(2008) 11 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9267 of 2003

Sheo Kumar Mishra APPELLANT

Vs

Union Bank of India and others RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 11 AHC CK 0075

Hon'ble Judges : Janardan Sahai, J and Rajes Kumar, J

Final Decision : Dismissed

Judgement

Rajes Kumar, J

The petitioner was Branch Manager in the Union Bank of India. It appears that a charge sheet dated 3.8.1995 was issued to the petitioner which consisted of articles of charges and statement of allegations. The articles of charges include the charge of (1) Failure to take all possible steps to ensure and protect the interest of the Bank; (2) failure to discharge his duties with utmost honesty, integrity, devotion and diligence; and (3) acting in a manner unbecoming of a Bank Officer. In support of the articles of charges there were statement of allegations. The statement of allegations contain details of various loans including piggery loans, pump set loans cash credit accounts of several persons, crop loans and other loan in respect of which irregularities were committed by the petitioner. In the heading of piggery loan it was alleged that the petitioner sanctioned loans amounting to Rs.18.200/ for each borrower under the Government sponsored scheme and the loans were disbursed to persons outside command area of the Branch and also beyond the laid down targets and the loans were disbursed thorough middlemen/suppliers and most of the accounts had become sticky and bad and doubtful of recovery and it was also alleged that during the course of investigation no securities were taken from the borrowers. It was also alleged that out of the loan amount of Rs.18,200 to each borrower, only Rs.8,000/ was given to the borrower and the remaining amount of Rs.10,200/

from each account was pocketed by the petitioner. The names of all account holders have been given in the statement of allegations. The names of various account holders who were granted cash credit facility in respect of which the petitioner is alleged to have committed irregularities have also been given in the allegation relating to cash credit account. Details of irregularities committed in respect of other loans have also been given.

An enquiry was held and the enquiry officer submitted his report on 19.7.1996. A second show cause dated 26.7.1996 against the proposed punishment of dismissal was given to the petitioner. The petitioner submitted his reply on 3.8.1996 and the disciplinary authority passed an order of dismissal on 6.12.1996. The petitioner preferred an appeal which was dismissed by order dated 29.3.1997. A review application was filed by the petitioner which was unsuccessful and dismissed on 23.5.2000. Thereafter the petitioner filed a mercy petition which too has been rejected. The petitioner has challenged the punishment order.

In regard to pump set account the enquiry officer has relied upon amongst other evidence the deposition of R.K. Bhatia MW2 who deposed that during inspection the securities were found to be inadequate to cover the bank finance. The enquiry officer has referred also to the statement of Shri Prakash and Sattan Ram that they were not given the entire amount of the loan. In respect of the piggery loan the enquiry officer relied upon the statement of V.K. Pathak MW1 apart from the other evidence. V.K. Pathak had stated that the petitioner had disbursed loan outside the command area and did not verify the end use of finance and number of loans were sanctioned and disbursed through middle man by crediting the loan amount directly to the account of the middle man instead of crediting the amount in the Savings Bank Account of the borrowers. The enquiry officer has referred to the statement of V.K. Pathak that in the case of loans to borrowers of village Birno, Sihawal and Bhadahun the loan amount was first transferred to the Savings Bank Account of the borrowers and thereafter was retransferred to the account of the middle man/supplier. Shortage of security in respect of these loans was also found. The enquiry officer has given a detailed report in respect of the irregularities committed in the various accounts. Counsel for the petitioner submitted that the enquiry officer did not find the allegation regarding acquisition of assets by the petitioner beyond his loan sources of income, proved. The charges which were found proved by the enquiry officer are of very serious nature and the disciplinary authority has agreed with the report of the enquiry officer.

In Bank of India and others Vs. T. Jogram 2007 Labour Law Report 1009 it has been held by the apex court that the court cannot sit in appeal over the findings of fact recorded in the disciplinary proceedings and assume the role of an appellate authority. Judicial review in such cases is not against the decision but it is against the decision making process. In State Bank of India and another Vs. Ramesh Dinkar Punde 2006 III Labour Law Journal 563 the apex court set aside the order of the High Court by which the High Court had set aside the punishment awarded in the disciplinary proceeding. It was held by the apex court that adjudication by the High Court is not as an appellate authority on merits by appreciation of evidence and that the High Court jurisdiction was circumscribed and confined to correct the errors of law and procedural error, if any, resulting in miscarriage of justice or violation of principles of natural justice.

We have heard Sri A.S. Rai counsel for the petitioner and Sri Piyush Bhargava counsel for the respondent Bank.

Three submissions were made by the counsel for the petitioner. Firstly that enquiry proceedings were not held at any particular place but were held at different places. However, the petitioner could not point out any prejudice that may have been caused to the petitioner. It also appears that the petitioner had participated in the enquiry. Counsel for the petitioner could not point out any prejudice that may have been caused to the petitioner on account of enquiry being held at different places.

It was secondly contended that another officer viz., A.K. Saxena who was Rural Development Officer and was equally liable and in respect of whom dismissal order was passed by the disciplinary authority was given lighter punishment by the reviewing authority substituting the punishment to reduction of 10 stages in the time scale. On this point it is contended that a step motherly treatment has been meted out to the petitioner which is discriminatory and violative of Articles 14 of the Constitution. In support of his contention, counsel for the petitioner relied upon the following decisions:

1.Sengara Singh and others Vs. State of Punjab and others, A.I.R. 1984 SC 1499,

2.Banshi Lal Singh Vs. U.P. Secondary Education Services Commission, Allahabad and others, 1999 A.L.J. 2309;

3.Director General of Police and others Vs. G. Dasayan, A.I.R. 1998 SC 2265.

In Sengara Singh''s case dismissal of several members of the police force for participation in an agitation was ordered but large number of the police men were reinstated while the petitioners in that case were not reinstated. It was held that logically the petitioners must receive the same benefit, which those reinstated received in the absence of any distinguishing feature in their cases. In Banshi Lal Singh''s case it was found that misconduct was committed by teachers and an order of removal from service was passed but in respect of some of the teachers the punishment was modified to stoppage of one increment. The petitioner however was meted out with the punishment of removal. A single judge of this court while allowing the writ petition held that the difference in the nature of punishment has arisen not because of any difference in nature of charge or the finding of guilt recorded by the enquiry officer but because the authorities empowered to grant approval were different. The learned single judge allowed the writ petition and modified the order of punishment directing stoppage of one increment as was the punishment awarded to the other teachers. In Director General of Police (supra) the apex court held that the delinquent constable was punished with dismissal whereas the codelinquent was compulsorily retired while others were let off without punishment. The apex court substituted the order of dismissal passed by the disciplinary authority with one of compulsory retirement. The cases cited by the learned counsel for the petitioner are distinguishable on facts. In this case we have found that the charges against the petitioner, which have been proved are of very serious nature. In Balbir Chand Vs. The Food Corporation of India and others 1998, Vol. 79 FLR 494 it was found that misconduct against the appellant was proved but some of the other delinquents were awarded a lighter punishment. It was held by the apex court that it was not necessary to repeat the same mistaken view and award of harsher punishment is not violative of Article 14 of the Constitution of India. Similar view was taken in Kastha Niwarak G.S.S. Maryadit, Indore Vs. President I.D.A. AIR 2006 (SC) 1142.

Counsel for the respondent bank submits that statement of allegations against A.K. Saxena and the petitioner are not identical. The allegation of grant of cash credit loan to various persons was not levelled in the case of Saxena. We have examined the contention advanced by the counsel for the petitioner and we do not find any merit in this contention. Firstly A.K. Saxena may have been involved in the processing of loan but his responsibility as Rural Development Officer and the petitioner''s responsibility as Branch Manager were different. Moreover, the order of the reviewing authority indicates that in the case of Saxena it was found that illegal gratification was not proved in the enquiry proceedings. It was also found that loan application of Makkal who was a middlemen was not processed by A.K. Saxena and that loan to Ram Pravesh was directly sanctioned by the petitioner and Saxena could not be held responsible for that. Although both persons may have been involved in some of the transactions and charges against them may have been proved but it cannot said that charges are identical. In the circumstances, the plea of Article 14 of the Constitution would not apply to the petitioner on facts.

Lastly it was contended that the punishment awarded to the petitioner is disproportionate to the magnitude of the charges. We have gone through charges. They are of very serious nature. The findings of the enquiry officer and those recorded by the disciplinary authority indicate that the petitioner had given loans to the various persons without securing the interest of the bank. He failed to take appropriate security for the loan. The enquiry officer has also relied upon the deposition of witness of the employer viz., Pathak and Bhatia who supported the charges. The disciplinary authority has also found that the petitioner had sanctioned loans under the Government sponsored scheme in connivance with few middlemen acting as supplier/dealer and allowed benefit of subsidy to the persons who were not entitled to and also also went to the extent of double financing to the chronic defaulters of the bank. It has also been found that bank funds to the tune of Rs.18.42, disbursed to the various borrowers as loan have become bad and doubtful of recovery. These findings have been upheld by the appellate authority as well as by reviewing authority. These are all findings of facts. There is nothing to show that these findings of facts are perverse or suffer form any such illegality which may call for interference under Article 226 of the Constitution.

Counsel for the petition submitted that all the amounts which were disbursed by the petitioner, reference of which was made in the charge sheet, have been recovered by the bank. In support of this contention he placed reliance on para 7 of the writ petition in which it has been stated that most of the loans account as per letters of allegations has been adjusted by the borrower which has not been recorded by inquiry authority during the course of enquiry. The petitioner has not indicated which loans were adjusted and which were not. The allegations are vague. We do not find any merit in the contention.

For all these reasons, we find no merit in the case. The writ petition fails and is accordingly dismissed.

