
(2016) 10 BOM CK 0165
In the Bombay High Court
Case No : Writ Petition No. 1620 of 2006

R.M. Yadav

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Bank of Baroda Officers Employees (Conduct) Regulations, 1976 — Regulation 20,
Regulation 24, Regulation 3(1)
Constitution of India, 1950 — Article 226

Citation : (2017) 1 MhLJ 497

Hon'ble Judges : Anoop V. Mohta and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. R.D. Bhat, Advocate, for the Petitioner; Mr. R.S. Pai with Mr. Anand Pai, Mr. A.K. Gopalan i/b. Haresh Mehta & Co, for the Respondents

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J.—This Writ Petition under Article 226 of the Constitution of India challenges the order passed by the Disciplinary Authority dated 17 December 2004 by which the Respondents imposed on the Petitioner a major penalty of "compulsory retirement" in the disciplinary proceedings initiated against him. This order is confirmed by the Appellate Authority as also by a further order of the Reviewing Authority, which are also challenged.

2. In the year 2003 the Petitioner was working with Respondent No. 1 as a Branch Manager with the Agardanda branch, in Alibag District. The Disciplinary Authority issued a memorandum dated 30 October 2003 along with statement of charges alleging that the Petitioner has failed to discharge duties with utmost integrity, devotion and diligence and the Petitioner has failed to protect the interest of the bank and if the charges are proved would amount to breach of Regulations 3(1), 20(4) and 24 of Bank of India Officer Employees' (Conduct) Regulations, 1976 (for short "the said Regulations"). The statement of allegations contained two Articles of charges. Charge No. 1 pertained to five loan accounts.

Without referring to the intricate details, the charges can be summarized as under:

Charge I

(A) Loan account of Mr. Narendra B. Hedulkar:

(i) The Account of Shri. Narendra B. Hedulkar was not eligible to be considered for loan under the KVIC scheme who was sanctioned loan of Rs. 3,00,000/- for a Dhaba.

(ii) He was already sanctioned a loan for ration shop which itself was running out of order. The Petitioner was in full knowledge of this fact. The Petitioner's actions were deliberate to accommodate the borrower and give undue advantage of Government subsidy. Further, the amount was not disbursed in stages but full amount was transferred to the saving bank account of the borrower and end use was not verified. Stale quotation of Rs. 3.17 lakhs dated 22 March 2001 was considered in the proposal. The project of Dhaba never took off for which loan was granted.

(iii) After sanctioning of loan, it was reported that the Petitioner had borrowed Rs. 40,000/- on 18 October 2001 from the said borrower which was not repaid.

(iv) The loan account had become NPA and the chances of recovery are negligible.

(B) Loan account of Mr. Rushikant Dongarikar:

(i) This account holder was a recipient of earlier loan on 15 January 1998. The account was irregular which was got closed by the Petitioner on 15 April 2002 by a cash deposit of Rs. 22,740/- and granted fresh loans aggregating Rs. 2.5 lakhs on 21 May 2002 (Rs.1 lakh for spare part business and Rs. 1.5 lakhs for cable network). It was stated that the quotations in support of the loan application were not verified and the end use was not checked, credit assessment was not done properly. The accounts were grossly out of order and have turned NPA.

(ii) The Petitioner had borrowed Rs. 10,000/- from this borrower as hand loan before sanction of the loan and subsequently Rs. 20,000/- was borrowed after 15 days and the Petitioner was yet to repay the entire amount of Rs. 30,000/-. The charge stated that the modus operandi was clear.

(C) Loan account of Mr. Avinash Vithal Khot:

(i) Full loan amount was disbursed by crediting saving bank account of the borrower instead of making direct payment to the supplier which was against the norms of the bank. Credentials of the person were not checked as the other relatives were NPA. An amount of Rs. 10,000/- was diverted on 21 March 2002 to close the NPA account from the disbursed loan amount when the loan was actually disbursed for spare parts business. The quotations supporting the loan application were also not verified. The end use was also not verified. The

borrower was never engaged in the activities of the spare parts.

(D) Loan account of Mr. Sujan K. Birje:

(i) The loan pertained to trading in imitation jewellery. The business premises were not mentioned in the proposal. The amount was directly credited to the saving bank account instead of making payment to the supplier. The borrower was not staying at the address given in the application but was staying at Mumbai. The account had turned NPA in the very first year of loan disbursement.

(E) Loan account of Mr. Hikmat Abdulla Dayanji:

(i) He was sanctioned loan of Rs. 3.30 lakhs for purchase of pickup van but was credited with an amount of Rs. 3 lakhs directly to the saving bank account of the borrower instead of making direct payment to the supplier of the vehicle. This was against the bank procedure and norms. Thereafter, the balance amount of Rs. 30,000/- was disbursed crediting the saving bank account of the borrower, and this was for payment of road tax insurance and registration which were already done prior to disbursement of the loan.

(ii) It is alleged that the borrower withdrew Rs. 30,000/- from his account and paid the amount to the Petitioner in cash on 24 October 2001 which was never paid back by the Petitioner.

Charge II

(i) It was alleged that the Petitioner had deposited substantial amount of Rs. 4,76,933/- in cash within six months of Petitioner's posting as Branch Manager in account No. 1 and SB account 2870 (joint account with son). The cash deposits were beyond the known sources of income and take home salary of the Petitioner and date-wise credits are set out.

(ii) During his tenure as a Branch Manager, the Petitioner purchased a four wheeler commercial vehicle for which the Petitioner got transferred Rs. 5 lakhs from his OD Account no. 2870 and a demand draft was issued to the supplier for which no exchange / bank charges were paid. Further no intimation was given to the competent authority for acquisition of such high value movable property which was in Bank Regulation 20(4) of the said Regulations.

3. Along with the charge-sheet, the Petitioner was given a list of documents along with written statements of the borrowers. The documents in respect of each of the charges were furnished to the Petitioner. As also a list of witnesses proposed to be examined on behalf of the bank was also furnished to the Petitioner. The Petitioner by his letter dated 11 November 2003 denied the charges inter alia stating that except one account, the other accounts were in regular order. As regards Charge 2, it is stated that he has purchased four wheeler for his personal use and not for commercial use.

4. The Respondents appointed an Inquiry Officer who conducted a departmental inquiry. Mr. D.D. Kamthe, the Manager of Agardanda Branch was examined as a

management witness who made a detailed deposition of each of the charges. The Petitioner, however, did not cross examine this management witness. The Petitioner examined himself. It is pertinent that in the examination in chief the Petitioner made the following categorical statements:

"Further I was bit ignorant, various rules, regulations and norms of advances area and staff mattes, which resulted in occurrence of various lapses."

5. As regards Charge II about non informing of acquisition of vehicle, the Petitioner stated that due to his ignorance he could not inform the Controlling Authority regarding purchase of high value movable property as required under the Regulation. In the cross examination, the Petitioner categorically stated that Mr. Hikmat Dayanji one of the borrowers who had submitted letter dated 18 December 2003, to the presenting officer that it was true that money was taken by the Petitioner and complaint regarding the same was subsisting. It was also recorded that the borrower further informed that he is still to receive Rs. 20,000/-, and Rs. 10,000/- has already been received by him. The Inquiry Officer accordingly prepared his report on the basis of evidence on record of the departmental proceedings.

6. On 16 March 2004 the Disciplinary Authority forwarded a report of the Inquiry Officer dated 12 March 2004 to the Petitioner. The Inquiry Officer considering the material on record had held that charge No. 1 is substantially proved except in case of paragraph (d) and (e) in respect of loan account of Mr. Narendra B. Hedulkar and loan account of Mr. Rushikant Dongrikar and as regards allegations of borrowing of funds by the Petitioner from Mr. Hikmat Dayanji, were also recorded to be not proved and the allegations pertaining to heavy deposits in the account was held to be not proved. The Petitioner submitted his reply dated 5 April 2004 to the inquiry report interalia raising his objections. Considering the Petitioner's reply, the Disciplinary Authority by his communication dated 11 June 2004 addressed to the Petitioner forwarded substituted findings of the Disciplinary Authority calling upon the Petitioner to make his representation on the substituted findings and to which he made the following conclusion:

" From the above, it is clear that :-

(i) the CSO had borrowed funds from the customers/borrowers and has not repaid the same till date;

(ii) As regard the borrowings of the CSO though there are contradictory statements of the borrowers on record, the PO has produced Shri. D.D. Kamthe as Management witness in whose presence the statements of the borrowers/complainants were recorded and hence as stated above these statements are having evidencing value. Whereas the statements brought by CSO, he neither produced any one of them as defence witness nor he had given any opportunity to the prosecution to cross examine the witness to confirm its authenticity for the purpose of evidencing value. I am, therefore, of the opinion that the statements produced by the CSO are the managed documents without having any evidencing

value;

(iii) The CSO has confirmed in his defence brief that his son is running Travel & Tourism business and the funds belong to his son which is nothing but his admission that he is indirectly involved in the business activity. He is also expressing his regret for no-disclosure of purchase of high value movable assets at the fag end of completion of departmental enquiry/ disciplinary action against him. For which he has no defence at all. In view of the above the allegations, which were not proved by the IA in his report & findings, now stand proved beyond doubt."

7. The Petitioner accordingly submitted his representation dated 28 June 2004 and 10 July 2004. Considering the material on record and the inquiry report, the Disciplinary Authority by its letter dated 17 December 2004 imposed a major penalty of compulsory retirement on the Petitioner in terms of Regulation 4(h) of the said Regulations. The Petitioner being aggrieved by the said punishment order approached the Appellate Authority by filing an appeal dated 31 January 2005. The Appellate Authority by a detailed order dated 9 June 2005 rejected the appeal and confirmed the order passed by the Disciplinary Authority. The Petitioner, thereafter, approached the General Manager / Reviewing Authority seeking review of the order passed by the Appellate Authority. By a detailed order dated 22 December 2005 the Reviewing Authority repealed the challenge as raised by the Petitioner and confirmed the orders passed by the Disciplinary Authority and the Appellate Authority. The Petitioner has accordingly approached this Court challenging the orders passed by the Disciplinary Authority as confirmed by the Appellate Authority and the Reviewing Authority.

8. Learned Counsel for the Petitioner in assailing the impugned orders submits that the impugned orders are arbitrary and illegal, firstly on the ground that the charges / allegations as contained in the charge-sheet were vague inasmuch as the charge-sheet does not specify which of the bank's norms are not complied. It is, then, urged that the Disciplinary Authority has relied on the letters alleged to be written by the borrowers which could not be relied in support of the allegations, that the Petitioner has borrowed funds from the borrowers. Thirdly, it is contended that the alleged irregularities were procedural in nature and such irregularities do not amount to misconduct. It is fourthly submitted that the entire action against the Petitioner was based on mere suspicion without there being any evidence and especially evidence indicating any malafides on the part of the Petitioner. In support of this contention, the learned Counsel for the Petitioner placed reliance on the following decisions:

(i) Dipankar Sengupta & Anr. v. United Bank of India & Ors., 1999 (I) L.L.J. 208, (ii) Gope Laxmichand Badlani v. Oriental Bank of Commerce, New Delhi & Ors., 2002 (3) L.L.N. 206; (iii) Anil Kumar Chopra v. Engineers India Ltd. & Ors., 2005 (III) LLJ 971 (iv) Roop Singh Negi v. Punjab National Bank & Ors., 2009 (II) LLJ 21 (SC);

9. On the other hand, the learned Counsel for the Respondents submits that the impugned order of punishment is justified in the facts of the case as the same is based on evidence available in the departmental proceedings. It is submitted that, in fact, the evidence against the Petitioner goes unchallenged as the Petitioner did not cross examine the management witness nor did the Petitioner examine any witness on his part to prove his case and/or to show that the charges are without any basis. It is submitted that moreover the Petitioner has made a statement before the Inquiry Officer that there were irregularities on his part and breach of the Rules and Regulations. It is submitted that once the findings are based on the evidence, then, this Court will not exercise jurisdiction under Article 226 of the Constitution to re-appreciate the evidence. It is therefore submitted that the Petition is devoid of merit and ought to be rejected. In support of his submissions, the learned Counsel for Respondents has relied upon the decision of the Supreme Court in the case "Suresh Pathrella v. Oriental Bank of Commerce", (2006)10 SCC 572.

10. We have heard the learned Counsel appearing for the parties. With their assistance, we have also gone through the inquiry report, the findings of the Disciplinary Authority, the substituted findings as also the detailed orders which are passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority.

11. It is well settled that the scope of interference in the disciplinary matters is very narrow. In exercise of jurisdiction under Article 226 of the Constitution, this Court does not wield a power to re-appreciate evidence and come to a different conclusion than the one recorded by the Disciplinary Authority. The scope of the jurisdiction is to examine whether the findings as recorded by the Disciplinary Authority are of a nature, that could not have been, ever reached on the evidence which has come on record in the disciplinary proceedings and further to examine whether the principles of law on fairness in the enquiry process namely adherence to the principles of natural justice and the rules and regulations are followed. In this case all these principles are followed. There is substantial material which is placed on record in the disciplinary proceedings. The material is in the nature of evidence documentary as also oral placed on behalf of the management. The Petitioner has failed to cross examine the management witness, despite an opportunity being abundantly available to the Petitioner nor the Petitioner has examined any other witness on his part in his defence. Significantly in his deposition, the Petitioner has made the following admission:

"Further I was bit ignorant, various rules, regulations and norms of advances area and staff mattes, which resulted in occurrence of various lapses."

12. We may observe that the charges as contained in the charge-sheet and as noted by us above are clear much less vague as contended on behalf of the Petitioner. The first charge pertains to details in respect of five loan accounts. The names of the account holders are set out. The misconduct/acts of commission/omission in respect of these loan accounts are also appropriately

pointed out. The details of the charges in each of these five accounts shows the breach of basic norms to be followed by the Petitioner in his capacity of a Branch Manager in allowing the borrowings. Learned Counsel for the Petitioner could not point out any material so as to make one believe and come to a reasonable conclusion that these charges are not proved. The Inquiry Officer has recorded findings in respect of each of these borrower's account. These findings are on the basis of oral evidence and the documents. The Disciplinary Authority also considered each of the charges in detail and the evidence in respect of each of these charges, taking into considering the seriousness of the charges which stood proved and that the accounts have turned NPA, the recovery was negligible, there was an outstanding amount which was irrecoverable. As also in regard to Charge no. II, it was concluded that the Petitioner had not reported the acquisition of commercial vehicle to the Respondent, and held that the charges being proved, the punishment of compulsory retirement is an appropriate punishment. As regards the contention of the Petitioner about substituted findings of the Disciplinary Authority not being in accordance with the provisions of the Regulations, the Disciplinary Authority rejected the said contention. It was recorded that Regulation 7(2) of the said Regulations was clear that "if the DA disagrees with the findings of the Inquiry Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charges if the evidence on record is sufficient for the purpose." It was thus recorded that the Disciplinary Authority did not find any controversy / anomaly while giving substituted findings in respect of his sub-part of each of the charges. However, we may observe that though there were several allegations in each of these borrowings, only one of the sub-allegations being not proved, would not make any difference as the main substantial charges and majority of the allegations against the same stand proved. We may observe that the Disciplinary Authority has taken due precaution and has shown utmost fairness in considering the report of the Inquiry Officer. Only when there was due application of mind, the Disciplinary Authority would disagree on some of the elements of the factual findings. But that does not in any manner affect the basic findings as recorded by the Disciplinary Authority and the basis of which the Disciplinary Authority came to a conclusion that the charges are proved. Similar is the position in respect of the order dated 9 June 2005 passed by the Appellate Authority. The Appellate Authority also considered each of the contentions of the Petitioner. As regards the case of the Petitioner on substituted findings, the Appellate Authority in paragraph (7) did not accept the Petitioner's contention. The reasons in that regard as contained in paragraph 7 of the order of the Appellate Authority are required to be noted, which read thus:

"The result, the Undersigned does not find any merit in the contentions raised by Shri. Yadav in his Appeal. Shri. Yadav has mainly brought out in his appeal that the substituted findings of the DA were not given along with the Inquiry Report. However, from the fact it is observed that he was given the substituted findings with a request to submit the representation on substituted findings. Hence, he

was offered reasonable opportunity to submit his representation on the said findings and thereby principles of natural justice was followed. However in spite of this, Shri. Yadav tried to indulge in dilatory tactics citing petty reasons and the Disciplinary Authority was well within his right & justified in substituting the findings to the extent he considered necessary. Further most of the above contentions have already been bought out by Shri. Yadav in his representation on Inquiry findings and the same have been considered by the Disciplinary Authority while passing the Penalty order. Further the undersigned finds that Shri. Yadav had ample opportunity to cross-examine the Management witness (MW1) but he had refrained from doing so thereby indicating his acceptance of all the deposition made by MW1.

The charges against Shri. Yadav has been proved and are serious. Bank is a Public Financial Institution which acts as custodian of public funds. In this present era of competition, the Bank can ill afford to have employees who by their acts not only expose the Banks funds to jeopardy but also indulge in acts which are unbecoming of an officer employee. When the quantum of Penalty imposed on Shri. Yadav is examined in this Background, the undersigned finds that the Disciplinary Authority would have been justified in imposing a penalty higher than the said penalty. In the circumstances, the Undersigned does not intend to interfere with the Penalty already imposed on Shri. Yadav. Accordingly, the Undersigned proceeds to pass the following order confirming the penalty already imposed on Shri. Yadav."

13. Further the Reviewing Authority also granted personal hearing to the Petitioner in his Review application. In fact in the review application, the Petitioner requested to consider his case sympathetically and grant him one more chance to serve the Respondents. The Reviewing Authority by his detailed order on a careful scrutiny of material of inquiry on record and the findings of the Inquiry Authority recorded that the findings of the Inquiry Authority is based on material on inquiry record. It was also recorded that the Petitioner had conceded that certain procedural lapses took place through oversight and he was ignorant of the rules and regulations, norms of the advance areas which resulted in occurrence of various lapses. As regard Charge No. II, it was recorded that the Petitioner had deposed that due to his ignorance, he could not inform the Competent Authority regarding purchase of high value movable property as required under the Regulations. The only contention the Petitioner urged was that the lapses were procedural in nature and no malafides were established on his part. However, the Reviewing Authority rejected these contentions recording that the charges were serious in nature and adversely reflects on the integrity of the Petitioner. The Reviewing Authority recorded that there cannot be a second opinion that utmost integrity and honesty is called for in the institution like bank where public money is held in trust and accordingly confirmed the order.

14. We do not find that there is any perversity and illegality much less any malafides in the above approach of the concerned Authority. It is settled principle

of law that even if there is no loss which is caused to the Respondent, the Respondent would be within its authority to impose a punishment in disciplinary matters when there is sufficient material in the departmental proceedings to indicate that the Respondent has lost confidence in the employee and more particularly when it is the question of integrity, honesty and public interest, involved in the actions of the employee. Thus, there was sufficient material and applying the test of preponderance of probability, the impugned punishment has been awarded.

15. There are also statements of borrowers which substantially prove Charge No. I to the extent it has been appreciated by the Disciplinary Authority in passing the final order. The Petitioner in this regard did not cross examine the management witness who proved the facts. It is thus not a case that there is no evidence. The misconduct of the Petitioner is sufficiently proved on the basis of this material. The nature of evidence was sufficient to come to a conclusion that the Petitioner need not be continued in the services of the Respondents. The Petitioner was holding the post of a Branch Manager of the Bank. Undisputedly this position required diligence, honesty and responsibility and strict adherence to the rules and regulations and the following of prudent banking norms in discharge of his official duties. There was sufficient material for the Respondents to come to a conclusion that the acts of commission and omission as complained, demonstrate that the Petitioner had failed to honour the obligations which were attached to his official position. The action on the part of the Respondents thus cannot be faulted. The learned Counsel for the Respondents would be correct in relying on the decision of the Supreme Court in the case "Suresh Pathrella v. Oriental Bank of Commerce" (supra) wherein the Supreme Court has clearly held that every officer at all times is required to take all possible steps to protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and does nothing unbecoming of a bank officer. The Regulations cast obligation to act in such a manner and which are also framed to instill public confidence in the bank so that the interests of depositors are well safeguarded. It is also held that in a situation when in fact no amount was lost to the bank, it would not be a ground to take a lenient view for the proved misconduct of a bank officer. Once the bank officer acts beyond his authority in breach of the bank's regulations, it is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service which is preceded by an enquiry.

16. Now coming to the decisions as relied on behalf of the Petitioner, we may observe that reliance on the decision of the Division Bench of this Court in the case of "Gope Laxmichand Badlani v. Oriental Bank of Commerce, New Delhi & Ors." (supra) is wholly unfounded. The case pertains to cross examination of a handwriting experts, where an opportunity to cross examine was not granted. It is in this context the Court had observed that though the strict rule of evidence may not apply to domestic inquiries, it is an elementary principle that no

document can be relied upon against the party without giving an opportunity of cross examining the author thereof. In the present case admittedly the Petitioner himself has not availed of any opportunity to cross examine the management witness nor the Petitioner examined any witness in support of his case. There is no material before the Inquiry Officer that the Petitioner ever asserted his right to dispute any of the statements of the management witness by undertaking a cross examination of the management witness. The Judgment is therefore of no assistance to the Petitioner.

17. As regards the Petitioner's reliance on the decision of the Division Bench of the Calcutta High Court in the case "Dipankar Sengupta & Anr. v. United Bank of India & Ors.", in our opinion, the same would not assist the Petitioner. This for the reason that there is a clear finding of fact that the Petitioner acted in breach of the Regulations which required the Petitioner to show honesty, integrity and diligence in discharge of the duties as a Branch Manager. The Petitioner being a Branch Manager, was completely aware about the rules and regulations and norms of grant of loans. It is, therefore, not a case where it can be said that lapses on the part of the Petitioner could not come within the purview of word "misconduct" in terms of the Bank's Conduct Regulations.

18. Further the reliance on behalf of the Petitioner on the decision of the Division Bench of this Court in the case "Anil Kumar Chopra v. Engineers India Ltd. & Ors." (supra) to support the contention that the charges are vague, also would not assist the Petitioner. It was a case where in the facts of the case, the Court had come to a conclusion that the charges were vague, and details and documents were not furnished to the delinquent employee. The charges in the present case are clear. The charges which we have noted above are the charges in detail. We do not see that there is vagueness in the charges. This is not a case where the Petitioner was not given documents. Sufficient opportunity was granted to the Petitioner to defend his case.

19. Lastly the decision of the Supreme Court in the case "Roop Singh Negi v. Punjab National Bank & Ors." (supra), in our view also would not support the Petitioner. This was a case where the inferences drawn by the Inquiry Officer were not supported by evidence. It was, thus, held that the finding of the Disciplinary and Appellate Authority based on such inferences would not be correct. A perusal of the Inquiry Report in the present case clearly shows that the findings of the Inquiry Officer are based on substantive evidence. The conclusion of the Disciplinary Authority, the Appellate Authority and the Reviewing Authority are based on evidence and are well within the framework of the facts and in law. The totality of the evidence clearly indicate that the charges against the Petitioner are proved. In our opinion, this decision, therefore, does not in any manner assist the Petitioner.

20. In the light of our observations, we are more than satisfied that the inquiry was conducted with due adherence to the principles of natural justice wherein full opportunity was granted to the Petitioner to participate the enquiry proceedings.

The findings of the Disciplinary Authority in imposing the impugned punishment is based on evidence. We also do not find any perversity in the Appellate Authority and the Reviewing Authority accepting the findings of the Disciplinary Authority.

21. In the circumstances, we find no merit in the petition. Resultantly, the writ petition is dismissed. No order as to costs.