Sunil S/o Umakant Mahashabde Vs Industrial Development Bank of India Ltd., Mumbai

Court: BOMBAY HIGH COURT (AURANGABAD BENCH)

Date of Decision: Oct. 24, 2016

Acts Referred: Constitution of India, 1950 - Article 226, Article 311

Citation: (2016) 6 AIRBomR 704 : (2017) LIC 689

Hon'ble Judges: S.V. Gangapurwala and K.L. Wadane, JJ.

Bench: Division Bench

Advocate: Shri Pradeep Deshmukh, Advocate h/f S/Shri H.A. Joshi and S.S. Kutthe, Advocates, for the Petitioner; Shri S.V. Advant, Advocate, for the Respondent Nos. 1 to 3

Final Decision: Dismissed

Judgement

S.V. Gangapurwala, J. (Oral)â€"The petitioner, at the relevant time, was serving as a Branch Manager. Departmental enquiry was initiated against

the petitioner. The Enquiry Officer found the petitioner guilty. The disciplinary authority imposed punishment upon the petitioner thereby

compulsorily retiring the petitioner from service. The petitioner preferred departmental appeal. The appellate authority dismissed the appeal. The

petitioner thereafter filed review of the said judgment passed by the appellate authority. The review is also dismissed. Aggrieved thereby, present

petition is filed.

2. Mr. Deshmukh, the learned counsel for the petitioner submits that four charges, which were framed against the petitioner were not substantiated.

On 13.1.2006, a complaint was made against the present petitioner to the effect that the complainant had deposited Rs.27,000/-, with the

petitioner for one time settlement of his crop loan account, which had become nonperforming asset. But instead of depositing Rs.27,000/, the

petitioner deposited only Rs.20,000/and remaining Rs.7,000/are misappropriated by the petitioner. The learned counsel submits that on

18.10.2002, the complainant was informed about his loan account and was directed to repay the loan amount. On or about 18.8.2005, the

complainant requested the petitioner by filing an application to settle his loan account as against Rs.20,000/. The copy of said letter is a matter of

record in the enquiry proceedings. The complainant had deposited Rs.20,000/with the Cashier of the bank and not with the petitioner. Copy of the

receipt of Rs.20,000/issued by the Cashier of the bank is also a part of record of the enquiry. The petitioner vide letter dated 19.4.2006 also

offered the same explanation. The initiation of enquiry is based with malafide intention. On 18.4.2006, the complainant was served with copy of the

complaint and on the very date, the Zonal Manager, Nagpur Zonal Office, informed the opinion taken by him.

3. The learned counsel submits that the charge no.2 is not at all proved. The charge no.1 was with regard to misutilizing the facility of

reimbursement of lodging expenses as well as reimbursement of local conveyance charges for personal gain through misrepresentation and

submission of sham lodging bill. The said charge is sought to be proved on the basis of letter dated 24.8.2006 issued by the General Manager of

Hotel Rajdhani. The General Manager accepted the bill to be original one, but further stated that the said bill is issued by the servant keeping the

management in dark by acceptance of a bribe. The learned counsel submits that the bills normally are issued by the hotel management and served

through the staff. The said charge ought to have been held as not proved.

4. The third charge with regard to submitting sham traveling bill for reimbursement by misrepresenting the mode of travel is absolutely not proved.

The same is sought to be proved on the basis of the letter issued by the approved valuer of the respondent - bank. The said letter does not speak

about the date, time of the official visit from Akola to Risod. The petitioner used to visit various places being Recovery Officer so always used to

avail the traveling allowance facility. The said letter cannot be an evidence.

5. The charge no. 4 is that by misutilizing the position as a branch head, the petitioner has misappropriated the rent sanctioned for coolers for the

use of branch. The said charge is false and the same is also not proved. Being Branch Manager, the coolers are ordered by the petitioner on rent

basis from various suppliers by calling quotations from them. After calling the quotations, the same are forwarded to the Zonal Manager for

sanction and after sanction, the same were hired on rent basis. The rent of coolers is paid to suppliers in the bank accounts and not paid by cash.

According to the learned counsel, explanation is offered by the petitioner in detail. Each and every charge has been categorically and specifically

denied. The said clarification is offered under letter dated 23.9.2006.

6. The learned counsel further submits that the enquiry traveled for quite a long time. Since 2006, the enquiry commenced, however, was not being

concluded. During the said long period of almost five years, the petitioner was facing personal as well as financial problems. The General Manager

called the petitioner and assured him that if the petitioner accepted the charges, the problems of the petitioner would be solved. The enquiry

committee had also assured the petitioner that a lenient view will be taken against the petitioner if the petitioner accepted the charges. Relying upon

the assurances given by the General Manager so also the enquiry committee, with a view that the enquiry would be concluded once and for all, the

petitioner on 25.1.2011 gave an acceptance letter thereby accepted all the charges levelled against him. The said letter was made the basis of

holding the petitioner guilty. The learned counsel submits that mere acceptance of allegations by the petitioner does not render the acceptance letter

as an evidence. The learned counsel submits that the circumstances under which the said letter of acceptance of charges was given have to be

considered. An opportunity was required to be given to the petitioner to explain the said admission of charges. According to the learned counsel, in

absence of giving opportunity to the petitioner of explaining the charges, the said letter of acceptance cannot be relied upon. According to the

learned counsel, the fact that the proceedings of enquiry continued at a snails speed and for five long years, the same was not concluded. The delay

itself is a ground to quash the said enquiry. The learned counsel relies on the judgment of the Apex Court in a case of State of A.P. v. N.

Radhakishan reported in AIR 1998 Supreme Court 1833, so also another judgment of the Apex Court in a case of P.V. Mahadevan v.

M.D. T.N. Housing Board reported in AIR 2006 Supreme Court 207. The learned counsel further submits that even the General Secretary

of All India IDBI Officers Association on 1.9.2012 had issued a letter to the respondents detailing the circumstances under which the letter of

acceptance of charges was given by the petitioner. The said letter is also placed on record before this Court. The same also would substantiate the

contention of the petitioner about the assurance given by the bank officers to the effect that if charges are accepted, a lenient view could be taken.

7. The learned counsel further submits that the evidence on record itself was insufficient to prove the charges against the petitioner. The

documentary evidence as well as the oral evidence was too short to prove the charges against the petitioner. The Enquiry Officer did not conclude

the proceedings of examining all the witnesses and giving opportunity to the petitioner to put forth his stand and merely concluded the enquiry on

the basis of the letter issued by the petitioner accepting the charges.

8. The learned counsel, without prejudice to his aforesaid contentions and in the alternative, submits that the respondents, considering all the

factors, ought to have taken a lenient view and could have issued minor punishment.

9. Mr. Advant, learned counsel for the respondents submits that it is not a case of denial of principles of natural justice. The petitioner was given

ample opportunity. The petitioner now is trying to retract from the admission of his guilt. The petitioner cannot be permitted to do so. The learned

counsel submits that in the departmental proceedings, strict rule of evidence is not applicable. With the evidence on record and the admission given

by the petitioner, the charges are proved. A fact admitted need not be proved. The said admission is an admission proprio vigore.

10. The learned counsel further submits that after conducting preliminary enquiry, a charge sheet was issued against the petitioner for his acts of

misconduct. Various documents were produced on record to prove charge no.1. Copy of the bill submitted by the petitioner along with the T.A.

bill was on record. The letter issued by the management of the said hotel was placed on record. Customer entry book maintained by the said hotel

was also a matter of record and the letter dated 24.8.2006 issued by the General Manager of the hotel Rajdhani stating that the petitioner never

stayed in the hotel and the bill produced by the petitioner is fake and is obtained from the hotel staff by paying bribe, so also the letter dated

1.7.2006 given by Mr.Galgalikar, Assistant Manager of Amravati Branch to the Chief Manager stating that he had visited the said hotel Rajdhani

along with one Mr.Deochake and owner of the hotel admitted before them that the petitioner had not stayed in the hotel.

11. The learned counsel submits that there were various documents to prove charge no.2. No due certificate issued by the petitioner to the

complainant, pay in slip, copy of original complaint letter dated 13.1.2006, report of the then Deputy Zonal Manager about his findings so also

copy of visit report dated 10.7.2007 submitted by Mr.Deochake in respect of his visits to Akot, Akola and Amravati in respect of investigation

done by him in respect of complaints against the petitioner, various documents have proved the said charge no.2.

12. Charge no.3 with regard to the false traveling allowance bill claimed by the petitioner and sanctioned for his travel from Yavatmal to Akola

during the period 16th to 18th January, 2006, so also from Nagpur to Akot on 19.4.2006. The self declaration dated 1.7.2006 submitted by the

approved valuer of the bank Mr. Abhijit Paranjape of Akola stating that he had traveled along with the petitioner in his own car and had not hired

the car when they visited the village Risod itself shows that false traveling allowance bills were raised by the petitioner to gain unfair benefit. The

learned counsel submits that as far as charge no.4 is concerned, various reports submitted by Mr. Deochake, who had done investigation about the

complaints against the petitioner, the copies of sanction orders of cooler rent for the years 2003, 2004 and 2005 and the applications made by the

Branch along with the copies of quotations year wise of the details of the payment of rent, were also placed on record.

13. The learned counsel further submits that all the facts unequivocally prove guilt of the present petitioner. Coupled with the same, the admission

given by the petitioner on 25.1.2011 is itself selfexplanatory. Admission is the best evidence. By giving the said letter, he specifically stated that he

does not want to produce any documents or witnesses. Management need not produce any further documents and witnesses. He has no

objections about the admissibility of the documents produced by the management. He does not want to avail services of anybody as his defence

representative and the enquiry be concluded and a lenient view may be taken. The learned counsel submits that the charges are proved by the

documentary evidence as well as admission given by the petitioner. The learned counsel submits that the attitude and conduct of the petitioner was

unbecoming of a bank official. The bank official is required to exercise higher standards of honesty and integrity. He has to protect the interest of

the bank. The learned counsel relies on the judgment of the Apex Court in a case of State Bank of India & another v. Bela Bagchi and

others reported in (2005) 7 SCC 435.

14. The learned counsel further submits that the petitioner had preferred an appeal before the appellate authority against the punishment imposed

by the disciplinary authority. Before the appellate authority also, he never made any grievance about the circumstances under which he was

required to give that letter. There was no whisper made by the petitioner in his appeal memo or till the conclusion of the proceedings in appeal that

the petitioner had not given the said letter of acceptance of charges by his free will. For the first time in the writ petition, the said plea is taken. No

explanation is given as to what prevented the petitioner from taking this plea before the appellate authority. The learned counsel submits that

because of admission given by the petitioner accepting his guilt so also accepting the documents produced by the management and requesting the

management not to proceed further with the enquiry, the further evidence was not recorded in the enquiry. The admission would prove the charges.

The learned counsel relies on the judgment of Division Bench of this Court in a case of Employees'' State Insurance Corporation & others v.

A.V. Tungare & others reported in 2015 (1) ALL MR 649. The learned counsel further relies on the judgment of the Apex Court in a case of

Channabassappa Basappa Happali v. State of Mysore reported in (1971) 1 SCC 1. the learned counsel submits that in fact the

management took a lenient view by compulsorily retiring the petitioner and not imposing punishment of removal from service. The punishment

imposed on the petitioner is not so disproportionate to the misconduct so as to shock the conscience of the Court. The learned counsel relies on

the judgment of the Apex Court in a case of Manoj H. Mishra v. Union of India reported in (2013) 6 SCC 313.

14A. With the assistance of the learned counsel for the respective parties, we have gone through the documents filed on record so also have

considered the arguments canvassed by the learned counsel for the respective parties.

15. The petitioner at the relevant time was working as Branch Manager of the respondent - bank. He was on a responsible position. The

transaction of the customers with the bank are in the nature of uberrimae fidei i.e. of active confidence and trust.

16. It appears that a preliminary enquiry was conducted. The petitioner was thereafter issued the notice. Four charges were framed against the

petitioner. The charges were to the effect that the petitioner had accepted an amount of Rs.27,000/from the customer for settling his account and

had deposited only Rs.20,000/in the loan account thereby misappropriated Rs.7,000/, so also the petitioner had submitted false lodging bill, false

traveling allowance bills and had submitted false bills with regard to rent of coolers. The documents were placed on record before the enquiry

committee. The documents were on record to prove various charges. The petitioner on 25.1.2011 gave a letter of acceptance of the charges

thereby accepting all the charges levelled against him. The petitioner in unequivocal terms admitted the said charges and requested the Enquiry

Officer not to proceed further and he admitted all the documents produced on record. A fact admitted by a party need not be proved. The

admission given by a party is an admission proprio vigore as is held by the Apex Court in the case of Thiru John & another v. Returning

Officer & others reported in AIR 1977 Supreme Court 1724.

17. The contention of the petitioner that the circumstances existing at the relevant time compelled him to give the said letter of acceptance and that

he was facing financial problems and personal problems which weighed him to give the said letter of acceptance of guilt, could have been

considered by this Court had the petitioner raised this plea at least before the appellate authority. After the punishment of compulsorily retiring the

petitioner was imposed by the disciplinary authority, the petitioner had filed an appeal before the appellate authority. In the appeal before the

appellate authority, there is no whisper about the fact that it was in compelling circumstances, he was required to give the said letter of acceptance

of guilt. The said appeal proceedings also continued for some time. During the said period, the petitioner could have raised the plea about the

circumstances under which he was required to give the said letter of acceptance of guilt. As contended by the respondents, even personal hearing

was given to the petitioner by the appellate authority. Even in the personal hearing, no such ground was agitated. It would be too late in the day for

this Court to consider the said arguments of the compelling circumstances existing requiring him to give the letter of acceptance of guilt.

18. The Apex Court in the case of Channabassappa Basappa Happali v. State of Mysore, referred to supra, the Apex Court has observed thus:

4. The pleas of the petitioner are quite clear. In fact he admitted all the relevant facts on which the decision could be given against him and

therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person

proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which

he is charged and to lead his defence. In this case, the facts were twofold that he had stayed beyond the sanctioned leave and that he had

proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These

facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile,

because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of everyone

of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is

otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether

leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason.

The enquiry officer had to go by the reasons given by him. On the whole therefore the admission was one of guilty in so far as the facts on which

the enquiry was held and the learned Single Judge in the High Court was, in our opinion right in so holding.

19. The service Regulations provide for major penalties. The major penalties provided by the service rules governing the employment of the

petitioner are as under:

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.

20. The most stringent punishment in the said category of major penalties is dismissal, which shall ordinarily be a disqualification for future

employment. Thereafter, removal from service, which shall not be disqualification for future employment and the third stringent is compulsory

retirement. The authorities after considering the record did not impose punishment of dismissal from service nor imposed punishment of removal

from service, but had compulsorily retired the petitioner, which would not be a disqualification for future employment also.

21. It is trite that Wednesbury''s principle of reasonableness is replaced by the doctrine of proportionality.

22. This Court would exercise its jurisdiction if it is found that the punishment imposed is disproportionate to the act complained.

23. The powers of this Court under Article 226 of the Constitution of India in re appreciating the whole proceedings of enquiry would be in a

limited compass. This Court in its writ jurisdiction would not re-appreciate the whole evidence on record. This Court would only invoke its

jurisdiction if it is found that the procedure in enquiry has not been properly adhered to or that the findings are against the record or arbitrary. None

of these factors exist in the present case.

24. Considering the aforesaid conspectus of the matter, no case for interference is made out. The writ petition as such is dismissed. There shall be

no order as to costs.