

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2013

CORAM

The Honourable Mr. Justice ELIPE DHARMA RAO  
and  
The Honourable Mr. Justice M. VENUGOPAL

W.A.No.2415 of 2010  
and  
M.P.No.1 of 2010

1.The General Manager (D & PB),  
State Bank of India,  
Local Head Office,  
'Circle Top' House,  
Post Box No.187,  
No.21, Rajaji Salai,  
Chennai- 600 001.

2.The Chief General Manager (Appellate Authority),  
State Bank of India,  
Local Head Office,  
'Circle Top' House,  
Post Box No.187,  
No.21, Rajaji Salai,  
Chennai- 600 001. .... Appellants/Respondents

vs.

M.Marimuthu .... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, 1865, against the Order passed by the Learned Single Judge of this Court dated 30.04.2010 in W.P.No.9145 of 2001 filed under Article 226 of the Constitution of India prayers to issue a writ of Certiorarified Mandamus calling for the records relating to the order bearing No. Appeals and Review Department A & R/Con./141 dated 08.03.2001 passed by the Second respondent confirming the order dated 21.10.2000 passed by the first respondent and consequently direct the respondents to reinstate the petitioner under due consequential benefits.

For Appellants : Mr.R.Muthukumarasamy,  
Senior Counsel  
for Mr.P.D.Audikesavalu  
For Respondent : Mr.K.V.Subramanian,  
Senior Counsel  
for Mr.P.Tamilavel

## J U D G M E N T

M. VENUGOPAL, J.

The Appellants/Respondents have preferred the instant Writ Appeal as against the Order dated 30.04.2010 passed by the Learned Single Judge of this Court in W.P.No.9145 of 2001.

2.The Learned Single Judge, while passing the Order dated 30.04.2010 in W.P.No.9145 of 2001 (filed by the Respondent/Petitioner) at Paragraph Nos.48 and 49, has inter alia observed that "... But, here is a case where the Petitioner could not make out any case that there was violation of principles of natural Justice or there was failure on the part of the Management to give fair opportunity to the Petitioner to defend the charges levelled as against him. A full-fledged enquiry was conducted in this case. Materials were produced on the side of the Bank with a view to establish the case. The Petitioner was also examined on his side. But, quite unfortunately, the Bank could not establish the charges levelled against the Petitioner with the materials produced before the Enquiry Officer. Therefore, the question of ordering fresh enquiry in the peculiar facts and circumstances of this case does not arise for consideration and as it is found that a perverse finding was rendered by the Respondents, the Court is competent to quash the entire proceedings issued by the Respondents as against the Petitioner" and resultantly, quashed the order of the Appellate Authority (2<sup>nd</sup> Respondent) in A & R/Con/141, dated 08.03.2001 and confirmed by the 1<sup>st</sup> Respondent (Disciplinary Authority) through order dated 21.10.2000 and further, directed the 1<sup>st</sup> Respondent to be reinstated in service with 25% of backwages from the date when he was suspended from service, etc.,

3.The Learned Senior Counsel for the Appellants/Bank Authorities contends that the Order dated 30.04.2010 in W.P.No.9145 of 2001 passed by the Learned Single Judge, is contrary to Law.

4.The Learned Senior Counsel for the Appellants urges before this Court that the Respondent/Petitioner has not disputed the truth in his statements recorded in interrogation during investigation and marked as Ex.P.2 and the same was corroborated by the submission of the 26 other documents marked during the domestic inquiry, which would suffice to establish the charges levelled against him.

5.Advancing his arguments, the Learned Senior Counsel for the Appellants submits that in the absence of any dispute, as regards the truth of the contents of the documents marked during the domestic inquiry, the non-examination of the investigating official or any other person, who had personal knowledge of the truth contained in the documents, would not, in any way, vitiate the evidentiary value of the contents of the documents so marked.

6.The prime contention made on behalf of the Appellants is that the Respondent/Petitioner in his reply to the Charge Memo had admitted the facts, which lead to the charges against him in the disciplinary proceedings and therefore, it was not necessary for the Appellants to independently prove the facts, by examining the witnesses for that purposes. That apart, the Respondent/Petitioner neither made any whisper nor desired to examine any witness in support of his defence in the disciplinary inquiry.

7.The Learned Senior Counsel for the Appellants projects an argument that the Learned Single Judge committed an error in holding that the Respondent/Petitioner was prejudiced by the non-examination of any witness on the side of the prosecution in the disciplinary enquiry, when it was not established, in what manner the case of the Respondent would have otherwise improved to his advantage, if any, such a witness had been made available for cross examination, in the absence of any factual dispute raised by him in defence to the charges framed against him.

8.The Learned Senior Counsel for the Appellants strenuously contends that even from the facts admitted by the Respondent/Petitioner it is clear that by his borrowings from individuals with whom, the employer contemporaneously had business transactions, he placed himself under pecuniary obligation by which the major penalty of compulsory retirement was imposed on him, which was a commensurate one and as such, the same does not require any interference.

9.It is the core contention of the Learned Senior Counsel for the Appellants that when it was proved that the disciplinary enquiry was properly conducted then, the question of adequacy or reliability of the evidences could not be canvassed in a Writ Proceeding under Article 226 of the Constitution of India.

10.Apart from the above, the Learned Senior Counsel for the Appellants submits that the Learned Single Judge should have followed the settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement and confer consequential benefits and in fact, the matter ought to have been remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action in according to law.

11.Lastly, the Learned Senior Counsel for the Appellants contends that the Learned Single Judge held that the Appellants failed to examine witnesses in the disciplinary enquiry and if it is so, and if the Learned Single Judge is of the opinion that this caused prejudice to the Respondent, then, the Learned Single Judge ought to have directed the Appellants to conduct enquiry proceedings afresh, thus affording them opportunity to examine such witnesses in proof of the charges against the Respondent. But, such opportunities



were not granted by the Learned Single Judge.

12.The Learned Senior Counsel for the Appellants cites the decision of the Honourable Supreme Court in State Bank of India and others v. Narendra Kumar Pandey, {(2013) 2 Supreme Court Cases 740}, at Special Page 747, wherein in Paragraph 13, it is observed as under:

"13.The first infirmity pointed out by the High Court was that charge-sheet did not mention anything about the documents or the witnesses which/whom it proposed to rely to prove the charges, nor appended any list of documents or witnesses. The presenting officer had also, according to the High Court, failed to provide the list of documents and witnesses to the charged officer. Further, the High Court also pointed out that minutes of the proceedings would indicate that forty eight more documents were produced before the Inquiring Authority and the rest of the documents were permitted to be produced on 07.11.1997. On 07.11.1997, thirty four more documents were produced and marked as Ex. 51 to 84. The High Court also pointed out that no witness was examined by the Bank in support of charges and hence to hold the charges relating to Government Business Branch proved was in fact a finding supported with no evidence."

Further, in the aforesaid decision at Special Page 749, in Paragraph 22, the Honourable Supreme Court has laid down as follows:

"We are of the view that the High Court also committed an error in holding that since no witness was examined in support of charges, it was a case of no evidence. In an ex parte inquiry, in our view, if the charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the Inquiring Authority should not have relied upon the documents which were not made available or disclosed to him. Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges."

13.He also seeks in aid of the decision of the Honourable Supreme Court in State of Punjab and Others v. Dr.Harbhajan Singh Greasy, {(1996) 9 Supreme Court Cases 322}, at Special Page 323, wherein it is held as follows:

"Since the Enquiry Officer's report leading the removal of the respondent was based on the alleged admission made by the respondent but was not supported by any Written Statement of the respondent and the alleged admission was being contradicted by the respondent, the

High Court may be justified in setting aside the order of dismissal. It is not a well-settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. But, since the respondent has retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension. The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service."

14. The pith and substance of the contention of the Learned Senior Counsel for the Appellants is that if the charges levelled against the Respondent/Petitioner are borne out from the documents, which are kept in normal course of business by the Bank, then, no oral evidence is necessary to establish the charges.

15. In response, the Learned Senior Counsel for the Respondent/Petitioner submits that the impugned order of punishment imposed by the 1<sup>st</sup> Appellant/1<sup>st</sup> Respondent, dated 21.10.2000 and later confirmed by the 2<sup>nd</sup> Appellant/2<sup>nd</sup> Respondent, dated 08.03.2001, are liable to be set aside, because of the reason that the entire domestic inquiry proceedings were conducted in gross violation of serious irregularities, which go to the root of the matter. Further, the Learned Senior Counsel for the Respondent/Petitioner contends that the Disciplinary Authority had not examined any witness in the domestic inquiry and therefore, the documents marked as prosecution exhibits could not be relied upon.

16. The Learned Senior Counsel for the Respondent/Petitioner submits that in the preliminary enquiry conducted by the Appellants in respect of the Respondent/Petitioner, documents were marked on behalf of the Management and further, the preliminary enquiry report cannot be used in regular enquiry and in the preliminary enquiry, xerox copies of documents were marked.

17. The Learned Senior Counsel for the Respondent/Petitioner cites the decision of the Honourable Supreme Court in *Nirmal J. Jhala v. State of Gujarat and Another*, {(2013) 3 MLJ 621 (SC)}, wherein it is held that "the evidence recorded in the preliminary enquiry cannot be used in the regular enquiry and further that, using such evidence

would be violative of principles of natural Justice."

18. According to the Learned Senior Counsel for the Respondent/Petitioner both the Investigating Officers were not examined in the domestic inquiry proceedings. Further, in respect of the Respondent/Petitioner's regular hearing proceedings, relating to the Charge Sheet, dated 09.06.1999, held on 02.12.1999 at 11.45 AM, he has clearly stated that he had signed in P.Ex.No.2, not in a good state of mind and he was under (a) pressure (b) fear (c) compulsion and (d) without any consciousness, while signing the same. Moreover, the Respondent/Employee examined himself and marked two documents.

19. As a matter of fact, the Respondent/Petitioner was issued with the Charge Sheet on 09.06.1999 in respect of the following serious irregularities/lapses/acts of misconduct in the appraisal, sanction, conduct and follow up of agricultural advances while working as Assistant Manager (Advances) at Avanashi Branch, during the period June 1993 to July 1996. They are

(i) That he had sanctioned and disbursed ACC loan limit of Rs.15,000/- (A/c No.1/152) to Smt. Karuppathal on 2.8.95 and borrowed from her Rs.15,000/- out of the above loan proceeds and thereby placed himself under pecuniary obligation which is against Service Rules of the Bank.

(ii) That he had sanctioned and disbursed ACC loan limits of Rs.15,000/- each to Shri Periya Karuppasamy (A/c.No.3/170) and to Shri Chinna Karuppasamy (A/c No.1/151) on 22.08.95 and 30.08.95 respectively and he had borrowed a sum of Rs.15,000/- each from the above borrowers (from out of the loan amount) and placed himself under pecuniary obligation which is against Service Rules of the Bank.

(iii) (a) That he had delayed the renewal of the ACC limit of Rs.20,000/- A/c No.1/125 of Shri S.N.Subramanian although he had already obtained ACC blank renewal documents / vouchers duly signed by him.

(b) His delay in the disbursement of the loan to Shri S.N.Subramanian forced him to requisition for 'No Due Certificate' to enable him to avail credit facilities at Indian Bank.

(c) While he had already issued 'No Due Certificate' to Shri S.N.Subramanian, to avail loan from Indian Bank, he had misused the blank signed forms and vouchers already obtained from him, by disbursing the loan amount of Rs.20,000/- on 21.08.95, without the borrower's knowledge and the loan amount was misutilised by him.

(iv) He had forged the loan documents in respect of ACC loans to Smt. Marathal (A/c No.3/178) and Smt. Palaniammal (A/c.No.3/177) on 7.11.95 for Rs.15,000/- each. The entire loan amount was misappropriated by him and borrowers had no agricultural lands nor leaseholding of any sort. The above named persons did not have any knowledge about the existence of such loans in their names. Although



it now transpired that Smt.Marathal is an illiterate, it is observed that the loan documents bear signatures allegedly belonging to her. It is also revealed that the above two persons are not engaged in agricultural activities at all.

(v)(a)He had sanctioned an ACC loan of Rs.10,000/- (A/c No.1/155) to Smt.Meenakshi on 4.5.94 and it was renewed on 6.12.94 for Rs.10,000/- even though the borrowed had no agricultural lands to be eligible for ACC loan and is not engaged in agricultural activities.

(b)He had also failed to conduct pre and post-sanction inspections.

(vi)He had sanctioned ACC loan of Rs.10,000/- to Smt.A.Shanthi (A/c No.1/162) on 3.8.95. The borrowed had no agricultural lands to be eligible for ACC loan. He had failed to conduct pre and post-sanction inspections to verify whether the borrower is in possession of any lands.

(Vii)(a)He had destroyed the ACC transaction sheets relating to the following accounts with a view to destroying the evidences which is a serious lapse on his part.

a)ACC A/c No.1/133 - Shri N.Karumanda Gounder

b)ACC A/c No.1/125 - Shri S.N.Subramanian

c)ACC A/c No.1/130 - Smt.Masariathal

(b)He had resorted to manipulation in the above accounts by using their names and misappropriated the loan amounts. And because of the above acts, he was informed that he had failed to take all possible steps to protect the interests of the Bank and also failed to discharge his duties with utmost integrity, honesty, devotion and diligence and thereby, violated Rule 32(4) of State Bank of India (Supervising Staff) Service Rules read with Rule 50(4) of State Bank of India Officers Service Rules.

20.As such, the Disciplinary Authority viz., the Deputy General Manager (Coimbatore Module) of the Appellant Bank, decided to initiate major penalty proceedings against the Respondent/Petitioner in terms of Rule 50(1) of State Bank of India (Supervising Staff) Service Rules read with 68(1) of State Bank of India Officers Service Rules. Further, the Respondent/Petitioner was required to submit his statement of defence, if any, within 15 days from the date of receipt of the letter.

21.The Respondent/Petitioner submitted his explanation dated 05.07.1999 to the Charge Sheet dated 09.06.1999 issued to him. He denied in his explanation that he committed any forgery or misutilisation of amounts as alleged and further, stated that there was no loss caused by him to the Bank etc.,

22. After conducting a detailed domestic inquiry, the Enquiry Officer submitted his report dated 29.04.2000 holding that the Charge Nos. (i), (ii), (iii) (a), (iii) (b), (iii) (c), (iv), (v) (a), (vi), (vii) (a), (vii) (b) were proved and also held that the Charge No. (v) (b) was not proved.

23. The Respondent/Petitioner submitted his representation on 05.06.2000 against the findings of the Enquiry Report. On 21.10.2000, the 1<sup>st</sup> Appellant/Disciplinary Authority passed an order inter alia observing that although the entire amount involved in the case have been repaid, the malafide intention in sanctioning/renewal/disbursal of 11 ACC loans aggregating to Rs.1.60 lakhs, posting of vouchers in the ledgers, passing them for payment with a view to deriving benefit for the Respondent/Petitioner were clearly discernible and accordingly, imposed a penalty of "compulsory retirement from service under Rule 67(h) of State Bank of India Officers Service Rules with the period of suspension being treated as suspension only.

24. On 08.03.2001, the 2<sup>nd</sup> Appellant/Appellate Authority has gone through the relevant records of the case independently and passed an order stating that the charges proved point to the malafide intention of the Respondent/Petitioner and opined that the penalty was commensurate with the gravity of the charges held as proved and consequently, rejected the Appeal and confirmed the penalty of "compulsory retirement from service with the period of suspension as suspension only" imposed on him.

25. It is to be pointed out that 'Compulsory Retirement' is one of the punishments provided for in Service Rules and was awarded only after completion of a disciplinary proceeding and was therefore amounted to disciplinary action consequent upon proof of misconduct. Indeed, in compulsory retirement or premature retirement, the Jural relationship of employer and employee comes to an end.

26. The object of premature retirement of an employee is ordinarily to weed out the inefficient, the corrupt, the dishonest or the dead wood from the service of an employer.

27. It is to be remembered that 'Judicial Review' is not an appeal from a decision, but, a Review of the manner in which the decision has been made. It is not directed to the decision, but, to the decision making process.

28. At this stage, this Court worth recalls the decision of the Honourable Supreme Court in Tara Singh etc., v. State of Rajasthan and others, {AIR 1975 SUPREME COURT 1487}, wherein it is laid down as follows:

"The right to be in public employment is a right to hold it according to rules. The right to hold is defensible



according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charges of inefficiency or incompetency the Government passes orders of compulsory retirement. The Government servant in such cases does not lose the benefits which a government servant has already earned. These orders of compulsory retirement are made in public interest. This is a safety valve of making such orders so that no arbitrariness or bad faith creeps in."

29. On going through the entire available materials on record and also, after perusing the order of the Disciplinary Authority, dated 21.10.2000 and the order of the Appellate Authority, dated 08.03.2001, we are of the considered view that the Respondent/Petitioner had committed gross serious irregularities and lapses. Further, the Authorities had considered the entire facts of the case in a thread bare fashion and assigned sufficient, cogent and convincing reasons in arriving at their conclusions.

30. Earlier, even during the course of investigation, the Respondent/Petitioner admitted in candid terms in regard to the irregularities/lapses committed by him and in this regard, his recorded statements during the interrogation, wherein he had affixed his signature were all corroborated by the other documentary evidences borne out of the record. Subsequently, the charges were framed against the Respondent/Petitioner. In fact, he had not disputed his signed statements, during the interrogation, marked as Ex.P.2 in the disciplinary inquiry. At this stage, he came out with the plea that he was under intense mental pressure and in a depressed state of mind, while making those statements.

31. Coming to the impugned order passed by the Learned Single Judge, dated 30.04.2010 in W.P.No.9145 of 2001, it is to be pointed out that in the present case on hand, a full-fledged domestic inquiry was conducted against the Respondent/Petitioner. However, the Learned Single Judge opined that the Bank could not establish the charges levelled against the Respondent/Petitioner with the materials produced before the Enquiry Officer and came to the conclusion that a perverse finding was rendered by the Appellants and resultantly, quashed the entire proceedings against the Respondent/Petitioner.

32. As far as the present case is concerned, on going through the entire gamut of the materials available on record, we come to an inescapable and irresistible conclusion that the views taken by the Learned Single Judge, while allowing the Writ Petition (filed by the Respondent/Petitioner) to the effect that "...But, quite unfortunately, the Bank could not establish the charges levelled

against the Petitioner with the materials produced before the Enquiry Officer and that a perverse finding was rendered by the Respondents (Appellants)" are unsustainable in the eye of Law. Therefore, we are inclined to interfere with the Order passed by the Learned Single Judge, dated 30.04.2010 in W.P.No.9145 of 2001 in allowing the Writ Petition (filed by the Respondent/Petitioner) and set aside the same to prevent an aberration of Justice. That apart, for the proved charges levelled against the Respondent/ Petitioner, we are of the considered view that the punishment of "compulsory Retirement from service imposed on the Respondent/ Petitioner by the Appellants under Rule 67(h) of State Bank of India Officers Service Rules" through their order dated 21.10.2000 and 08.03.2001, is just, fair and proper to advance the cause of Justice.

33.An imposition of punishment is within the power and discretion of an Authority and that ordinarily, Civil Courts have no jurisdiction to substitute the punishment imposed by such an authority, as per the decision of the Honourable Supreme Court in State of Punjab and others V. Surjit Singh, Conductor, [(1996) 8 Supreme Court Cases 350].

34.In the instant case on hand, there is enough evidence, which go to prove the charges levelled against the Respondent/Petitioner by the Appellants/Bank. It is well settled principle of law that if there is some evidence, then, the Court or Tribunal in exercise of its powers of Judicial Review cannot sit as a Court of Appeal and interfere with the punishment by reassessing the evidence on its own, as per the decision of the Honourable Supreme Court in Rae Bareilly Kshetriya Gramin Bank V. Bhola Nath Singh and Others, [AIR 1997 Supreme Court 1908].

35.An order of imposing punishment should be a reasoned one. Although it need not be in a detailed manner, the order passed by the Disciplinary Authority should disclose reasons so as to enable an Appellate or Supervisory Authority to appreciate what factors weighed with the Disciplinary Authority in awarding punishment, as per the decision of the Honourable Supreme Court in The State of Punjab V. Bakhtawar Singh and others, [AIR 1972 Supreme Court 2083].

36.There is no two opinion of the fact that the punishment to be imposed on a delinquent must be commensurate with the gravity of misconduct. In fact, a disproportionate penalty would be in violation of Article 14 of the Constitution of India. A 'Judicial Review' will be maintainable, when the punishment awarded was highly irrational viz., in outrageous defiance of logic.

37.Based on the aforesaid principles, the imposition of punishment must suit the offence and offender and also keeping in mind another fact that the said punishment should not be either vindictive or unduly harsh so as to mean that it should not be

disproportionate to the offence committed as to shock one's conscience. Viewed in that perspective, we are of the considered view that for the proved charges against the Respondent/Petitioner (Delinquent), the award of punishment of compulsory retirement from service would subserve the ends of Justice and the same is upheld. However, we opine that the other limb of the punishment that the period of suspension of the Respondent/Petitioner be treated as suspension only, is an excessive one, besides the same being on the higher side. The reason being in Service Law 'Compulsory Retirement' is a species of removal. An individual is removed from service, though he does not forfeit the benefits which he had already earned. At best, it is a soft blow. However, it is a removal, nonetheless, in law. Therefore, to prevent an aberration of Justice, we hereby set aside the "penalty relating to the period of suspension being treated as suspension only" imposed upon the Respondent/Petitioner by the Authorities concerned. Further, we direct the Appellants to adjust the period of suspension of the Respondent/Petitioner to that of whatever leave he is eligible and having the same at his credit. In case, if the Petitioner/ Respondent has no leave to his credit, then, it is open to the Appellants/Bank Authorities to treat the period of suspension as Loss of Pay. The said period of suspension shall, thus, be treated as duty period for all purposes. Moreover, we direct the Appellants to settle the compulsory retirement benefits due to the Respondent/Petitioner (if not already settled) within a period of four weeks from the date of receipt of a copy of this Judgment.

With these observations, the Writ Appeal is disposed of, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/  
Asst.Registrar

//True Copy//

Sub.Asst.Registrar

To

1.The General Manager (D & PB),  
State Bank of India, Local Head Office,  
'Circle Top' House, Post Box No.187,  
No.21, Rajaji Salai, Chennai- 600 001.

2.The Chief General Manager (Appellate Authority),  
State Bank of India, Local Head Office,  
'Circle Top' House, Post Box No.187,  
No.21, Rajaji Salai, Chennai- 600 001.

1 CC to Mr.P.D.Audikesavalu, Advocate, S.R.No.32248

1 CC to Mr.P.Tamilavel, Advocate, S.R.No.32720

JJM 10.07.2013

W.A.No.2415 of 2010 and  
M.P.No.1 of 2010