daily news paper Dainik Jagaran and Amar Ujala respectively regarding some irregularities of the society and in consequence thereof an inquiry was initiated by the District Assistant Registrar of District Cooperative Society U.P. Meerut.

3. On the basis of this inquiry report the Deputy Registrar Cooperative Societies U.P. Meerut suspended the management of the society and the responsibility was entrusted to an Administrative Committee headed by Shri Anand Kumar Singh, City Magistrate Meerut for looking after the matters of the society. On getting this news some of the members of the society agitated the matter before Regional Manager of the Bank on whose behest a news was published in the Amar Ujala to the effect that the Central Bank of India has no concern with the society. Explanation of the petitioner was sought by the Regional Manager and an FIR was also lodged against office bearers of the society. In the result the petitioner was kept behind bars and pursuant to the same was also placed under suspension with effect from 13.10.2004.

4. Vide order dated 20.7.2005 of the Regional Manager a departmental inquiry was initiated against the petitioner and a charge-sheet with two charges was served on him. The charges were in relation to his association with the society which ultimately led to the demonstartion before various branches of the bank which, as per respondents has tarnished the image of the bank. The petitioner, being the office bearer of the society is alleged to have solicited customers of the bank even in the office hours and allured them to do business with the society on the pretext of getting more interest on their deposits. The petitioner was further charged for granting huge loans to public in violation of Banking Regulation Act as well as the Cooperative Societies Act.

5. The petitioner approached the High Court by filing civil misc. Writ petition No. 57903 of 2005 and the court finally disposed off this petition on 30.7.2005 directing the respondents to conclude the inquiry within a period of four months. Mr. R.P. Agarwal was nominated as inquiring authority (In short ''IA''). For his assistance in the inquiry proceedings, petitioner nominated Mr. A.K. Suri, Branch Manager, Meerganj Branch as his assisting officer (in short ''AO''). As the IA was conducting the inquiry contrary to the mandatory provisions contained in the Central Bank of India Officers Employees Conduct Regulation 1976, therefore, the petitioner made a complaint to the competent authority for changing the IA. On the request of Petitioner the IA was replaced and Shri M.M. Agarwal was appointed as IA. AO Shri A.K. Suri being under the pressure of the management, refused to assist the petitioner, therefore, a retired bank officer Mr. R.B. Agarwal was requested to act as AO by the petitioner.

6. In support of the charge the management examined three witnesses namely, Mr. Anil Gupta, Mr. Harendra Singh and Mr. Brijendra Singh. A request for summoning the relevant records was made by the petitioner but was turned down by the IA. Petitioner in his defence examined three witnesses namely, Mr. B.K. Agarwal, Mr. Arvind Gupta and Mr. Deepak Sharma. No further time was granted to the petitiner for examining more defence witnesses and the inquiry proceedings were closed on 1.12.2005. The IA without applying his mind and contrary to the bank regulations and the law submitted his report observing therein that the charges levelled against the petitioner stood proved and the disciplinary authority on the basis of the said report passed the impugned order of dismissal. An appeal against the said order was preferred by the petitioner but the appellate authority had also affirmed the impugned order without assigning logical reasons. Hence this writ petition.

7. Respondent no. 2 to 5 have filed a counter affidavit denying the fact that the business of the society was transacted through the said bank account as alleged by the petitioner. Respondent bank never permitted its employee to indulge into illegal activities while carrying the business of the society. Petitioner being the Secretary alongwith other office bearers was grossly involved in the working of the society. The management of the society was superseded by order dated 10.10.2004 of the Deputy Registrar Cooperative Society U.P. and an Administrative Committee headed by City Magistrate, Meerut was formed to look after the affairs of the society. The office bearers of the society lowered the image of the bank on account of the news regarding irregularities published in the news papers. Because of the irregularities committed in the society petitioner was placed under suspension and FIR was lodged against him persuant to which he was sent to jail. A departmental inquiry was initiated into the matter and report thereof was submitted against the petitioner, therefore, the action taken by the Department is in accordance with the law and as per prescribed procedure. Specific charges were formulated against the petitioner in accordance with Regulation 6(3) of the Central Bank of India Officers Employees (Discipline and Appeal) Regulations 1976. It is wrong to say that the charges levelled against the petitioner were vague. All the relevant documents in possession of the bank were produced at the time of the inquiry and copies thereof were either provided to the petitioner or he was permitted to inspect it. The inquiry was conducted as per bank rules and regulations. Petitioner was given full opportunity to produce his defence. Though on the request of petitioner the assistance of legal practitioner was denied but he was permitted to have an assistant during the inquiry. Petitioner played all the tricks during the inquiry to prolong it but in the light of the direction of the Hon''ble Court the inquiry was to be completed expeditiously. On the request of the petitioner the respondents even changed the inquiring authority also. The impugned orders have been passed considering the facts and circumstances and keeping in view the rules and regulations of the bank.

8. The petitioner has also filed a rejoinder affidavit refuting the allegations made

in the counter affidavit and reiterating therein the averments already made in the petition. It is further submitted that the petitioner was lawfully performing his role with cooperative society which was permissible under Regulations of the Central Bank of India Employees (conduct) Reguation 1976 and there was no occasion for the respondent bank to initiate the disciplinary proceedings against the petitioner on this account. All the accounts of the society in question are with the different branches of the bank and the photostat copies of all the relevant and concerned documents of the society as required, were already provided to the respondent bank at the time of the opening of the accounts. Every activity of the society was duly acknowledged by the respondent bank since beginning. The bank has neither been the controlling authority nor has any concern with the society and as such the departmental inquiry by the bank against the petitioner being an employee of the Central Bank of India for the alleged and so called irregular activities of the society is illegal and not permissible in the eyes of law. Mr. C.S. Khanna, the Disciplinary Authority himself had been a member of the society. The image of the bank was never tarnished by the act of the society or its office bearers.

9. Though the extract of copies of the oral evidence is not filed by the parties but a thorough reading of the inquiry report submitted by Shri B.P. Agarwal inquiring authoirity makes it clear that the charges were presumed to have been proved on the basis of hypothesis only. The P.O., during the inquiry proceedings produced 16 management exhibits and examined three witnesses in support of charges while defence has produced ten exhibits and also examined three witnesses in his defence. Charge No. 1 as mentioned in the inquiry report is extracted herein-under:- "Charge No. 1. : That Mr. Mishra is the secretary of the Central Bank Employees'' Salary Earners Co-operative Society Ltd. (In short society) and is associated with teh activities of the society. The society has not paid back the amount of the public which became due for which the public had hold demonstrations on various branches as well as the Regional Office. This has tarnished the image of the bank. Thus Mr. Mishra has acted in ill manner which is unbecoming of a bank officer."

The IA took support of six questions which were put forward by the PO to the management witness Sri Anil Gupta. The answers given against all these questions confirms only one fact that the petitioner was Secretary of the society and also was involved in its working. The management witness Anil Gupta supported the version of the defence to the extent that the petitioner used to perform his duties in the bank during day time while in the evening hours he used to sit in the office of the society. The IA observed in his findings that the petitioner remained Secretary of the society from 30.12.2000 till the day when the management of the society was superseded by the Administrative Committee headed by the City Magistrate, Meerut, therefore, he cannot escape from his responsibilities. In the impugned order, it is admitted by the disciplinary authority that the Bank and the society are two separate entities. The Inquiring Authority in his report has observed that the depositors of the society could not get back their amount but no such evidence is on record in support of his observation. A part of the Inquiry Report to this effect is extracted hereinunder :-

"The contention of CSOE that the administrator has not made the payment to the depositors of the society. This is a fact finding process. If we go into detail, why the payment was not made to the depositors of the society. Then we came across the fact that the society had made huge loans to the non-members which has become non-recoverable and thus the society has no liquid funds to make payment to the depositor. Thus the officials who made such advances are the real trouble shooter. Sri Mishra was secretary of the society for almost four years and he has not done anything to report such activities before the members of the society. No audit was made. No permission from the competent authorities was taken. They were doing parellel banking without banking license from RBI. How, he can be said to be innocent?

As per MEX-2 & MEX-3, even a layman can understand the effect of these demonstrations on the image of the bank. The CSOE''s contention that the growth of the business was 15-71%, thus there was no negative impact, is not correct. The business of the bank is not only at Meerut. Moreover, had this incident has not taken place, the growth might have been more?

Thus, charge no. 1 is proved."

10. Thus, it is clear that the Inquiring Authority on the basis of a hypothetical inference reached the conclusion that the amount deposited by the persons was not repaid by the society and it was because of the inaction of the petitioner and only on these grounds, the I.A. opined that this act of the society tarnished the image of the Bank. No member or depositor was either produced or examined to corroborate the said inference. The evidence led did not disclose any detail of any non-recoverable loans having been extended at the behest of the petitioner.

11. Charge No. 2, as per the inquiry report, is extracted herein under:-.... "Charge No. 2:- That during all these years, Mr. Mishra Solicited deposit for the society from the general public during office hours stating that the society pays more interest than the bank so they should deposit their savings with the society instead of bank. After office hours Mr. Mishra used to sit in the office of hte society for soliciting the customers of the bank to do business with the society instead of the bank etc. Society has also granted huge loans to the public in general which is vilation of the banking regulation act as well as the co-operative societies Act."

The P.O. Relied upon only ten questions in relation to this charge. Out of ten, three questions were in relation to the statement of MW-1 Mr. Anil Gupta who deposed that he had handed over some money to petitioner for being deposited it in the Central Bank but the petitioner instead of depositing this money in the bank, deposited it in the account of society on the pretext of providing more interest. The rest of the seven questions, which were made the basis of the inquiry report were related to grant of loan by the society to its members and non-members. The answers given by the witnesses are narrated in the inquiry report. As per statements of witnesses loan was disbursed by the society without prior permission of the Registrar Cooperative Society. It is further stated that the society was running a parallel bank and that too without any licence issued by Reserve Bank of India, the public money was misused and the petitioner himself took a loan of Rs. 5,59,056/- from the society. These were not the charges against the petitioner.

12. As per this charge, the petitioner solicited deposits for the society from the general public during office hours on the pretext of providing more interest than the Bank.

13. It shall be proper to mention here that the management witness Anil Gupta to a question asked by the P.O. admitted that the petitioner used to sit in the office of the society in the the evening hours and not in the office hours of the bank. Moreover, it is nowhere mentioned in the Inquiry Report as to what deficiencies were pointed out during the annual audit report and the action taken pursuant thereto. For want of such evidence, the version of the witnesses to this effect remain uncorroborated.

14. The Disciplinary Authority in the present case is Mr. C.S. Khanna, Regional Manager who also happened to be a member of the said society.

15. On the basis of the questions answers mentioned as hereinabove I.A. was of the view that though no permission is required, as per banking requlations, to promote/manage a cooperative society but the officers have to function within limits and should exercise their power in relation to society as provided in the bye laws. IA further observed that so far as the granting of loans to general public is concerned, PO has put forward comprehensive documents to prove this fact that loans were disbursed to general public also, though it was not specifically proved as to who received these loans. In his opinion if the loans were advanced to non-members, it is violation of bye-laws. Witness Anil Gupta during his deposition complained that his deposited money with the society was not repaid before its maturity on his demand. It is also told by this witness that the said money was deposited on the insistence of the petitioner through one Mr. Harish Gupta. IA opined in his report that the said money might have been deposited through Mr. Harish Gupta at Delhi Road Branch but as the petitioner & Mr. Harish Gupta both are working in the society, therfore, the petitioners may be held responsible for its non payment. I.A. simply on the basis of above said evidence reached on the conclusion that charge no. 2 was also proved against the petitioner.

16. Though, the Inquiry Report does not contain the names of the management witnesses as well as defence witnesses but a perusal of the impugned order makes it clear that the management during the course of inquiry examined three witnesses one of which Mr. Anil Gupta is said to be a depositor in the society, Mr. Harendra Singh, Uppar Zila Sehakari Adhikari, Meerut and Mr. Brijesh Singh

Assistant Manager of the respondent-Bank. While from the side of the petitioner, Mr. V.K. Agrawal, Mr. Deepak Sharma and Sri Arvind Kumar Gupta were examined in defence. Apart from Mr. Harendra Singh, who is a witness produced from the side of the management and is an employee attached to the office of the Registrar, Cooperative Society, rest two witnesses are said to be the indepedent witnesses. These two witnesses are not custodian of the bank records. Moreover, the exhibits shown to these witnesses were neither excuted by them nor they could tell as to who have prepared those documents. So these exhibits may not be said to have been duly proved. As per the inquiry report, Mr. Anil Gupta submitted before the Inquiry Officer that his money which was intended to be deposited in the Bank was on the pursuation of the petitioner deposited in the society on the pretext of providing more interest than the Bank. Though, the Inquiry Officer also reached to the conclusion that the said amount instead of depositing it in the Bank was deposited by one Mr. Harish Gupta on the pursuation of the petitioner but the said presumption is drawn without any documentary evidence available on record.

17. A part of the finding of the I.A. in relation to this charge is extracted hereinunder :- "After going through the entire records, depositions of witnesses of both sides, arguments of both sides, my observations are as under:-

It is true that no permission is specifically required to promote/ manage a co-operative society, as per permission of CBI Officer employee, conduct regulations. But the officer has to function within his limits/ powers provided in the acts/ bye-laws. No loan/ act permits the C.S.O.E. to do the business of banking without a license from R.B.I.

As rgards loans to general public is concerned, P.O. has put up comprehensive documents to prove that loans to general public have been given by the society. It is not necessary or relevant to prove to whom these loans have been given. Simply it is sufficient, if these have been given to non-members violating the bye-laws of the society/ provisions of Cooperative Societies Act/ Banking Regulation Act."

18. The Hon''ble the Apex Court in the case of Roop Singh Negi Vs. Punjab National Bank and others (2009) 1 Supreme Court Cases (L&S) 398 in paragraph No. 14 of the said judgment has held as under:- "(14) Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasijudicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

19. In Moni Shankar Vs. Union of India SSC Page 492, It was held by Hon''ble the Apex Court :- "(17) The departmental proceeding is a quasi-judicial one. Although, the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent office relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirement of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

20. In Kaptan Singh Vs. State of U.P. and another. 2014(8) ADJ 16 (DB), a Division Bench of this Court has held that the documentary evidence have to be examined on the date fixed for inquiry whether in the presence of the delinquent or in absentia (ex-parte)

21. Though the Inquiry Report is said to have been prepared on the basis of evidence available on record but a plain reading of it makes it clear that it is based merely on conjectures and surmises. No evidence was led on record to the effect that any fraud was perpetrated in the society. It appears that the concept of fraud was suo moto presumed by the I.A. without any evidence available on the record. No evidence is on record to show as to who has committed fraud or against whom it was committed.

22. Regulation 3 of the Central Bank Officer Employees (Conduct) Regulations, 1976 relating to conduct of the correspondent employees is extracted hereinunder :- "(1) Every officer employee shall at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employees shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

A perusal of the above mentioned regulation entitles the employees of the bank to take part in the promotion and management of a cooperative society registered under the Cooperative Societies Act. Respondents did not dispute the fact that the said society was a registered society having its account in the respondent bank. It is admitted to the management employees that the petitioner during the working hours had never left his office for the function of the society. Management witness admits that the petitioner worked in the society only in the evening hours i.e. after the hours of his duty in the bank. No such evidence is on record to prove that the petitioner had ever violated this regulation.

23. The Inquiring Authority or the Disciplinary Authority without the material available on the record reached on the conclusion that both the charges levelled against the petitioner were proved. Their findings were based only on the media reports that sparked off the controversy relating to the charge of tarnishing of the image of the bank. Neither any member of the public or demonstrator or the newspaper reporter was made to depose in order to confirm the news that was spread against the bank. This unconfirmed material cannot be mere matter of faith or evidence so as to raise a bona fide belief about such allegations. As the management witnesses had failed to confirm the allegations therefore the conclusion so drawn in the proceedings by the IA and confirmed by the Disciplinary Authority are based on mere surmises and do not constitute proof. The management failed to corroborate the allegations of tarnishing of image, of procuring customers or soliciting of deposits, of acting adverse to the interest of the bank or working for the society during banking hours. No member of the public or any demonstrator involved in the demonstration before the bank leading to the news paper report was examined by the management to prove the alleged demonstration or allegations against the petitioner. Tarnishing the image of the bank on the basis of unsupported news item could never be believed. A belief is an acceptance of a statement of anything provided such a statement is given during the course of the inquiry in a disciplinary proceeding. It is then only that reliance can be placed for arriving at any conclusion. Neither of these elements have been established either before the inquiry officer or on the basis of an evidence to support the order of the disciplinary authority. Therefore, on the basis of such evidence the conduct of the petitioner may not be said as unbecoming of a bank employee. This reflects that the inquiry report is based on no evidence and the order of the Disciplinary Authority is based on nonapplication of mind and is perverse.

24. We are aware of the limitations of the parameters of judicial review in such matters. This Court cannot assume the role of an appellate forum and an order can be reviewed on the known grounds of violation of Fundamental Rights, violation of procedure and the grounds of abject perversity. The instant is a case that touches all the above three elements, particularly the ground of perversity as discussed and enumerated hereinabove.

25. On the basis of the above said discussions, it is clear that the impugned

orders dated 3.2.2006 and 4.8.2006 based on the said Inquiry Report suffer from perversity and are not sustainable. Hence, the impugned orders are hereby set aside and the writ petition is, accordingly allowed.

26. Our findings however, would not affect the criminal proceedings where the standard of proof beyond reasonable doubt has to be observed. We, therefore, clarify that our observations are confined only to the evidence led in the disciplinary proceedings which for the purpose of our decision have been considered to arrive at a fault in the decision making process and not beyond that. This judgment therefore, would not affect any proceedings related to the society and its affairs including any involvement of the petitioner. As the petitioner has retired from service, therefore, the respondents are directed to provide him pay and other allowances from the date of his suspension till the date of his superannuation after adjusting the subsistence allowance which has already paid to the petitioner. The petitioner''s gratuity shall remain withheld till conclusion of the criminal trial. Respondents are further directed to complete this exercise within three months from the date of the production of a certified copy of this order.

