
(2011) 09 DEL CK 0018
In the Delhi High Court
Case No : Writ Petition (C) 643 of 1995

R.S. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0018

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Randhir Jain, Ruchika Jain and Dhananjai Jain, for the Appellant;
R.V. Sinha, Sangita Rai for R 1/UOI, Raj Birbal Raavi Birbal and R.S. Mathur for R 2, for the Respondent

Judgement

S. Muralidhar, J.—The Petitioner who was working as the Chief Inspector in the Inspection & Control Division of the Punjab National Bank ("the Bank"), Respondent No. 2, challenges an order dated 3rd June 1994 passed by the Disciplinary Authority ("DA") imposing on the Petitioner the penalty of reduction of grade from SMG Scale IV to MMG Scale III and an order 17th June 1995 passed by the Chairman-cum-Managing Director of the Bank as the Appellate Authority ("AA") removing the Petitioner from service.

2. Earlier the Petitioner had also challenged the validity of Regulation 17 of the Punjab National Bank Officer Employees (Discipline & Appeal) Regulations 1977 ("Regulations 1977") along with P.D. Circular No. 1320 dated 3 February 1992. However, learned Counsel for the Petitioner made a statement before the Division Bench of this Court on 8th September 2006 that the Petitioner would not like to press prayer (a) (i) of the writ petition. Consequently, the writ petition was directed to be listed before a learned Single Judge.

3. The Petitioner joined the services of the Bank as an apprentice in March 1958 for a period of six months, but was appointed as a Clerk on 24th June 1958. He was promoted to Officer's grade as Accountant on 2December 1974 and Officer-in-Charge Scale I in the year 1976. In 1978 he was promoted to the post of

Manager Grade Scale II. In 1983, he was promoted to the post of Senior Manager MMG Scale III and on 25th August 1989, as Chief Manager SMG Scale IV. While discharging duties as Chief Inspector in the Inspector & Control Division of the Bank, he was served with the charge sheet dated 1st February 1992. The articles of charge were as under:

Article-I

He sanctioned loans to various parties in undue haste by ignoring the pre-sanction credit appraisal measures.

Article-II

He sanctioned loans to various parties by exceeding his vested loaning power.

Article-III

He unduly sanctioned loans to various parties by neglecting post sanction control measures and put sizeable funds of the Bank difficult or recovery.

Article-IV

He failed to exercise effective control over the house keeping affairs of the branch and did not take appropriate steps to safeguard the Bank's interest.

4. The conclusion of the enquiry, the Enquiry Officer ("EO") submitted a report dated 26th July 1993 holding charges I, II and III to be proved, and charge IV to be partially proved. A copy of the report was furnished to the Petitioner by the DA on 18th August 1993. After perusing his reply, the DA, by an order dated 3rd June 1994 imposed the penalty of reduction to the lower grade, i.e., from SMG Scale IV to MMG Scale III. When the Petitioner appealed against the said order, he was issued a further show cause notice on 8February 1995 by the AA asking him to show cause as to why his punishment should not be enhanced to removal from service. Thereafter, the impugned order was passed on 17th June 1995 by the AA removing the Petitioner from service.

5. Mr. Randhir Jain, learned Counsel appearing for the Petitioner submitted that the findings of the EO were perverse and based on No. evidence. He further submitted that expansion of the four articles of charge into thirty-six charges by the EO at the instance of the Presenting Officer ("PO") was illegal. The Petitioner in fact did not consent to the expansion of the charges from four to thirty-six. He submitted that the enquiry itself was vitiated since the presenting officer (PO) on behalf of the Bank admittedly did not prove any of the documents presented during the enquiry. Mr. Jain submitted out that though he Petitioner was charged with having sanctioned loans to various parties "in undue haste and ignoring the pre-sanction credit approval measures", No. documents were produced to show that the Petitioner acted in undue haste or that there were pre-sanction credit approval norms that were communicated to the Petitioner. He relied upon the decision in State of U.P. and Others Vs. Saroj Kumar Sinha,

6. This Court notes that the first article of charge was that credit facilities were sanctioned by the Petitioner without obtaining CAS data for thirteen of the fourteen accounts pertaining to copper wire drawing units. They were given cash credit limit (hypothecation) of Rs. 10 lakh besides other loan facilities. The EO while holding the said charge to be proved also held that the Petitioner had failed to anticipate the difficulty in procurement of the raw material by the said units. He also ignored the instructions conveyed to him by the Zonal Manager by letter dated 26th July 1990 meant to curb advances for copper wire drawings. The EO held that "even if there had been No. communication from the Zonal Officer to restrict advances to units engaged in copper wire drawings, the charged officer should have exercised prudence instead of going unbridled in the matter of sanction of loans to new units for a low-priority activity. He must have watched the working and performance of one or two units financed with bank loan before extending his helping hand to other units carrying on same or similar activity. During a short period of about seven months after his taking over charge of the branch, he sanctioned huge limits to a large number of units, which apparently appears to be an injudicious act." Further, the EO observed that "in the Chief Manager's Branch, operational matters are more of a function of the Industry Officer and the Manager and Officer (Loans). However, close scrutiny of one or two cases by the Chief Manager would have provided necessary guidelines to the processing officials to correct aberrations in similar cases subsequently processed by them".

7. The record of the proceedings before the EO reveals the statement made by the PO that apart from submitting 859 documents, he also intended to produce three witnesses on behalf of the management. Thereafter on 8th October 1992, a question was asked to the PO as to his reply to the objection raised by the Petitioner, who had stated earlier that "there are a number of papers which are not originals with branch files and as such the same could not be verified with the originals. Original documents should be called for the purpose of enquiry proceedings." The PO then answered that, "more often than not the borrowing parties produce photocopies of the documents, such as MCD license, partnership deed, SSI registration certificate etc. as they have to retain the original documents with them." The Petitioner undertook to produce a list of documents and witnesses in his defense on the next date of hearing. This led to further adjournment of the proceedings. The proceedings dated 27 January 1993 show that the PO informed the EO that most of the charges listed in the fourteen accounts detailed in the charge sheet were common and a list of common charges had been framed. It was recorded that the Petitioner had No. objection to the modality of the presentation. Consequently there is No. merit in the contention that the Petitioner did not consent to redrawing of the original four articles of charges into thirty-six specific charges.

8. It does appear that the PO did not produce the originals of the documents relied upon by the Bank. However, the Petitioner does not appear to have doubted the veracity of the documents themselves in his answers to the detailed

questioning by the EO. It really turned on the interpretation of the documents. Further, although the Bank has not been able to show that after the letter dated 26th July 1990 from the zonal office, any of the units were financed by the Bank while the Petitioner was Chief Manager, the fact remains that on 10December 1990 he was advised to hand over the charge to the branch as his tenure was coming to an end. The charge that he disobeyed the instructions of the zonal office cannot therefore be said to have been established conclusively. The conclusion drawn by the EO on this aspect was that even if there had been No. communication from the Zonal Office to restrict advances to units engaged in Copper Wire drawings, the Petitioner "should have exercised prudence instead of going unbridled in the matter of sanction of loans to new units for a low priority activity." The charge that "in certain accounts, stocks were valued at sale price instead of purchase price/market price (whichever is lower) thus inflating the inventory of stocks" was held not to be proved. Likewise the charge that "machinery installed in a few cases was that of a description different from the one financed by the Bank", was held to be an "irregularity" which was "not of much relevance." Further, on the charge that "housekeeping of the branch in regard to tallying of balances and maintenance of control registers/ledgers was totally ignored", the EO observed:" In a big branch, the responsibility of proper housekeeping rests not only on the Incumbent In charge but on so many officials down the line. The charge is partially proved."

9. This Court is not to act a court of appeal and re-examine the evidence analyzed by the EO. of course, where the findings are perverse or based on No. evidence, this Court can interfere. However, in the instant case, this Court is not persuaded to do so since the EO appears to have remained objective in drawing some of the above conclusions. As noticed hereinbefore while some of the charges were held proved some others were held not proved or only partly proved. In the present case, the DA accepted the report of the EO and imposed a punishment of reduction from SMG Scale IV to MMG Scale III grade by the order dated 3rd June 1994. This Court does not find any legal infirmity in the said order of the DA.

10. However, the AA enhanced the penalty to removal from service by the second impugned order dated 17June 1995. The question that then arises is whether the AA was justified in enhancing the penalty to removal from service. In other words considering the charges held proved by the EO was the punishment of removal from service imposed by the AA disproportionate?

11. In the impugned order dated 17th June 1995, the AA observed that the Petitioner "unduly sanctioned loans to various parties by neglecting post sanction control measures and put sizeable funds of the Bank difficult of recovery." On this aspect the EO noted that there is an SSI Officer who is supposed to undertake the exercise of monitoring the post sanction performance of the units and keep track of the end-use of the funds. The EO also noted that "other staff down in line may also be responsible". However the EO held that "the Charged

Officer cannot claim that he was oblivious of what has happening in the branch. He must have kept an eye at least on transactions involving heavy amounts in big loan accounts." In terms of Regulation 3 (1) read with Regulation 24 of the Regulations 1977, it must be shown that the Petitioner acted with intent to cause loss to the management. However there was No. specific charge on this aspect. The observation of the DA that the Petitioner showed "utter lack of prudence to discharge his duties" was not a conclusion drawn by the EO. The specific finding was that the Petitioner's conduct was "injudicious". The AA however appears to have added its own "findings" which did not even form part of the charge. The AA stated that "the charges which stood proved in the department enquiry are of very serious nature and bank's funds of Rs. 4.23 crores approximately are proving difficult of recovery". The further observation was that in regard to the outstanding amount of Rs. 1.48 crores, No. security was available with the Bank. These were the factors that appear to have weighed with the AA to conclude that the penalty imposed by the DA was not "commensurate".

12. Ms. Raavi Birbal, learned Counsel appearing for the Bank sought to justify the above decision of the AA to enhance the penalty by submitting that although the figure of the bad debts and outstanding not covered by any security did not specifically form part of the charge sheet or the subject matter of the enquiry, it represented the aggregate of the outstanding amount in the accounts mentioned in the charge sheet. She relied upon the decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Sh. Ram Pratap Singh*, to urge that mere illegality in holding the enquiry will not vitiate the punishment.

13. The above explanation offered by the Bank to defend the order of the AA is not convincing. The charge of causing loss to the Bank was never put to the Petitioner at any point in time. The charge sheet is silent on the amount that was proving difficult to recover, or the amount for which No. security was available with the Bank. The said "finding" of the AA is based on No. evidence. The AA could not have at the stage of appeal by the Petitioner made that the basis for enhancement of the penalty. Consequently, this Court finds that the show cause notice dated 8February 1999 issued by the AA proposing to enhance the penalty awarded by the DA and the consequential order dated 17th June 1995 passed by the AA awarding the punishment of removal from service to be unsustainable in law.

14. Consequently, the order dated 17th June 1995 passed by the AA awarding the Petitioner the punishment of removal from service is hereby set aside. The order dated 3rd June 1994 of the DA imposing on the Petitioner the penalty of reduction from the grade of SMG Scale IV to the grade of MMG Scale III is restored. The Petitioner is deemed to have continued in service till superannuation on the reduced grade of MMG Scale III with all consequential benefits. The Bank will within four weeks issue consequential orders as regards the Petitioner's retrial and other benefits and make payment of the arrears owing to the Petitioner as a result thereof.

15. With the above directions, the writ petition is disposed of.