(2014) 03 GAU CK 0058

In the Gauhati High Court

Case No : Writ Petition (C) No. 1025 of 2009

Shri Pawan Kumar Agarwala — APPELLANT

Vs

The Union of India and Others — RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 2 GLT 491 : (2014) LabIC 1684

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S. Shyam, Mr. A. Dhar, Mr. K.K. Das, for the Appellant; S.S. Sharma, Mr. G. Jalan and Ms. L. Sarma, for the Respondent

Judgement

1. Heard Mr. S. Shyam, the learned Counsel appearing for the petitioner. The Respondent Nos. 2 to 7 are represented by Mr. S.S. Sharma, the learned Sr. Counsel. The petitioner was a Deputy Manager in the State Bank of India (SBI) and in pursuant to a disciplinary proceeding, he was removed from service through the impugned order dated 29.04.2006 (page. 198). Questioning the legality of the disciplinary proceeding and the foundation of the adverse conclusion, the present case is filed under Article 226 of the Constitution of India.

2. The misconduct alleged was in connection with the petitioner''s stint as the Branch Manager of the Phulbari Branch of the SBI, where he was posted from 21.07.1996 to 19.06.2001. The disciplinary proceeding was drawn up under Rule 67 & 68 of the SBI Officers Service Rules with the charge memo dated 28.10.2004 (Annexure-7), where the following 2 charges and six allegations were leveled against the Deputy Manager:-

Charge-I

While you were posted as Branch Manager at Phulbari branch of State Bank of India from July'' 96 July'' 2001 you committed some serious irregularities in sanction and disbursement of a Cash Credit loan for Rs. 1,00,000/- to Shri Abdul

Kuddus Mondal, guaranteed by Shri Hasanuzzaman at Hallydayganj branch of State Bank of India, by abusing your position as Branch Manager. You had, earlier, sanctioned loans to Shri Abdul Kuddus/Quddus Mondal and Shri Hasanuzzaman, from Phulbari Branch, both of which had turned NPA during the material period. You influenced the Branch Manager, Hallydayganj branch to sanction the Cash Credit loan, without disclosing the Agricultural Term Loan to Shri Mondal and Shri Hasanuzzaman at Phulbari branch. As a result of your deliberate actions, the Bank''s interest has been put in jeopardy and the Bank has been exposed to pecuniary loss of substantial amount. You have, thus, failed to protect the interest of the Bank and did not discharge your duties with integrity, honesty, devotion and diligence, which is unbecoming of a responsible officer of the Bank. Your actions are in clear violation of Rule No. 50(1) and 50(4) of State Bank of India Officers'' Service Rules applicable to you. The imputations of lapses on the basis of which the charges are framed are enlisted in the attached ANNEXURE-II.

Charge No. II

You committed some gross irregularities in sanction and disbursement of two clean overdrafts to i) The Secretary, J.N. High School and ii) Shri Tapash K. Sangma for Rs. 10,000/- and Rs. 15,000/- on 17-04-2000 and 28-05-2001 respectively, which have become Non Performing Asset due to non-payment by borrowers. On scrutiny it is observed that the above overdrafts were sanctioned by you beyond your discretionary power (being Rs. 3000 only) during that period. You have neither submitted the Control Returns of advances nor the returns of irregular loans to your controlling officer on a regular basis. You have financed recklessly flouting Bank''s extant Rules and Regulations with ulterior motives. You have not obtained prior approval of your controlling authority and also not sought post facto approval for the same. As a result of your deliberate actions, the Bank''s interest has been put in jeopardy and the Bank has been exposed to pecuniary loss of substantial amount. You have, thus, failed to protect the interest of the Bank and did not discharge your duties with integrity, honesty, devotion and diligence, which is unbecoming of a responsible officer of the Bank. Your actions are in clear violation of Rule No. 50(1) and 50(4) of State Bank of India Officers'' Service Rules applicable to you.

The imputations of lapses on the basis of which the charges are framed are enlisted in the attached ANNEXURE-II.

Allegation No. I

A Cash Credit loan application form dated 12.3.99 was submitted to Hallydayganj branch of State Bank of India by Shri Abdul Kuddus Mondal for a working capital limit of Rs. 1,00,000/- against work order, was written in your handwriting. You assisted the then Branch Manager, Hallydayganj branch in the processing of the loan, which was sanctioned on 27.03.1999. The sanction letter and documents in regard to this loan were also written in your handwriting.

Allegation No. II

While being posted as Branch Manager at Phulbari branch of State Bank of India, you were instrumental in the appraisal and sanction of a term loan of Rs. 1,00,000/- at Hallydayganj branch to Shri Hasanuzzaman, a resident of Phulbari on 29.04.1999, knowing well that you had already sanctioned an Agricultural Cash Credit limit of Rs. 15,000/- on 08.12.1998 to the said Hasanuzzaman at Phulbari branch and its repayment/servicing of interest was only partly made by Shri Hasanuzzaman.

Allegation No. III

The aforesaid loan proposals were processed at Hallydayganj branch with your active assistance and did not bear any reference to the already existing loans at Phulbari branch, which were sanctioned by you and turned irregular during your tenure as Branch Manager, Phulbari branch. You had sanctioned a Agri Term Loan of Rs. 15000/- to Shri A.K. Mondal on 14.2.1998 from Phulbari Branch for purchase of a Cargo boat which had turned NPA since 14.03.99 and transferred to P.B. Account on 26.02.2002 with an outstanding of Rs. 16475/- where Shri Hasanuzzaman was a guarantor. Thus you had consciously enabled Shri Abdul Kuddus Mondal and Shri Hasanuzzaman to surreptitiously enjoy concurrent borrowings at Hallydayganj branch even while their loan accounts at your branch, Phulbari, were irregular. Al these four loan accounts have turned into Non Performing Asset and the Bank is now exposed to a potential loss of substantial amount.

Allegation No. IV

Overdraft Account No. 25 of the Secretary, J.N. High School

You sanctioned an overdraft to the Secretary, J.N. High School, Phulbari for Rs. 10,000/- on 17.04.2000, which has become NPA due to non-payment by borrowers. On scrutiny it is observed that the overdraft was sanctioned beyond your discretionary power (being Rs. 3000 only) during that period and no record of submission of control returns are available either at the branch or at the controlling officer. Thus you had sanctioned/disbursed the overdraft limit in gross violation of bank''s extant norms/guidelines. The present outstanding due in the account is as under:

Outstanding + Interest accrued

Total due

Irregular since (Jan 2002 to Mar, 2004)

Rs. 13,072.96 + Rs. 5,851/-

Rs. 18,924/-

17 July, 2000

In this regard the other irregularities are below:

i) The beneficiary is not entitled/competent to borrow as there is no such resolution passed by the school management committee in keeping with the bylaws/permission of the inspector of schools.

ii) The available permission vide the inspector of school''s letter dated 09-11-96 states that "The Secretary of the school is authorized to operate bank accounts relating to the transaction and deposit of the govt. money" but not for borrowing of any kind.

iii) While sanction was accorded on a plain paper of which only photocopy exists at the branch. The applicant''s letter was against salaries of March and April, 2000, but no credit appear in the school account after the said irregular withdrawal allowed vide Cheque No. 374755 dated 17-04-2000 for Rs. 10,000/-.

iv) The said Cheque was not entered in the Cheque Referred & Returned Register.

v) Despite your tenure continuing at the branch thereafter till July, 2001 (over 3 months), you preferred not to follow up for regularization of the position of the account, as there is no evidence of sending demand notices nor any entry exists in the Inspection/Customer Call Register.

vi) No irregularity report was submitted to controlling officer.

vii) This irregular sanction and continuing irregularity in the account has attracted adverse comments in the last inspection & audit report dated 03-12-2002 at Sl. No. 602070.01 including requirement for examination of staff accountability.

Allegation No. V

Overdraft Account No. 89 of Shri Tapash K. Sangma

You sanctioned an overdraft to Shri Tapash K. Sangma of Phulbari for Rs. 15,000/- on 28-05-2001, which has become Non Performing Asset due to non-payment by the borrower. On scrutiny it is observed that the above overdraft was sanctioned by you beyond your discretionary power (being Rs. 3000 only) during that period and no record of submission of control returns are available either at the branch or at the controlling office. Thus, you had sanctioned/disbursed the overdraft limit in gross violation of bank''s extant norms/guidelines. The present outstanding due in the account is as under:

Outstanding + Interest accrued

Total due

Irregular since (Jan 2002 to Mar, 2004)

Rs. 15,464.00 + Rs. 7,369.00*

Rs. 22,833.00

28 July, 2001

i) There is no formal sanction available in branch records.

ii) You have written "Allowed" against your initial on the relative Cheque No. 374933.

iii) No specific repayment programme was made at the time of sanction.

iv) The said Cheque was not entered in the "Cheque Referred & Returned Register.

v) Despite your tenure continuing at Phulbari branch thereafter till July, 2001 (over 3 months), you preferred not to follow-up for regularization of the position of the account, as there is no evidence of sending any demand notice nor there exist any entry in the Inspection/Customer Call Register maintained at the branch.

vi) No irregularity report was submitted to controlling office.

vii) This irregular sanction and continuing irregularity in the account has attracted adverse comments in the last inspection & audit report dated 03-12-2002 at Sl No. 602070.02 including requirement for examination of staff accountability.

Allegation No. VI

As a result of your deliberate actions mentioned in Allegations Nos. IV & V above, the Bank''s interest has been put in jeopardy and the Bank is likely so suffer a financial loss of Rs. 28,536.96 plus interest.

3. As can be seen from the Charge No. I, the branch manager is alleged to have abused his position in getting loan sanctioned at the Hallydayganj Branch of SBI to borrowers Abdul Kuddus Mondal and Hasanuzzaman. These two borrowers had outstanding dues for previous loans taken from the Phulbari Branch of the bank and this allegedly exposed the bank to pecuniary loss of substantial amount.

4. The 2nd charge pertains to disbursement of overdraft facilities to the J.N. High School and Tapash K. Sangma for Rs. 10,000/- and Rs. 15,000/- respectively, which allegedly were beyond the discretionary limit of the branch manager (stated to be only Rs. 3,000/-) at the relevant point of time. Such overdraft facility allegedly put the bank''s interest into jeopardy and accordingly the delinquent was asked to give his reply to the 6 allegations stated in the charge memo dated 28.10.2004 (Annexure-7).

5. Since the two loans specified in Charge No. I relates to the Hallydayganj Branch of the bank, it may be appropriate to note that a preliminary inquiry was conducted earlier into the said allegation and the petitioner was given a show cause notice on 06.08.2003 (Annexure-3) to explain why he assisted the branch manager of the neighbouring branch, in assessment of the loan sanctioned to Abdul Kuddus Mondal and Hasanuzzaman, despite being aware that both

borrowers had already availed loan facility from the petitioner''s Phulbari Branch of SBI. On the allegation of facilitating undeserved loan disbursal by the Hallydayganj Branch, the petitioner in his reply of 16.10.2003 contended that he had rendered assistance in assessment of loan, under telephonic instruction of the Assistant General Manager, Regional Office, Tura to help to eradicate the huge negative variance in loan advances of the Phulbari branch. Moreover, the existing ACC/ATL loans at the petitioner''s Phulbari Branch of the two borrowers were clearly mentioned in their respective opinion reports and projecting that no loss was caused to the Hallydayganj Branch by sanctioning of those 2 loans, the petitioner requested for dropping of the proceedings.

6. Simultaneously with the petitioner, the Manager of the Hallydayganj Branch Mr. PK Das was also given a similar show cause notice but in his case, taking the matter further, disciplinary proceeding was drawn up and eventually Mr. Das was inflicted the penalty of pay reduction by one stage for one year without cumulative effect. Significantly at that stage, the bank did not proceed against the petitioner in pursuant, to the show cause notice dated 06.08.2003 (Annexure-3).

7. But after the charge memo dated 28.10.2004 was given, departmental inquiry was conducted on the six allegations and the petitioner herein questions the legality and fairness of the inquiry proceeding and its conclusion.

7.1. The finding of the Inquiry was given on 25.10.2005 whereby it was declared that the charge under allegation No. I i.e. the petitioner facilitated a loan for Abdul Kuddus Mondal from the Hallydayganj Branch by writing the loan application in his own handwriting and also preparing himself the sanction letter, was held to be proved.

7.2. The allegation No. II of loan being sanctioned to Hasanuzzaman by the Hallydayganj Branch although he had already availed an agricultural cash credit facility of Rs. 15,000/- from the Phulbari Branch was also declared to be proved by the Inquiry Officer.

7.3. On the allegation No. III of facilitating concurrent borrowing from the Hallydayganj Branch despite the borrowers having earlier secured loan from the Phulbari Branch was declared to be partly proved by the Inquiry Officer.

7.4. The allegation No. IV of granting overdraft facility to the J.N. High School beyond the discretionary cap of Rs. 3000/- for the Branch Manager was declared to be proved but the similar charge of granting overdraft facility under allegation No. V to Tapash K. Sangma beyond the petitioner''s permissible limit of Rs. 3000/- was declared to be not proved.

7.5. Consequent upon the proved findings on the concerned allegations, the allegation No. VI was declared to be proved by the Inquiry Officer.

8. The bank''s disciplinary authority after considering the findings of the Inquiry Officer proposed the punishment of reduction of basic pay by one stage for 3

years and the appointing authority through his endorsement of 04.01.2006 concurred with the punishment suggested by the disciplinary authority. But at that stage, the Chief Vigilance Officer (CVO) of the SBI through his letter dated 01.02.2006 opined that extreme mala fide are discernible on the part of the charged officer and considering the purported gravity of the proven charges, recommendation of a stiff major penalty was made by the CVO. Consequently, the minor punishment proposed earlier (reduction of basic pay) was not inflicted and instead, the penalty of "removal from service" under Rule 67(i) of the Service Rules was imposed on the delinquent.

9. Mr. S. Shyam, the learned counsel questions the legality of the disciplinary process by pointing out that the petitioner was denied a fair opportunity to defend the charges. He firstly submits that some of the vital documents, which had a close bearing with the charges were not furnished to the delinquent and the counsel refers to the Bank''s communication dated 19.06.2005 (Annexure-11) to project that 7 vital documents including the Control Return Files for the concerned loans in the Hallydayganj Branch and the Phulbari Branch were not furnished. Moreover the ledger sheet and the inspection/follow up registers pertaining to the sanctioned loans were also not made available to the charged officer.

10. Referring to Rule 68(1) (IX) (a) of the SBI Service Rules, Mr. Shyam submits that the inquiry authority is obliged to furnish to the delinquent the list of documents and the list of witnesses through which the charges are proposed to be proved and the counsel submits that the list of witnesses was never furnished by the Inquiry Officer and some vital documents which would have exonerated the petitioner, were not made available to the charged officer.

11. From the Inquiry Report the petitioner projects that in respect of the 4 loans with total disbursal of Rs. 2,30,000/-, the Bank recovered Rs. 2,13,595/- and accordingly it is submitted that very minimal loss was caused to the Bank and what is more significant is that this loss was not on account of the petitioner''s fault, Mr. Shyam submits that the Power of Attorney furnished by Abdul Kuddus Mondal was never utilized to recover the balance loan dues of Rs. 15,450/- and because of the negligence of those responsible for loan recovery, a small unpaid amount had to be written off by the bank.

12. During the relevant period since large scale contract finance was targeted by the SBI and the Hallydayganj Branch was lagging behind in achieving the target, on instruction of his superior, the petitioner rendered assistance to his neighbouring Bank Manager to sanction contract finance for Abdul Kuddus Mondal and Hasanuzzaman from the Hallydayganj Branch of the Bank and the learned counsel refers to the statement of the Branch Manager Mr. P.K. Das of the Hallydayganj Branch to project that assistance was rendered by the petitioner at the invitation of Mr. Das and there was no self attempt by him to facilitate sanctioning of loan in that branch.

13. The petitioner refers to the Appeal Memo dated 13.07.2005 of Mr. P.K. Das to project that since contract financing was a new experience for the Branch Manager of the Hallydayganj Branch, Mr. P.K. Das took assistance of the petitioner who was then posted at the Phulbari Branch to apprise the loan proposals and it is projected that loans were repaid and the Bank made profit by way of interest income, on the sanctioned loans.

14. Mr. Shyam submits that the opinion report (DEX-4) furnished in support of the disbursed loans clearly disclosed the previous loans of the borrowers from the Phulbari Branch but surprisingly neither the inquiry Officer nor the disciplinary authority or the CVO had taken note of the said opinion report, which establishes the bona fide of the petitioner''s action in rendering assistance to his neighbouring Branch Manager to meet the target for disbursal of contract finance by the Hallydayganj branch. The delinquent also contends that taking multiple loans is not prohibited in the SBI and contract finance were sanctioned for the 2 borrowers by the Hallydayganj branch manager, with full knowledge of the previous loans taken by them from the Phulbari branch.

15. On the charge of granting overdraft facility of Rs. 10,000/- and Rs. 15,000/- respectively to the J.N. High School and Tapash K. Sangma, the petitioner projects that the allegation of granting overdraft facility beyond the petitioner''s discretionary limit is based entirely on wrong premises. In support of his contention, Mr. Shyam refers to the Scheme of Delegation of Financial Powers (Advances), 1995 to project that w.e.f. 11.09.1995 the Branch Manager in the MMGS-II cadre were entitled to sanction unsecured loan up to Rs. 25,000/- and similar amount as Small Business Finance Advance and accordingly it is contended that the discretionary limit was never crossed by the petitioner in sanctioning overdraft facility to these two borrowers.

16. In this context, the non-furnishing of the control return file of the Branch as well as the bank''s Ledger sheets of the J.N. High School account and Mr. Tapash K. Sangma account are projected as cause for serious prejudice to the petitioner''s case as these documents would have established that the borrowers had availed similar overdraft facility earlier and in any case this was within the permissible discretionary cap of the Manager of the Phulbari Branch.

17. In order to establish that the petitioner was vindictively targeted by the disciplinary authority, the learned counsel refers to the communication dated 07.11.2005 (Annexure-17) of the disciplinary authority to project that the finding of the Inquiry Officer against the allegation No. III & V which were held to be not proved was summarily discarded by the disciplinary authority without affording any opportunity to the petitioner to have his say to support the finding of the Inquiry Officer. Mr. Shyam submits that while the disciplinary authority can disagree with the Inquiry Officer, an opportunity before disagreement is required to be provided to the delinquent and the one sided reverse view of the disciplinary authority is inconsistent with natural justices and the principles of service jurisprudence. In support of this contention, he cites State Bank of India

and Others Vs. K.P. Narayanan Kutty,

18. Representing the respondents, Mr. S.S. Sarma, the learned Sr. Counsel submits that the petitioner was considered to have committed a serious misconduct by facilitating sanctioning of loan from another Branch through his personal effort, whereby the bank''s interest was jeopardized and accordingly the counsel argues that the matter cannot be treated as a minor lapse.

19. Referring to the Bank''s vigilance manual, the Sr. Counsel submits that in a disciplinary matter the advice of the CVO can be sought by the disciplinary authority on the penalty to be inflicted and accordingly it is argued that the intervention of the CVO who suggested major penalty was permissible and is consistent with the applicable norms in bank''s disciplinary proceedings.

20. Projecting that the petitioner as the Branch Manager of the Phulbari Branch had no business to assist in disbursal of loans in the Hallydayganj Branch, Mr. Sarma submits that only for facilitating second loan to persons closely known to the delinquent, he went out of his way to render assistance to the borrowers and this cannot be treated as a minor lapse. In this context the Bank''s lawyer contends that the charge against the petitioner is far more serious than the charge against Mr. P.K. Das who was the Branch Manager of the Hallydayganj Branch.

21. The delinquent herein has admitted that he wrote the loan application forms of Abdul Kuddus Mondal and Hasanuzzaman to enable them to avail contract finance from the Hallydayganj Branch. But it is argued that the loan eligibility was assessed on merit by the sanctioning authority of the Hallydayganj Branch and the authority was aware that the applicants had availed loans to the extent of Rs. 10,000/- and Rs. 15,000/- respectively from the petitioner''s Phulbari Branch of the SBI.

22. Projecting that minimal loss was caused by the loans and that both loans were squared up (assuming that the disciplinary proceeding was just and fair), the petitioner''s lawyer argues that the minor punishment proposed by the disciplinary authority of pay reduction should have been considered reasonable in the context of the charges.

23. The deficiencies in the enquiry finding is highlighted by contending that the Inquiry Officer did not base his conclusion on any incriminatory materials and in fact the opinion report (DEX-4) was totally ignored which would have established the innocence of the delinquent. More importantly, since the enquiry was conducted without furnishing crucial documents and by withholding the list of witness, it appears to be a case of denial of fair opportunity to the delinquent in gross violation of the procedural requirement of the Service Rules. That apart the proceeding of the inquiry is also found to be vitiated since the then Branch Manager Mr. P.K. Das of the Hallydayganj Branch was never examined in the Inquiry and without his evidence, conclusion on culpability of the delinquent on the loans disbursed from the Hallydayganj Branch could not have been

reasonably reached by anyone, including the Inquiry Officer.

24. The intervention of the CVO too is found to be unjustified since it was at stage when the disciplinary authority and the appointing authority had already decided on the penalty to be inflicted on the charged officer. In fact minor penalty was proposed by the disciplinary authority and this was approved by the appointing authority and the CVO without indicating how the "extreme mala fide" of the delinquent was inferred arbitrarily, ordered for a "stiff major penalty". Assuming that the charges were proved in a fair proceeding, the inference of extreme mala fide by the CVO doesn''t appear to be based on any cogent material as it is clearly shown that the petitioner rendered assistance at the request of the Branch Manager of the Hallydayganj Branch and also on instruction of his superior who wanted that Branch to meet the target for disbursal of contract finance.

25. In so far as the overdraft facilities granted to the J.N. High School and to Taposh K. Sangma from Phulbari Branch, they are clearly within the permissible limit under the Delegation of Financial Powers for the branches and accordingly it is apparent that the adverse conclusion reached by the Inquiry Officer was perverse without there being any material foundation to reach that conclusion. Therefore this appears to be a case of no evidence and the adverse declaration made by the CVO and the Inquiry Officer against the petitioner appear to be works of conjunctures and surmise only.

26. Looking at the disagreement of the disciplinary authority with the Inquiry Officer, the disciplinary authority should have afforded an opportunity to the delinquent to enable him to support the favourable conclusion reached by the Inquiry Officer and having regard to the decision in the State Bank of India Vs. K.P. Narayanan Kutty (Supra), I am of the view that the procedure followed by the disciplinary authority in pursuant to the Inquiry is inconsistent with the law declared in State Bank of India Vs. K.P. Narayanan Kutty (Supra).

27. Since the petitioner was not furnished with list of witnesses as mandated by Rule 68(2)(ix) of the Service Rules and more importantly since vital documents relevant to the charges were withheld from the delinquent, it is apparent that the Inquiry proceeding suffers from serious procedural infirmity and since the proceeding is contrary to the statutory prescription and reasonable opportunity was denied to the delinquent to defend the charges, it has to be declared that the proceeding is unfair and is vitiated and cannot be utilized for any disciplinary action.

28. Moreover as earlier indicated the adverse conclusion reached in the Inquiry is not supported by any cogent evidence. Conspicuously some relevant evidence like the discretionary loan sanctioning limit (Rs. 25,000) of the branch manager, the account ledgers, control return files, request for the petitioner''s assistance at the Hallydayganj branch by his superior and his branch manager colleague were not taken into account and a predetermined conclusion was reached by the

Inquiry Officer. Therefore on the basis of the available materials, the impugned findings are found to be given arbitrarily without material support and consequently the findings are declared to be perverse justifying the writ court''s interference.

29. In view of above, the impugned order dated 29.04.2006 (page. 191) whereby the delinquent was removed from service is quashed and the petitioner is ordered to be reinstated in service. Subject to satisfying the employer that the petitioner was not gainfully employed after his removal, 25% of the back wages should be paid to him upon reinstatement. However, the reinstated official shall be given all other service benefits including notional continuation of service without any break, for the purpose of seniority, pension etc. It is ordered accordingly. With the above direction, the case stands allowed without any order on cost.

