

GAHC010006612017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/11/2018

CENTRAL BANK OF INDIA
Represented by its Chief General
Manager, CENTRAL OFFICE, CHANDERMUKHI, NARIMAN POINT, MUMBAI
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2: ZONAL MANAGER/ DISCIPLINARY AUTHORITY
ZONAL OFFICE
CENTRAL BANK BUILDING
G.S. ROAD
BHANGAGARH
GUWAHATI

3: REGIONAL MANAGER
REGIONAL OFFICE
CHANDRABHAVAN
NEHRU PARK ROA

VERSUS

RABIN CHANDRA SARMA
RESIDENT OF VILL ASHOK PATH, H.No. 1, BASISTHA ROAD, BELTOLA,
GUWAHATI

For the Appellant : **Mr. M. Sharma, Advocate.**

Ms. S. Islam, Advocate.

For the Respondent : Mr. K. H. Choudhury, Sr. Advocate.
Mr. Sk. Muktar, Advocate.

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : **31.07.2024**

Date of judgment : **06.08.2024.**

JUDGMENT & ORDER (CAV)

(Suman Shyam,J)

This intra court appeal preferred by the Bank is directed against the judgment and order dated 13.07.2017 passed by the learned Single Judge in W(C) No.1319/2009 filed by the respondent/writ petitioner assailing the order of penalty of dismissal from service dated 19.11.2007 imposed upon him. By the impugned judgment and order dated 13.07.2017 the learned Single Judge had remanded the matter back to the disciplinary authority for the purpose of taking a fresh decision on the punishment to be imposed upon the respondent/writ petitioner which ought to be proportionate to his misconduct.

2. The facts and circumstances of the case, leading to the filing of this appeal, briefly stated, are that while working as the Branch Manager of Bokulia Branch of the appellant Bank, a disciplinary enquiry was initiated against the respondent/writ petitioner on the basis of memorandum of charge dated 02.03.2007, levelling certain allegations against him. The four charges brought against the writ petitioner on the basis of charge-sheet dated 07.05.2007 are as follows :-

“Charge No.1 :- Shri Sarma, as Branch Manager violated/disobeyed the instructions of his higher authority in handling advance portfolio.

Charge No.2 :- Shri Sarma committed serious financial anomalies in sanctioning and disbursing loans in 173 CKCC accounts at the branch jeopardizing the pecuniary interest of the bank when his lending powers were ceased by his higher authority.

Charge No.3 :- Shri Sarma as Branch Manager in order to conceal his misdeeds/financial irregularities in the aforesaid CKCC accounts did not report to his higher authority about such loans through periodical control returns.

Charge No.4 :- Shri Sarma as Branch Manager acted illegally and unauthorisedly in sanctioning and disbursing 173 CKCC loans involving a total sum of Rs.42.05 lacs which amount is presumed to be a pecuniary loss to the bank.”

3. The statement of imputations annexed to the charge-sheet contained the particulars of the allegations supporting the aforesaid charges.

4. The respondent filed his written statement denying the charges brought against him. According to the respondent, he was under a genuine impression that renewal and enhancement in the ‘CKCC’ loan limit, where the borrower had repaid the earlier dues, is not a fresh sanction and hence, his power was not curtailed so as to restrict disbursement of loan. It was also the stand of the respondent that during the relevant time, the Branch was having a strength of only one Branch Manager and only three other staff which was highly inadequate to handle 400 fresh cases of

CKCC loan. As such, in order to meet his target he had to discharge his duties under such heavy workload. The respondent had further stated that in all the cases mentioned in the charge-sheet he had obtained land holding certificate, non-encumbrance certificate and valuation certificate from the Assistant Revenue Officer as per the norms of the DLTC. On such ground the respondent had denied of having acted in violation of the orders and instructions of the superior authorities while sanctioning/disbursing the loans.

5. On 02.07.2007, a supplementary charge-sheet, based on further investigation allegedly conducted by the Bank authorities in disbursement of loans under the Bokulia Branch, had been served on the respondent. In the supplementary charge No.1 it was alleged that despite curtailment of his lending power by the Regional Manager, Upper Assam Region, the respondent had sanctioned a demand loan of Rs.35,000/- to Shri Puspa Kalita against security of KVP of total Rs.50,000/- although as per the lending policy, the Branch Manager did not have any power to sanction such loan. Supplementary charge No.2 was to the effect that the respondent had sanctioned similar demand loans to two borrowers viz., Gajendra Saikia and R. B. Saha by jeopardizing the interest of the bank. In supplementary charge No.3 it was alleged that the respondent had sanctioned loan for an amount of Rs.1.50 lakh in favour of one Shri Arun Chandra Barik without issuing any sanction letter or acknowledgment from the borrower. Moreover, the borrower was also not drawing his salary from the Branch and even the collateral security of LIC policy was not assigned in favour of the bank and repayment was not coming since December, 2006. Supplementary charge No.4 was to the effect that the respondent had

sanctioned two personal loans for an amount of Rs.1.00 lakh and Rs.50,000/- respectively, in favour of Sri Bhaba Kanta Saikia and Sri Suren Rabha, despite curtailment of his lending powers by the Regional Manager. Supplementary charge No.5 was on account of the fact that the respondent had allegedly sanctioned and disbursed loan amount of Rs.1.00 lakh in favour of one Shir Bhaba Rajbongshi in violation of the lending policy norms of the bank.

6. In response to the supplementary charge-sheet also the respondent had submitted written statement denying the allegations brought against him, thus explaining his stand in the matter.

7. On conclusion of the departmental proceeding the enquiry officer had submitted report dated 04.09.2007 holding that all the charges brought against the respondent stood "fully proved". The disciplinary authority i.e. the Zonal Manager of the appellant Bank, after considering the report of the Enquiry Officer and upon accepting the findings recorded therein, had imposed the major penalty of "Dismissal from Service which shall ordinarily be a disqualification for future employment" upon the respondent. Being aggrieved by the order of penalty dated 19.11.2007 the respondent had approached this Court by filing WP(C) No.1319/2009 which was disposed of by the learned Single Judge by judgment and order dated 13.07.2017, which is under challenge in the present appeal preferred by the bank.

8. The learned Single Judge was of the opinion that the order of major penalty dated 19.11.2007 did not indicate that the petitioner was responsible for causing any financial loss to the Bank and therefore, the penalty of dismissal from service was an

extreme penalty, which was disproportionate to the allegations of misconduct brought against the respondent. By taking note of the decision of the Hon'ble Supreme Court rendered in the case of **Om Kumar Vs. Union of India** reported in **(2001) 2 SCC 386**, wherein it has been laid down that in order to assess as to whether, any administrative decision relating to imposition of penalty in a departmental proceeding was arbitrary under Article 14 of the Constitution, Wednesbury principles would be applicable and also by relying upon the law laid down in the case of **B. C. Chaturvedi Vs. Union of India** reported in **(1995)6 SCC 749** wherein, the Supreme Court has held that when punishment imposed by the disciplinary authority is found to be shockingly disproportionate to the conscience of the Court/Tribunal, it would be proper to appropriately mould a relief either by directing the disciplinary authority to reconsider the penalty or, in exceptional cases, impose appropriate penalty with cogent reasons therefor, the learned Single Judge has remanded the matter back to the disciplinary authority for passing a fresh order of penalty within a period of three months from the date of the order.

9. It would be significant to note herein that in the judgment and order dated 13.07.2017 there is no indication that the order of penalty of "Dismissal from Service which shall ordinarily be a disqualification for future employment" dated 19.11.2007 had been set aside. Notwithstanding the same, the matter has been remanded to the Disciplinary Authority for reviewing the order of penalty. Be that as it may, from a careful reading of the impugned judgment and order dated 13.07.2017 what is apparent on the face of the record is that the learned Single Judge did not express any opinion on the findings recorded by the Enquiry Officer with regard to the articles

of charges but was merely of the opinion that it is not a case of deliberate adoption of dubious means with the object of, either making personal financial gain or with the intent of causing pecuniary loss to the Bank. Hence, the requirement to suitably review the order of penalty imposed upon the respondent/writ petitioner was felt by the learned Single Judge. If that be so, it would not be necessary for this Court to examine the legality and validity of the enquiry proceeding. The only question that would, therefore, arise for consideration by this Court in the present proceeding is as to whether, the order of remand is in accordance with law or not.

10. During the course of hearing, Mr. M. Sharma, learned counsel for the appellants has argued that there are a number of allegations brought against the respondent which clearly shows that he had acted in utter violation of the rules, regulations and the banking norms. Therefore, the respondent was clearly guilty of serious misconduct. As such, submits Mr. Sharma, the major penalty of "Dismissal from Service" with disqualification from future employment, in the facts and circumstances of the case, was wholly justified. Mr. Sharma has, however, submitted in his usual fairness that there is no material available on record to show that the bank had suffered any pecuniary loss due to the transactions referred to in the two memorandums of charges mentioned herein above.

11. Mr. K. H. Choudhury, learned senior counsel appearing for the respondent has argued that since the direction of the learned Single Judge is only to review and reconsider the penalty imposed upon his client without interfering with the findings of the Enquiry Officer, the present is not a fit case for interference with the impugned

judgment and order passed by the learned Single Judge. Contending that his client has been out of service since the year 2007 and therefore, at this point of time, his post retiral dues is the only relief that he can reasonably expect since there is no possibility of reinstatement in service, the learned senior counsel for the respondent has argued that the view taken by the learned Single Judge in the impugned judgment is a plausible one, in the facts and circumstances of the case and therefore, the same does not call for any interference.

12. After considering the submissions made by learned counsel for both the sides and upon going through the materials available on record, we find that although there are some allegations brought against the respondent pertaining to his conduct while acting as the Branch Manager of Bokulia Branch, which conduct, viewed from the point of view of the Bank, might have far reaching implications in the matter of proper administration of the Bank, yet, there can be no doubt about the fact that there is no material brought to the notice of this Court indicating any pecuniary loss having been suffered by the Bank due to the conduct of the respondent. In such circumstances and taking note of the fact that the learned Single Judge has not interfered with the findings of the Enquiry Officer recorded in the report dated 04.09.2007, we are also of the opinion that the extreme punishment of "Dismissal from Service which shall ordinarily be a disqualification for future employment" was too harsh and can be considered as shockingly disproportionate to the nature of misconduct alleged to have committed by the petitioner. Viewed from that angle, we are convinced that the approach of the learned Single Judge, in remanding the matter back to the disciplinary authority for consideration of any other punishment to

be imposed upon the respondent, is a reasonable approach and therefore, does not call for interference by this Court.

13. Having held as above, we have also noticed that the learned Single Judge, while remanding the matter back to the disciplinary authority, did not expressly set aside the earlier order of penalty dated 19.11.2007. Unless the order dated 19.11.2007 is set aside the question of imposing any other lesser penalty upon the respondent may not arise in the eyes of law.

14. A careful reading of Regulations 3 and 4 of the Central Bank of India Officers' (Discipline and Appeal) Regulations, 1976 goes to show that the following major penalties can be imposed upon an employee on the ground of misconduct :-

“Major penalties :

f) Save as provided for in (e) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

g) Reduction to a lower grade or post;

h) Compulsory retirement;

i) Removal from service which shall not be a disqualification for future employment;

j) *Dismissal which shall ordinarily be a disqualification for future employment."*

15. From the above, it is apparent that the major penalty of "Dismissal which shall ordinarily be a disqualification for future employment" is the harshest of all the major penalties which can be imposed upon an employee of the Bank. In the present case, since the learned Single Judge has observed that the aforesaid penalty imposed upon the respondent/writ petitioner was disproportionate to the nature of misconduct alleged against him and considering the fact that we did not find any error in the approach of the learned Single Judge in adopting such a view, the order of penalty dated 19.11.2007 must be held to be unsustainable in the eyes of law. The same is accordingly set aside.

16. The Disciplinary Authority is directed to pass any other order of penalty save and except the penalty of "Dismissal which shall ordinarily be a disqualification for future employment" upon the respondent/writ petitioner. A fresh order of penalty, if any, be passed within a period of one month from today. All consequences under the order to be passed by the Disciplinary Authority, in terms our order, shall ensue upon the respondent with immediate effect. It is, however, made clear that if no fresh order of penalty is passed by the Disciplinary Authority, pursuant to our order, within the period of 30 days from today, then in that event, it would be open for the respondent to seek appropriate relief in the matter including making a prayer for reinstatement in service if the same is permissible under the law.

With the above observations, this Writ Appeal stands disposed of.

There shall be no order as to cost.

JUDGE

CHIEF JUSTICE

T U Choudhury

Comparing Assistant