

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.5269 OF 2001

Date:02-08-2005

Between:

G.Devadas S/o Meeraiah (late),
Guntakal Branch, Anantapur Dist.

..... PETITIONER

AND

1 The Chief Gnrl Manger, & Appellate Authority, State Bank of India,
Local Head Office, Hyd and others.

RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.5269 OF 2001

ORDER:

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Challenging the action of the respondents in removing the petitioner from service, after a regular departmental enquiry, which was also confirmed in an appeal, the present writ petition is filed.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner was working as an Assistant Manager in the respondents-bank at Guntakal Branch, Anantapur District.

A charge sheet dated 17-10-1995 was served on him for certain irregularities said to have been committed by him while he was working as Field Officer at Atmakur, ADB Branch during June, 1990 to August, 1992, for which the petitioner submitted his statement of defence on 12-11-1995. But, the respondents by feeling that there is force in the charges levelled against the petitioner, ordered for a domestic enquiry.

The enquiry was conducted on 24-12-1996 and a report was submitted to the higher authority on 26-02-1997. A copy of the enquiry report was furnished to the petitioner and a reply was called for, as such the petitioner submitted his reply on 17-04-1997 denying the charges levelled against him. The third respondent, after going through the enquiry report submitted by the enquiry officer and the explanation submitted by the petitioner, recommended the second respondent, who is the appointing authority, to impose a penalty of removal from service. Accordingly, the second respondent passed orders dated

09-03-1998 removing the petitioner from service. Aggrieved by the same, the

petitioner preferred an appeal before the first respondent, who is the appellate authority, and the same was dismissed by the appellate authority by the order dated 18-09-1998 confirming the order of the second respondent. Challenging the same, the present writ petition is filed.

A counter affidavit has been filed by the respondents admitting that the petitioner was served a charge sheet on 17-10-1995, on the ground of certain irregularities, while he was working as Field Officer at Atmaku Branch, for which, he submitted his explanation. Since his explanation is not satisfactory, a domestic enquiry was conducted. After going through the enquiry report of the enquiry officer and the explanation submitted by the petitioner, the respondents removed the petitioner from service. The appeal filed by the petitioner before the appellate authority was rejected as there was no merit and that the penalty imposed on him was commensurate with the proven acts of misconduct and the gravity of the lapses on his part, and therefore, there are no grounds to interfere with the same.

The learned counsel appearing for the petitioner contended that the petitioner had put up considerable length of service in the respondents-bank and he has been discharging his duties without any remarks and it is not the case of misappropriation or corruption or causing financial loss to the bank and that the findings are not based upon any evidence and therefore, he prays to set aside the impugned proceedings.

On the other hand, the learned Standing counsel appearing for the respondents-bank contended that the writ petitioner committed a grave misconduct and without discharging his duties properly, recommended for fresh loans and the findings are based upon the evidence on record and the punishment is also proportionate to the proved misconduct and therefore, there are no grounds to interfere with the impugned proceedings.

Though several contentions have been raised that the evidence is not based upon the material on record and without affording any opportunity to the petitioner, the major punishment was imposed, but after perusing the material available on record, it is clear that the findings are based upon the evidence on record. For certain irregularities committed by the petitioner, the following charges have been framed:

1. He had encashed two bankers' cheques issued by the branch, which were held in his sole custody;
2. (a) He had facilitated passing on the pecuniary benefit of debt relief to the borrowers of the branch even though they were not entitled for such relief;
(b) He had also provided debt relief to some of the borrowers in excess of the eligible amount of the debt relief;
3. He had recommended fresh loans to some of the beneficiaries, while the loans sanctioned to them earlier were outstanding and overdue.

The enquiry officer, basing on the documents Pex.1 to 12 (a) and the deposition of P.W.1, established that the bankers' cheque was encashed fraudulently by Devadas, the petitioner herein, whereunder the first charge is partly proved, and therefore, with regard to the encashment of one of the bankers' cheque is established.

In respect of charge Nos.2 (a) and (b) that he had facilitated passing on the pecuniary benefit of debt relief to the borrowers of the branch even though they were not entitled and the relief is provided in excess of the eligibility amount, the said findings on these two charges have been referable to the evidence of the prosecution exhibits Pex.29-A to 29-Z, 30,

30 (A) and 32 and the deposition of PW.1. Therefore, the findings cannot be said to

be perverse and contrary to the evidence on record.

With regard to the charge No.3 that the loans were sanctioned to some of the farmers even though some of the earlier loans sanctioned to them are outstanding and overdue, the mistake committed by the delinquent is that he did not disclose the existence of the earlier loans and their over due position. On that aspect also, the findings are based upon the evidence. The charge Nos.4 and 5 were not established.

After perusal of the enquiry report, it cannot be said that the findings are based upon no evidence. There is oral and documentary evidence adduced by the department before the enquiry officer, and therefore, the findings cannot be termed as 'perverse' and by following the principles of natural justice, the enquiry was conducted. It is not a case of denial of right of the petitioner whatsoever in the departmental enquiry. Therefore, the findings are completely in accordance with law.

The learned counsel appearing for the petitioner mainly contended that the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct.

On the other hand, the learned Standing counsel appearing for the respondents-bank contended that in view of the serious irregularities, the dismissal from service is the proper punishment, and therefore, there are no grounds to interfere with the same.

It is not disputed that the disciplinary authority and on appeal the appellate authority, being fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or the gravity of the misconduct.

It is well settled that the Court should not interfere with the administrators'

decision, unless it was illogical or suffers from procedural impropriety or was shocking to the consciousness of the Court in the sense that it was in defiance of logic or moral standard.

There cannot be any dispute that the punishment or penalty to be imposed must be commensurate with the gravity of the misconduct. A disproportionate penalty would be violative of Article 14 of the Constitution of India. Although the choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority, but it must suit the offence and it should not be vindictive or unduly harsh nor so disproportionate to the offence so as to shock the consciousness and amount in itself to conclusive evidence of bias.

It is not a case of accepting illegal gratification from the farmers to whom the petitioner recommended loans. The charges proved against the petitioner are that he had facilitated passing on the pecuniary benefit of debt relief to the borrowers even though they are not entitled and secondly he had also provided debt relief to some of the borrowers in excess of the eligible amount and thirdly he had recommended fresh loans to some of the beneficiaries, while the loans sanctioned to them earlier were outstanding and overdue. It is not the case of the department that in doing so, the petitioner gained any pecuniary advantage or the beneficiaries paid certain amounts to him in view of his recommendations. No doubt, in such circumstances two views may be possible, one is by accepting certain amounts, there is a possibility for the petitioner to recommend for fresh loans suppressing the existing loans and also he was responsible for passing of pecuniary benefit of debt relief to the borrowers. At the same time, it is also possible that due to negligence or failure in discharging his duties properly, he might have recommended the loans without any pecuniary advantage with a view that his action would help the poor farmers, where the loans recommended to the farmers are less than Rs.10,000/-.

The farmers, who have availed the loans, outstanding amount due to the bank is

also less than Rs.10,000/-.

The petitioner is not the sanctioning authority. Being a Field Officer, it is his duty to recommend the cases, but that duty has not been discharged by him properly. At the same time, a corresponding duty is also cast upon the officers who have sanctioned the loans. So, in these circumstances, the negligence of duties cannot solely be attributable to the petitioner. There is also negligence on the part of the other employees who have passed the loans or who have identified the borrowers for the purpose of passing the loans. The persons who are responsible for identifying the eligible borrowers and also the persons who are responsible for passing of the loans to the farmers, in spite of the fact that the loans of such farmers are still pending, were not prosecuted along with the writ petitioner in the departmental enquiry. So, the blame or fault cannot be attributable to the petitioner alone. In such view of the matter, in the absence of any corruption allegations or taking of bribe from the farmers, the imposition of major punishment of dismissal from service is disproportionate to the proved misconduct.

There is a clear discrimination on the part of the respondents-bank in identifying and prosecuting the writ petitioner alone in spite of the fact that there are lapses on the part of the other employees, who have approved the list of beneficiaries, and also who have sanctioned the loans to the farmers.

It is a case of victimization. Since it is not a case of misappropriation or causing financial loss to the bank by the petitioner, but it is only the negligence in discharging his duties properly, the punishment of dismissal from service is disproportionate to the proved misconduct. Hence, the punishment of dismissal from service awarded by the disciplinary authority and confirmed by the appellate authority is liable to be set aside.

Therefore, the respondents are directed to reinstate the petitioner into service. If the punishment of dismissal from service is modified to that of withholding of five increments with cumulative effect for the lapses committed by the petitioner, it would be the just and proper punishment. The petitioner is not entitled for any monetary benefits from the date of dismissal till the date of reinstatement by virtue of this order, but the said period has to be counted for continuity of service for terminal benefits only.

Accordingly, the writ petition is allowed. No costs.

JUSTICE K.C.BHANU

Date: 02-08-2005.

YCR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice

On this Tuesday the second day of August Two Thousand and five.