(2014) 03 GAU CK 0026

In the Gauhati High Court

Case No : Writ Petition (C) No. 2840 of 2006

Shri Nani Gopal Palit — APPELLANT

Vs

The State Bank of India — RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Citation : (2014) 2 GLD 59 : (2014) 2 GLT 560

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : T.N. Srinivasan, Mr. M. Dutta and Mr. A. Deka, for the Appellant; N. Barua and Ms. M. Bharali, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. T.N. Srinivasan, the learned counsel for the petitioner. The respondents are represented by Mr. N. Barua, Advocate. The petitioner has retired as an Assistant Manager from the State Bank of India (SBI) on 31.12.2010 and he challenges the order dated 6.6.2003 of the disciplinary authority, whereby he has disagreed with the finding of the inquiry officer. Then the appointing authority through the order dated 10.11.2003 has inflicted the following punishment on the retired Manager:--

Reduction to the beginning of the time scale of pay in JMGS-I for a period of 3 (three) years with further directions that the officer will not earn increments during the period of such reduction and on expiry of such period the reduction will have the effect of postponing further increments of his pay in terms of Rule 67(f) of State Bank of India Officers'' Service Rules.

2. The Appellate Authority and the Review Committee through their respective order(s) of 26.4.2005 and 7.3.3006 had upheld the penalty ordered by the appointing authority.

3. Questioning the legality of the disciplinary proceeding, the petitioner challenges the order(s) by contending that the disciplinary authority and the appointing authority failed to indicate the reasons for disagreeing with the

favourable conclusion reached by the inquiring authority.

FACTUAL BACKDROP

4. The petitioner while he was posted as the Branch Manager at the Manza Tin Ali Branch of the SBI was alleged to have committed irregularities in sanctioning of loans under the Integrated Rural Development Programme (IRDP) and Direct Agricultural Cash Credit Loans, under Central Govt. scheme and as a result of the alleged lapses of the delinquent, the Bank was exposed to loss to the tune of Rs. 4,40,836/-. The solitary charge against the delinquent was sub-divided into separate allegations and the relevant portion of the charge memo being relevant, are extracted here-in-below for ready reference:

A legation-I: It is alleged that you sanctioned and disbursed IRDP and Agricultural Cash Credit Loans to borrowers as shown in Annexure-"A", "B" and "C" al of which subsequently turned out to be non-existent and fictitious burrowers. Some of the villages were even not in existence in which the borrowers were shown to have been financed. The disbursements were done prior to the receipt of subsidy and in many cases in excess of the sanctioned amount. As a result the Bank is exposed to loss to the tune of Rs. 4,40,836/-.

A legation-II: It is alleged that you verified the burrowers at the time of documentation and signed in the specified columns in the Control Card-cum-Ledger Sheet of the borrowers accounts shown in Annexure-"A", "B" and "C" although al these borrowers were non-existent and fictitious borrowers. Some of the villages of the borrowers were even not in existence.

A legation-III: It is alleged that you did not maintain any records/registers relating to pre-sanction survey/post disbursement for low up/inspection and sending of reminders/notices to most of the loan account holders in respect of the loan accounts as shown in Annexure-"A", "B" and "C".

A legation-IV: You sanctioned and disbursed IRDP loan A/C No. IRDP/ATL/II/1406 in the name of Sri Khangbura Terang of Hidim Teron Gaon. The photograph affixed in the Control Card-cum-Ledger Sheet was that of one Sri Langbrik Terang who was working as interpreter in the office of the Dy. Commissioner, Karbi Anglong, Diphu. Sri Langbrik Terang admitted to avail the loan under the assumed name of Sri Khangbura Terang showing himself as resident of Hidim Teron Gaon. He also signed in the name of Khangbura Terang in the loan documents such as Control Card-cum-Ledger Sheet. Loan Application Forms, Sanctioned Letters, Agreement of Hypothecation etc. and in Drawl Form No. 433522 dated 16.5.90 for Rs. 1,500/-. An amount of Rs. 3600/- was received by Shri Binod Barman s/o. Maino Singh Barman, resident of Mahendijua Halmai Gaon, Karbi Anglong, Assam by Banker''s Cheque No. BN/9/517773. There was no such person by name of Khangbura Terang in village Hidim Teron Gaon. It is therefore alleged that the financing was made by you in a reckless manner without satisfying yourself about the bonafides of the burrowers.

A legation-V: It is alleged that you sanctioned and disbursed IRDP loan A/c No. IRDP/ATL-II/1374 to 1379 and IRDP/ATL-10/1193 & 1194, 1198, 1200 shown in sl. No. 1 to 8, 12 & 14 of Annexure-"C" after verifying the borrowers at the time of documentation. The loan a/c. in respect of a/c No. TRDP/ATL-10/1195 to 1197 & 1199, 1201 to 1206 shown in sl. No. 9, 10, 11, 13, 15 to 20 of Annexure-"C" were disbursed by you. Al these borrowers subsequently turned out to be fictitious. It is, therefore, alleged that you were negligent in financing and exposed the Bank to substantial loss.

5. Considering the petitioner''s reply to be unsatisfactory, an inquiry into the charges was ordered and the Inquiry Officer Mr. A.H. Biswas in his inquiry report of 26.3.2001 (Annexure-C) declared that the charges under Allegation Nos. I, II, IV and V were not proved. In so far as the Allegation-III (pertaining to non-maintenance of records and lack of follow up action for loan recovery), the Inquiry Officer found the charges to be partially proved. To put it in another way, alleged lapses in pre-sanction survey was found to be not proved whereas the lapses for not sending reminders/notices for loan recovery were held to be proved.

6. But curiously the Inquiry Officer in his report of 26.3.2001 took into account an additional charge i.e. disbursement in excess of the prescribed limit pertaining to A legation-I and although this allegation was not part of the charge memo issued to the delinquent on 26.3.2001, this additional charge was held to be proved.

7. The inquiry report was considered by the disciplinary authority and while furnishing the copy to the delinquent on 6.6.2003, the disciplinary authority recorded his disagreement on the favourable findings and after recording his own conclusion, the response of the delinquent was sought through the communication dated 6.6.2003 (Annexure-B).

8. In his reply on 23.6.2003 (Annexure-D), the delinquent dealt with the specific evidence against each of the allegations which led to his exoneration and he then requested the disciplinary authority to review his earlier conclusion, after perusing the defence exhibit and the defence brief.

9. The inquiry report alongwith the views of the disciplinary authority were then placed for consideration before the General Manager and through the order dated 10.11.2003 (Annexure-E), the appointing authority concurred with the disciplinary authority and thereafter the impugned penalty was inflicted on the delinquent.

10. The petitioner submits that the Inquiry Officer exonerated the delinquent from the substantial allegations pertaining to wrongful sanctioning of loans under the IRDP Scheme and the Direct Agricultural Cash Credit Scheme to non-existent and fictitious persons and accordingly it is argued that mere technical lapses in loan recovery process is not a major misconduct warranting a major penalty.

11. In order to show the harshness of the penalty, the petitioner''s lawyer Mr. T.N. Srinivasan submits that the petitioner''s pay was drastically reduced from Rs. 21,140/- to Rs. 10,000/- for 3 years and thereafter his pay was re-fixed permanently at Rs. 11,140/- and with this meager pay, the petitioner superannuated on 31.12.2010. Consequently the petitioner is receiving much lesser pension at Rs. 3,990/- P.M.

12. The learned counsel submits that the beneficiaries under the Central Govt. sponsored finance schemes are identified by the Panchayat Officials/BDOs and for such loans the Bank Manager has no role in identification of beneficiaries. This is why the allegation of loan being granted to non-existent and fictitious persons was held to be unproved by the Inquiry Officer since the evidence clearly showed that the borrowers were genuine persons. Yet the disciplinary authority without disclosing the basis for disagreeing with the favourable findings of the Inquiry Officer, arbitrarily decided to reject the findings of the Inquiry Officer. The petitioner argues that the disciplinary authority couldn''t record dissent without disclosing the reasons for his disagreement with the inquiring findings.

13. Referring to the non-speaking opinion of the disciplinary authority and the concurrent approval of the appointing authority, Mr. Srinivasan submits that it was a clear case of non-application of mind by both since the disciplinary authority simply extracted the gist of the six allegations and declared that he does not agree with the favourable findings of the inquiry officer. Similarly the appointing authority in a parrot like manner indicated his agreement with the disciplinary authority, without disclosing the basis for his concurrent views.

14. In his turn, Advocate Mr. N. Barua for the SBI submits that the petitioner at the relevant time was posted as the Branch Manager in the Manza Tin Ali Branch and it was his responsibility to identify the eligibility of the applicants to receive loans from the Bank and since he was negligent, the Bank was exposed to loss to the tune of Rs. 4,40,836/- and accordingly the counsel submits that the delinquent was rightly held responsible by the disciplinary authority.

15. The respondents submit that the primary function of the Bank Manager is to sanction loans to deserving applicants and also to take steps for timely recovery of the loans. Here since the delinquent failed to discharge his responsibility, the major penalty under Rule 67(f) of the State Bank of India Officers'' Service Rules was justifiably inflicted on the delinquent.

16. In this case, the delinquent was absolved from the major charges of loans given to non-existent and fictitious persons. But since the disciplinary authority disagreed with the inquiry findings, he was duty bound to record reasons for his dissent. But while differing with the inquiry findings, the disciplinary authority failed to disclose any reason. Therefore an illegal procedure was followed by him and this was contrary to the law laid down by the Apex Court in S.P. Malhotra Vs. Punjab National Bank and Others, and Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,

17. As regards the adverse finding on the additional charge on the allegation-I, since this new charge was absent in the charge memo furnished to the delinquent, the adverse finding on this charge can''t be made the basis of any disciplinary action against the delinquent.

18. Moreover the opinion given by the appointing authority on 10.11.2003 shows that the disciplinary authority''s dissent was accepted without any application of mind and although reasons were not disclosed for the dissent, surprisingly the appointing authority found the same to be in order.

19. The gravity of the punishment also deserves to be commented upon in this case. The delinquent herein was exonerated of the substantial charges pertaining to loan disbursal to undeserved beneficiaries. However on the lesser charge of procedural lapses in loan recovery, some adverse conclusion was drawn by the Inquiry Officer. But such procedural lapse does not in my view justify imposition of a major penalty. As earlier noted that the petitioner''s pay was substantially reduced and after suffering this penalty for 3 years, he was made to serve at a meager salary of Rs. 11,140/-, since the pay reduction was made effective for the entire duration of the petitioner''s service career. Moreover it appears to be a case of double penalty which not only impacted the petitioner''s pay during his service tenure but also substantially reduced his pension to a measly Rs. 3,990/- P.M. The gravity of the penalty impact is amply demonstrated since his pay was reduced to Rs. 11,140/- from Rs. 21,140/- for the duration of his service career and he received proportionately lesser pension, after he superannuated on 31.12.2010.

20. Considering the above, I am of the view that both the disciplinary authority and the appointing authority ignored the law while disagreeing with the findings of the Inquiry Officer. Conspicuously neither of them disclosed the basis for their disagreement. Therefore the impugned proceeding is declared to be vitiated and suffering of any penalty on such vitiated proceeding can''t be permitted in law. Following this conclusion, the impugned order dated 6.6.2003 (Annexure-B) of the disciplinary authority, the penalty order 10.11.2003 (Annexure-E) of the appointing authority and the negative order(s) of the Appellate Authority and the Review Committee are quashed. As a result, the respondents are directed to give all service benefits to the petitioner by considering the delinquent to be exonerated on all counts. It is ordered accordingly. The case is accordingly allowed, without any order on cost.