
(1994) 11 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2431 of 1992 (R)

Apurba Ranjan Sarkar

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 02-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0011

Judgement

R.N. Sahay, J.—The petitioner at the material time was posted as Assistant Manager, in Sakchi Branch of Bank of India. He is governed by the Bank of India Officers Service Regulation 1979 (in short the Regulation).

2. On 20.2.1986 the petitioner applied for advance of Rs. 1300/- for the purpose of purchasing onward journey tickets for visiting Puri along with family. The amount was sanctioned and paid to the petitioner by the appropriate authority. Regulation (44) speaks of leave travel concession facility to the officers of the Bank of India. Sub-regulation (7) of Regulation (44) entitles staff to take advance against leave travel concession which reads as follows:

(i). An officer, an request may be granted an advance to the extent of actual costs of return tickets for going to the place on destination/visit is declared by him on his undertaking to produce ticket and relevant money receipts.

(ii). Where an officer proposing to travel by his own car/taxi he may be granted an advance upto 75% of his entitlement against a suitably undertaking.

(iii). An officer will be required to submit L.T.C. bill within 7 days from the date of resumption of duty otherwise the amount advanced to him against LTC leave will be recovered in one lump sum from the salary of the subsequent months.

3. To resume the narrative of the events, the petitioner along with his family proceeded to Puri on 28.2.1986 by 176 Dn Neelanchal Express. He had purchased four full and two half second class tickets and boarded at Tatanagar in the first class compartment with the permission of Coach attendant. In 1986 the Neelanchal Express was a day time train and there was no system of issuing

reserved tickets. The petitioner says that near about Kharagpur the seats were available in the first class compartment and petitioner converted the 2nd class tickets into first class and journeyed upto Puri. The petitioner reported to duty on 8.3.1986. The petitioner as per the relevant regulation quoted above was required to submit the bills within seven days from the date of resumption of duty and on his failure to do so the Bank could have recovered the amount from the salary of the petitioner in subsequent months. The petitioner did not submit the L.T.C. bill because travel tickets vouchers retained by him were lost and he had to obtain necessary certificate from the railways. He however, submitted the bill of Victoria Club Hotel and tickets issued by Orissa Tourism Development Corpn. (OTDC). He could not submit the travel bill as the same was misplaced. The Bank did not proceed under Sub-Rule (3) of Regulation 44(7) to recover the advanced amount from the salary of the petitioner. The petitioner says that he also requested that advance be deducted from his salary as per Regulation 44(7) (iii) but that was not done. Ultimately, the petitioner himself got it adjusted from his salary for the month of August 1987. No action was taken against the petitioner by the disciplinary authority.

4. On 22.12.1987 the Branch Manager wrote to the Regional Manager that the petitioner tried to retrieve travel tickets but being unable to do so finally repaid the whole amount. The Branch Manager was of the view of the petitioner had availed the L.T.C. and treated L.T.C. span as already utilised.

5. However, by memorandum dated 8.1.1988 the petitioner received the following memo from the Regional Manager.

Memorandum calling for Explanations

1. Shri Apurva Ranjan Sarkar had taken privilege leave from 28.2.1986 to 7.3.1986 to avail LTC (Span 22-11-1984 to 22-11-1986) and had taken an advance of Rs. 1300/- on 20.2.1986.

2. Shri Sarkar had not availed LTC after taking the advance from the Bank. He refunded the said amount of advance on 28.8.1987 after a lapse of 11/2 years; Shri Sarkar should have refunded the amount immediately upon reporting for duty, as he had not availed LTC for which the advance was taken.

3. His written explanation for the aforesaid misconduct should be submitted within 7 days of receipt of this memorandum. Disciplinary action will be initiated against, him if:

(a) written explanation is not received within the time stipulated, or

(b) his written explanation is not found satisfactory.

6. In the meantime, the petitioner tried his best to retrieve travel tickets from the Railway, but since second class tickets were converted into first class ticket near about Kharagpur, the same was not furnished by the Railway authorities. The petitioner made correspondence with Khurda Road Division and Garden

Reach authorities of the South Eastern Railway. He was informed that it was not possible to give certificate after three years of the journey. The petitioner submitted his explanation to the Regional Manager on 22.1.1988 in which he stated the following facts:

1) He proceeded to Puri along with his parents and Children by Neelachal Express travelling in First Class. He returned on 6.3.1986 by Utkal express travelling in second class. He had retained the travelling tickets particulars to submit L.T.C. bill.

2) After return from holiday he got involved in the construction work of his house and misplaced the tickets particulars. He tried his best to obtain receipt from the railway authorities, but particulars could not be supplied.

Ultimately it was decided to refund the entire amount advanced which was done on 29.7.1987.

3) The petitioner lastly admitted that his case was one of serious deviation from duty but prayed that his acts be condone.

7. Thereafter the Regional Manager, Bank of India vide his letter dated 29.11.1988 requested the Station Master, Tatanagar Railway station Jamshedpur to check up and report whether the petitioner had travelled in first class on 28.2.1986 by 176 Dn, Neelanchal Express. The Chief Booking Supervisor South Eastern Railway informed the General Manager that no First class ticket of Puri had been issued on 28.2.1986 for Neelanchal Express. The petitioner was also informed by the Divisional Director, Public Grievance, Khurda that it was not possible to locate the records relating to journey of the petitioner.

8. The petitioner was then transferred to Giridih. The Regional Manager Giridih Region intimated the petitioner that he had decided to proceed against him under Clause (6) of Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976 for acts of misconduct alleged to have been committed by him when the petitioner was posted at Sakchi Branch, Jamshedpur Region, as officer. Articles of charges were as follows:

ARTICLES OF CHARGE

Acts of misconduct as hereinafter mentioned, are alleged to have been committed by you while you are working as officer, Sakchi Branch:

ARTICLES-I

You have taken an advance of Rs. 1300/- on 20.2.1986 from Sakchi Branch towards cost of Railway tickets, for onward journey from Tatanagar station to visit Jagannath Puri in order to avail Leave Travel Concession facility, but, subsequently, refunded the amount on 28.8.1987.

Please note that your aforesaid act of retaining the advance amount with you for about one and half years, amount to temporary misappropriation of the Bank's

fund.

You have, thus committed misconduct in terms of Regulation 24 of Bank of India Officer Employees (Conduct) Regulations 1976, as you have committed breach of Regulation 3(1) of the said Regulations.

ARTICLES-II

You had requested vide your application dated nil, addressed to the Manager, Sakchi Branch (and received Rs. 1300/- on 20.2.1986, the cost of first class Railway tickets for onward journey from Tatanagar station to Jagannathpuri in respect of four adults and two children but you did not actually undertake the said journey.

Please note that your aforesaid act of claiming false Leave Travel Concession from the Bank amounts to an act involving lack of your integrity and an attempt to cause wrongful gain to yourself.

You have, thus, committed misconduct in terms of Regulation 24 of Bank of India Officer Employees (Conduct) Regulation 1976, as you have committed breach of Reg. 3(1) of the said Regulations.

9. It will be useful to quote the following statement of allegations:

Statement of Allegation in respect of Article-I

While you have posted as Officer, Sakchi Branch, you requested the Manager, Sakchi Branch, vide your application dated nil, to grant you six days Privilege Leave from 3.3.1986 to 8.3.1986 and an advance of Rs. 1300/- towards onward journey, cost of tickets in order to enable you to avail Leave Travel Concession facility for the span 22.11.1984 to 21.11.1988. Subsequently, you requested the Manager, vide application dated 27.2.1980 to permit you to avail leave with Leave Travel Concession from 28.2.1986 as the tickets for undertaking journey on 1.3.1986 were not available. Your aforesaid request was also acceded to. Thereafter, on 28.8.1987, you refunded the advance amount taken by you and did not submit any application to the Branch Manager, showing the reasons for your refunding the amount for his consideration, Please note that your aforesaid acts of retaining the Bank's amount with you for about one and half years, as stated above, and merely refunding the amount to the Branch without giving application to the Branch Manager in this regard, for his consideration, amount to acts of misconduct, in terms of Regulation 24 of BOIOE (Conduct Regulation, 1976 since you are allowed to have committed breach of Regulation 3(1) as mentioned in the attached Articles of charges.

Statement of Allegation respect of Article-II

You mentioned in your explanation dated 22.1.1988 that you went to Puri from Tatanagar Railway station alongwith the members of your family, i.e. parents, your wife and two children, on 28.2.1986 by 176 Down Neelanchal Express by First Class, whereas, it was found that no first class ticket to Puri was issued

from Tatanagar Railway station for travelling by Neelanchal Express on 28.2.1986. Please note that Your aforesaid act of claiming false leave Travel Concession from the Bank, amount to an act involving lack of your integrity and an attempt to cause wrongful gain to yourself which are acts of misconduct, in terms of Regulation 24 of Bank of India Officer Employees"(Conduct) Regulations, 1976, since you are alleged to have committed breach of Regulation 3(1) as mentioned in the attached Articles of Charge No. II.

10. The petitioner vide Annexure-8 denied the charges and prayed to be exonerated. After enquiring the Enquiry Officer in Para 14 gave the following finding in respect of Charge I.

In the light of the foregoing, I conclude that staff-official, Shri A.B. Sarkar cannot be freed from the charge of a total callous attitude, if not temporary misappropriation, He failed to produce the relevant information from the Railway Authorities quickly to show to the Bank that he travelled by First Class from Tatanagar to Puri, as per his letter, Ex. M.B. and square off the outstanding in the Branch's Suspense Account. Besides, he goes to explain that the matter of LTC advance remained secondary to his house construction, which is unacceptable by any standard of reason.

As regard charge No. II finding in Para 25 of the report was follows:

In the light of the above observations, I cannot persuade myself to hold Shri A.R. Sarkar, guilty of claiming false leave travel concession from the Bank. He has taken advance for purchasing journey tickets.

11. The Disciplinary authority, the third respondent examined the finding of, the Enquiry Officer and the proceedings of the enquiry. He differed from finding of the Enquiry Officer in respect of Charge No. II. He accepted the finding in respect of Charge No. I. As regards Article of Charge II he observed:

this charge is also provide in as such as the irrebutable evidences were produced in the enquiry to show that you did not purchase first class Railway ticket from Tatanagar Station to Jagannathpuri Station. You had taken the plea of converting IInd Class ticket to Ist Class Railway ticket around Kharagpur, only at the time of submitting your written arguments before the Inquiring Authority when the evidence part of enquiry was already concluded. You could not substantiate your stand. As such the Article of Charge II also stands proved against you.

The disciplinary authority, then ordered for reduction of salary to one lower stage in the time scale in respect of both the charges.

12. The petitioner has impeached the order imposing the penalty (Annexure-10).

13. Mr. P.K. Sinha, learned Counsel for the petitioner has submitted that the impugned order of penalty was arbitrary, unreasonable and without jurisdiction. He contended that the disciplinary authority exonerated the petitioner in respect of Charge No. II whereas disciplinary authority without affording any opportunity

to the petitioner differed with the finding and imposed the penalty. The petitioner ought to have been issued notice as the disciplinary authority was not inclined to agree with finding of the Enquiry Officer in respect of Charge No. II.

14. The main argument of Mr. Sinhras that on time interpretation of Regulation 44(7)(iii) of the Staff Regulation the whole proceeding was illegal and unwarranted. He has submitted that Regulation was clear that the Bank was entitled to recover the advanced amount in lump sum from the salary of the subsequent month in the event the staff after taking advanced failed to submit L.T.C. Bill within seven days from the date of resumption of duty. The whole proceeding had proceeded on the assumption that the petitioner had not availed the L.T.C. after taking advance. It is not the case of the respondents that the petitioner had submitted false L.T.C. bill. In fact, he did not submit any bill. In that situation Regulation 44(7)(iii) becomes operative and the amount advanced was liable to be recovered in lump sum from the salary of subsequent month which too was not done. The petitioner himself moved for deduction. Mr. Sinha argued that departmental proceeding is not maintainable in absence of any allegation of misconduct. Mr. Sinha submitted that non-submission of L.T.C. bill does not amount to misconduct and even not availing of the advance can not be said to be misconduct, in face of Regulation 44(7)(iii) of the Service Regulation.

15. Mr. D. Dash, learned Counsel for the respondents submitted that facts of the case clearly show that this was an act of misconduct on the part of the petitioner. Mr. Dash meant to convey that the petitioner had not travelled in First Class but he attempted to Charge T.A. for First Class. He submitted that it was a case of temporary embezzlement. It is submitted that the petitioner had dishonestly claimed and received an amount of Rs. 1300/- under the L.T.C. Scheme. Onwards fare of Puri which he did not undertake; involved lack of integrity and dishonesty. Article h of the Charge stands fully proved according to admission of the petitioner. At the cost of the repetition it is stated that according to Article II of the charges the petitioner had taken advance but had not actually undertaken the journey, It is not true because there is abundant evidence and the Enquiry Officer has accepted that the petitioner had gone to Puri; may be that he did not travel in First Class.

16. I am unable to accept the contention of Shri Das that the conduct of petitioner involved lack of integrity, dishonesty in terms of Regulation 24 of Bank of India Officer Employees" (Conduct) Regulation 1976. According to Charge No. II the petitioner having taken advance of Rs. 1300/- the fare of First Class Railway tickets for onward journey from Tatanagar Station to Jagannath Puri, actually he did not undertake the said journey. This is contrary to the finding of the Enquiry Officer Hence this charge fails. The first charge that the petitioner was guilty of temporary embezzlement since having taken advance of Rs. 1300/- on 28.8.1987 and he refunded the amount of 30.8.1987, also fails in view of Regulation 44(7)(iii). It is to my mind incorrect interpretation of this rule when an Officer takes advance for L.T.C. and goes not submit bill within seven days

from the date of resumption of duties, is liable to be recovered one lump sum from the salary of the officer. Hence no question of temporary embezzlement arises. Shri Das relying on decisions reported in State of Andhra Pradesh Vs. Sree Rama Rao, and State of Orissa Vs. Bidyabhushan Mohapatra, , has argued that the High Court under Article 226 of the Constitution of India can not act as appellate authority and cannot review the evidence. He has relied on other authority also. These decisions are not applicable in the facts of the case.

17. Mr. P.K. Sinha relying on Union of India (UOI) and Others Vs. J. Ahmed, , has submitted that even if the LTC was not availed by the Officer no misconduct can be said to be committed having regard to Regulation 44(7)(iii). This contention appears to be well founded. It appears that the appeal preferred by the petitioner was dismissed during pendency of the case. Mr. Sinha contended that the appellate authority dismissed the appeal without application of mind and without considering the points raised in the memo of appeal. This contention is also well founded.

18. For the reasons stated above, the punishment order contained in Annexure-10 and the appellate order are quashed by writ of certiorari. The petitioner shall be restored to the position he was occupying prior to the imposition of the punishment. He shall be entitled to all benefits which he is entitled had he not suffered the punishment. There shall be no order as to costs.