

(2010) 04 CAL CK 0087
In the Calcutta High Court
Case No : C.O. 8121 (W) of 1996

Arjun Hembram

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Banks Officer Employees (Discipline and Appeal) Regulations, 1977 — Regulation 4, 6(17)

Citation : (2010) 04 CAL CK 0087

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kishore Dutta and Dilip Kumar Maity, for the Appellant; Arunabha Ghosh, Sudhansu Sil and Raj Sekhar Basu, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—The petitioner, prior to his dismissal from service of the Bank, respondent No. 1 following disciplinary proceedings, was functioning as Manager at branch office Bhimpur in the district of Midnapore.

2. The Chief Manager of the Zonal Office of the Bank at Calcutta issued charge sheet against the petitioner containing 12 (twelve) articles of charge vide charge sheet dated 9.9.1992. Most of the charges related to perfunctory discharge of duty by the petitioner leading to the likelihood of the bank facing huge financial loss. The petitioner in his reply to the charge sheet denied the material allegations levelled against him. The explanation furnished by the petitioner not having been found satisfactory, an enquiry was conducted by appointing an enquiry officer to unearth the truth. The enquiry officer submitted his report on 3.12.1993 returning the following findings:

Charges

Findings

----- I. Shri Hembram during incumbency at PO PROVED Bhimpur sanctioned loans under

various categories of PS Advances with the connivance of the supplier and did not ensure compliance of Bank's procedures for sanctioning and disbursement of loans

----- II.
Shri Hembram had accommodated same PROVED parties and their relatives by sanctioning various loans without adhering to the Bank's guidelines and procedures at PO Bhimpur.

----- III.
Shri Hembram allowed loans to fake and PROVED impersonated persons. He sanctioned loans through middlemen/fake suppliers who did not supply the materials as per sanction.

----- IV.
Shri Hembram did not ensure verification PROVED of securities and as a result securities were missing in a large number of accounts and Bank's interest is jeopardized.

----- V.
Shri Hembram sanctioned large number PROVED of loans for purchase of pump sets in connivance with the suppliers at PO Bhimpur. He gave false certificate for end-use verification and did not ensure Bank's procedures and jeopardized Bank's interest.

----- VI.
Shri Hembram had allowed to expire the PROVED on the basis limitation in loan accounts at PO of admission by Shri Bhimpur and jeopardized Bank's interest. Hembram.

----- VII.
Shri Hembram failed to obtain insurance PROVED on the basis cover in 80 accounts at PO Bhimpur and of admission by Shri jeopardized Bank's interest. Hembram.

----- VIII.
Shri Hembram did not obtain proper PROVED except item documents of loan accounts at PO No. B (iii), E and F. Bhimpur while sanctioning priority sector loans.

----- IX.
Shri Hembram did not ensure post- PROVED except sanction follow up for recovery of Bank's accounts under items dues and failed to lodge DI&CGC claim in No. IX (b) and IX (c). protested advance accounts at PO Bhimpur and jeopardized Bank's interest.

----- X.
Shri Hembram at PO Bhimpur had NOT PROVED. incurred expenditure under various heads beyond his vested powers unauthorizedly.

----- XI.
Shri Hembram at PO Bhimpur did not PROVED. deposit Rs. 2600/- to the depositor's account, instead pocketed the money. When the fact came to light, he deposited the amount to S/F A/c of depositor after about 4 months and the interest thereon was also deposited.

----- XII.

Shri Hembram while working as OIC at PROVED on the basis PO Chilkgarh from 3/1/86 to 12/5/90 of admission by Shri sanctioned loans under various Priority Hembram. Sector schemes and did not ensure proper en-use of funds. He also failed to make recoveries in all these accounts and put sizable funds of the bank in jeopardy.

3. The report of enquiry alongwith letter dated 25.9.1993 was furnished to the petitioner seeking his comments. He did not submit his comments. A further opportunity was extended to him vide letter dated 8.12.1993. However, the petitioner did not respond. It was presumed that he had nothing to say in respect of the report of the enquiry officer. Upon consideration of the materials on record, the disciplinary authority concurred with the report of the enquiry officer and decided to dismiss the petitioner from service of the bank with immediate effect in terms of Regulation 4(h) of the Bank's Officer Employees' (D&A) Regulations, 1977 (hereafter the said Regulations). By his order dated 28.3.1994, the disciplinary authority communicated the order of dismissal. It was further ordered that the petitioner would not be entitled to any salary for the period of suspension except subsistence allowance already paid.

4. The order of dismissal was carried in appeal by the petitioner in terms of provisions contained in the said Regulations. The appellate authority by an order dated 9.9.1994 rejected the appeal. A review petition followed which also met the same fate. By an order dated 27.5.1995, the reviewing authority rejected the review petition.

5. In this petition, the entire disciplinary proceedings including the chargesheet, the enquiry proceedings, the report of enquiry, the final order of punishment as well as the orders of the appellate authority and the reviewing authority are under challenge.

6. The writ petition was heard finally on affidavits. On conclusion of hearing, parties were also granted liberty to file written notes of arguments.

7. Mr. Dutta, learned Advocate for the petitioner, in support of the relief claimed in the petition raised the following points:

a) The disciplinary authority did not prove the charges levelled against the petitioner in accordance with the established principles of law;

b) The allegations levelled against the petitioner are in the nature of procedural and supervisory lapses and hence do not amount to misconduct.

c) The charges are not definite and specific. Although violation of norms on the part of the petitioner was alleged, the chargesheet does not disclose the norms allegedly violated by the petitioner;

d) The relevant witnesses were not produced and hence not examined and exhibited documents, therefore, were not proved;

e) Regulation 6(17) of the said Regulations was not complied with by the enquiry officer along with other substantive provisions thereof and, therefore, the petitioner was deprived of the procedural safeguards.

f) The enquiry officer proceeded on the erroneous basis that the petitioner admitted the charges although he had explained why the admission should not be acted upon;

g) The report of the enquiry officer is not supported by reasons and is perverse in the eye of law;

h) Punishment imposed is for a purpose not mentioned in the charge sheet;

i) Punishment imposed is disproportionate to the gravity of misconduct committed and proved at the enquiry; and

j) The appellate authority and the reviewing authority did not act judiciously while considering the petitioner's prayers.

8. Mr. Dutta in great details took pains to impress the Court that the petitioner was a victim of the circumstances and, therefore, considering the heavy burden of work which he was required to discharge, the appellate as well as the revisional authority ought to have viewed his submissions sympathetically. In support of the various points urged by him, Mr. Dutta relied on the following decisions:

a) State of U.P. Vs. Ravinder Nath Chaturvedi and Another,

b) 2007(2) CLJ (Cal) 156 Union of India v. Shri Saied Meera;

c) Roop Singh Negi Vs. Punjab National Bank and Others,

d) Kuldeep Singh Vs. The Commissioner of Police and Others,

e) Surath Chandra Chakrabarty Vs. State of West Bengal,

f) Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy,

g) The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu,

h) 1998 (2) CLJ 204 Dipankar Sengupta v. United Bank of India;

i) 1999 (2) SLR 517 Gopal Chandra Barik v. Punjab National Bank;

j) State Bank of Patiala and others Vs. S.K. Sharma,

k) Mathura Prasad Vs. Union of India (UOI) and Others,

l) 2006 (1) CHN 288 Jayanta Kumar Sikdar v. State of West Bengal and Ors.;

m) 2000 (1) SLR 157 (9) South Bengal State Transport Corporation v. Jahar Goswami;

n) AIR 1961 SC 1070 Jagdish Prasad Saxena v. State;

- o) Delhi Transport Corporation Vs. Shyam Lal,
- p) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others,
- q) Ram Chander Vs. Union of India (UOI) and Others,
- r) R.P. Bhatt Vs. Union of India and Ors (UOI) .,
- s) S.N. Mukherjee Vs. Union of India,

9. Mr. Ghosh, learned Advocate representing the respondents contended that in proceeding to dismiss the petitioner from service, they strictly adhered to the principles of natural justice and fair-play in action and did not deprive the petitioner of any of the procedural safeguards enshrined in the said Regulations. According to him, the petitioner had admitted 5 (five) out of 12 (twelve) articles of charge levelled against him before the enquiry officer and such fact alone was sufficient to impose upon him the penalty of dismissal from service in view of the likelihood of the bank suffering huge financial losses due to indiscriminate grant of advances to the parties by the petitioner without proper identification and other acts of commission/omission mentioned in the chargesheet. He contended that though the loss likely to be suffered by the bank has not been quantified, such quantification is immaterial. Negligence of the petitioner likely to cause loss to the bank is sufficient to attract the clauses in the said Regulations constituting major misconduct. In support of his submissions, he relied on the decision reported in State Bank of India and others Vs. T.J. Paul,

10. It was next contended by him that so far as bank officers are concerned, they are repository of public trust and any act of a bank officer beyond his authority even without causing loss but yielding profit has been viewed as misconduct warranting major penalty and in this regard reliance was placed by him on the decisions reported in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, and Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, for the proposition that there is no distinction between acts done in bad faith and bonafide in official capacity in so far as actions taken beyond scope of official duty are concerned. He further relied on the decision reported in State of Maharashtra and Another Vs. Shri Chander Kant,

11. Temporary misappropriation of public funds amounts to criminal breach of trust was argued by him on the authority of the decisions reported in Shabbir Ahmed Sher Khan Vs. State of Maharashtra, and State Bank of India and Others Vs. S.N. Goyal,

12. Heavy reliance was placed by Mr. Ghosh on the decision reported in 2006 (11) Scale 88 Uco Bank, Chandigarh v. Hardev Singh. According to him, the facts in that case are similar to the charge levelled against the petitioner under article of charge No. 11. Hardev Singh was working as a teller and had not deposited Rs. 864/- received from a customer on different dates. Although he subsequently returned the money, his removal from service based on unauthorised retention of

public money was held to be valid.

13. Mr. Ghosh proceeded to contend that though the petitioner accounted for the money made over to him by the customer on a non-working day by crediting the same in his bank account together with interest, the very fact that he had kept with himself such money for about four months amounted to temporary misappropriation of customer's money which is a serious matter and, therefore, major penalty provisions in the said Regulations were duly attracted. The Supreme Court in Harder Singh (supra) reversed the decision of the High Court and, therefore, he urged that the petitioner on similar reasoning ought to be denied relief.

14. In support of the proposition that the disciplinary authority is the best judge to decide on the quantum of punishment and that the High Court should not ordinarily interfere with the penalty imposed on a bank officer involved in embezzlement or misappropriation of funds, or acting in excess of authority while granting loan, the decision in UCO Bank and Another Vs. Rajinder Lal Capoor, was relied on.

15. Mr. Ghosh then referred to the appeal dated 26.4.1994 preferred by the petitioner questioning the order of dismissal. In particular, he invited the attention of the Court to paragraphs 3 and 4 thereof which read as under:

3) Since there is no charge quantifying any actual losses to the bank and many of the lapses pointed out can easily be rectified the undersigned request pardon for such lapses.

4) Last but not the least the amount involve in above irregularities relates to small borrowers and the total amount is also very less and as there is no past record of any grave charge against the undersigned your kind self is prayed for taking a considerate view and award minor punishment to uphold justice.

16. According to him, the stand taken by the petitioner even in the appeal is one praying for pardon for lapses committed by him. He contended that it is entirely the domain of the disciplinary authority as well as the appellate authority to judge whether a particular delinquency calls for major or minor penalty. Having regard to the turn of events he contended that the penalty inflicted on the petitioner cannot be branded shockingly disproportionate deserving interference by the Writ Court.

17. He, accordingly, prayed for dismissal of the writ petition.

18. I have heard learned Advocates for the parties and perused the materials on record as well as the contents of the written notes of arguments.

19. There can be no doubt that admission is the best piece of evidence and it can be relied on against its maker, while taking penal action in disciplinary proceedings. It is, however, true that the maker of the admission is at liberty to explain why the admission should not be acted upon [see Shyam Lal (supra)].

20. Since a number of charges framed against the petitioner have been held to be proved on the basis of his admission, I shall proceed to consider as to whether the petitioner was successful in his attempt to demonstrate before the enquiry officer that such admission should not be acted upon. I intend to adopt this course of action, for, if the petitioner is not found to have been successful in demonstrating that his admission should not be acted upon, there would be no necessity of considering whether the process initiated for holding the other charges proved against the petitioner on the basis of evidence or materials adduced during enquiry suffer from any vitiating factor or not.

21. As has been noted above, articles of charge 6, 7 and 12 have been held to be proved on the basis of admission made by the petitioner.

22. In course of enquiry proceedings before the enquiry officer on 22.6.1993, it was recorded in respect of article of charge No. 6 that the petitioner "admits the charge which he states was due to pressure or work and shortage of staff". The explanation offered by him so that the admission may not be acted upon appears to be that there was pressure of work and shortage of staff. In order to persuade the enquiry officer to act on the explanation, it was obligatory for the petitioner to produce documentary evidence to show that as a result of pressure of work and shortage of staff he had been facing insurmountable difficulties and resultantly had approached his higher authorities with a request to lessen his burden by deputing adequate number of staff. That evidence the petitioner admittedly did not adduce. In the absence thereof, it cannot be held that the enquiry officer in returning a finding of guilt on the basis of his admission committed any error.

23. So far as article of charge No. 7 is concerned, on the same day i.e. 22.6.1993, the petitioner stated that in most of the cases mentioned in the chargesheet the advances had been made by his predecessor-in-office but "renewal of insurance policy could not be done by him through oversight. As regards new cases, the a/cs of the borrowers have been debited but premium receipts and policy cover not obtained from the insurance companies." The explanation offered by the petitioner in respect of this charge hardly assists him. Failure to act in a particular manner due to oversight amounts to negligence. It is due to his neglect that renewals could not be effected and even no explanation was offered why premium receipts and policy covers were not obtained from the insurance companies despite debit of amount from the respective accounts of the borrowers. The finding that article of charge No. 7 stood proved on admission does not also merit interference.

24. Regarding article of charge No. 12, the statement of the petitioner before the enquiry officer on 22.6.1993 was to the following effect:

Sri AC Hembram inform having made all the advances mentioned in the Charge Sheet (except serial No. 30) under various Govt. Sponsored schemes like SEUY and SESRU. The advances are made under the schemes under individual and

political pressure. The advances in these schemes usually have a poor recovery position due to formation of union amongst the borrowers who are also receiving political protection and usually do not repay the loan.

25. I shall consider the contention of Mr. Dutta in respect of article of charge No. 12 and the effect of the above statement a little later.

26. It would appear from the enquiry proceedings that on 21.8.1993 the enquiry officer granted opportunity to the petitioner to furnish his explanation in relation to the charges, and the statements which the petitioner wished the enquiry officer to record in his defence against the charges were duly recorded. So far as articles of charge 6, 7 and 12 are concerned, this is what the petitioner stated:

Charge No. VI

I admit that the limitation register was not properly maintained due to pressure of work. Hence, the mistake occurred.

Charge No. VII

I admit that insurance cover in respect of most of the cases mentioned in Annexure "D" of the charge sheet could not be obtained through oversight and due to pressure of work.

Charge No. XII

The advances under this head were made at PO Chilkigarh under different Govt. sponsored schemes i.e. SEUY/SESRU (except the one under serial No. 39). The advances have been made under pressure from individual borrowers and also from political level. I could not verify the end use of the same properly due to pressure of work and scattering of a/cs to various distant places covering three panchayats. The periodical instalments in such a/cs has been poor due to willful default of the borrower and not proper follow up due to pressure of work.

Further this was my first branch as incumbent Incharge without any second man. Due to inexperience I could not take the desired care in the loan accounts.

27. That the petitioner admitted charges 6 and 7 once again before close of enquiry is clear and no further discussion is considered necessary.

28. According to Mr. Dutta, the petitioner in respect of article of charge No. 12 had replied to the effect that the alleged irregularities were committed at Chilkigarh branch of the bank while he functioned there between 3.11.1986 and 12.5.1990 and that the same having been brought to his notice, he had replied thereto at that point of time and since no further steps were taken by the bank authorities, it was presumed that they were satisfied with the reply of the petitioner; yet, the enquiry officer in returning a finding that the petitioner had admitted the charge proceeded on an erroneous basis.

29. The contention does not impress me. It is evident from the petitioner's statements that some of element of delinquency is palpable. If at all there was

political pressure, the petitioner ought to have brought the same to the notice of his higher authorities. That was admittedly not done and thus he cannot escape the consequences.

30. Apart from the above, it appears that in course of proceedings dated 21.8.1993, the petitioner made statements in respect of certain other charges which read as follows:

Charge No. VIIIB

(i) I admit the charges levelled by the authorities regarding obtaining and attesting of photographs etc. of the borrowers.

Charge No. VIII C

I admit all the charges mentioned in this item from serial No. (i) to (xv) with regard to pump set loan accounts. I also state that this was due to pre of work.

Charge No. VIII (D)

I admit the charge that I did not affix my signature in the Document Register in page No. 15 to 17, page No. 19 to 23 and page No. 184 to 197 dated 29.7.1991 through oversight.

Charge No. IX(a)

I admit that there has been no proper follow up, as required, of borrowers for the recovery of dues of the Bank. It was due to large No. of loan a/cs scatters in around 42 villages quite away from the branch. Due to shortage of staff and pressure of house keeping it has not been possible for me to regularly follow up the borrower. A legal notice was however, served by me through Bank's advance, in some of the cases.

Charge No. IX(d)

I admit the charges mentioned in this item in the a/c of Dey Cabinet (both T/L and C/C a/cs) which were through oversight.

Charge No. IX(e)

I admit having not obtained inventory in the a/cs mentioned in the charge sheet regularly.

Charge No. IX(f)

I admit the charge of having not renewed the limits and preparing C/Rs on borrowers/guarantors in the four accounts mentioned in the charge sheet under serial No. (i) to (iv) of the charge.

Charge No. IX(g)

I admit the charge of not having lodged claim with DICGC in respect of the a/cs mentioned in the charge sheet.

31. It would, therefore, appear that although initially the petitioner had made an attempt to resist the charges by raising whatever defence he could offer, on the verge of completion of the enquiry proceedings he admitted a number of charges, which he initially did not admit. It could be true that lapses committed by him may have been unintentional and/or without ulterior motive. However, it is not always necessary that an act to constitute misconduct must in every case be actuated by ulterior motives. For instance, if a sentry entrusted with the duty of guarding the border falls asleep and allows the enemy to enter into the territory by crossing the border which he is required to guard, the very fact that he fell asleep inadvertently would not fall short of a misconduct warranting penalty. It all depends on the nature of the duty one is entrusted to discharge. A bank officer holds a position of trust and while dealing with public funds there is little margin of error.

32. Much has been argued in respect of article of charge No. 11 by Mr. Dutta. He forcefully sought to impress me that the petitioner having made good the loss suffered by the customer for inadvertent retention of money by paying him interest and the customer having withdrawn the complaint, the incident ought not to have been blown out of proportion and looked upon as misappropriation of funds. It would appear from the defence raised by the petitioner that the incident resulted out of forgetfulness on his part. In view of the decision of the Apex Court reported in Hardev Singh (*supra*) which applies with full force in the facts of the present case, I am unable to hold that retention of the money of the customer of the petitioner should not be viewed as misconduct warranting punishment. It is immaterial that the petitioner was given the money by the customer on a non-working day. He could well have refused to receive the money tendered to him and asked the customer to come on a working day.

33. In view of establishment of this charge along with proof of some other charges based on admission made by the petitioner referred to above, I have no other option but to hold that irrespective of the manner in which the enquiry proceedings were conducted against the petitioner, which I do agree with Mr. Dutta did not conform to established legal principles in all respects, the petitioner was offered adequate opportunity to defend himself and the decision making process leading to dismissal of the petitioner from service based on proof of charges 6, 7, 8, 9, 11 and 12 does not stand vitiated by illegality, irrationality and procedural impropriety so as to shock the conscience of the Court of Writ warranting interference.

34. So far as the contention that the charges being vague and indefinite are concerned, it is observed that the petitioner did not express his inability to understand the same and on the contrary replied to the charges giving the impression that he was clear in his mind in respect of the alleged acts of commission/omission that he was required to explain.

35. The other contention regarding non-compliance with Regulation 6(17) of the Regulations is equally without merit. Once the petitioner made statements in his

defence prior to the enquiry proceedings being closed, it was not obligatory for the enquiry officer to explain circumstances that were appearing in the evidence against the petitioner to him for eliciting his response thereto. The decision in Gopal Chandra Barik (supra) is clearly distinguishable. There despite the delinquent not having made any statement in his defence, the enquiry officer did not comply with that part of Regulation 6(17) that was mandatory in nature.

36. I have also considered the several other decisions cited by Mr. Dutta. The law declared by the Apex Court and this Court cannot be disputed. It must be borne in mind that each decision is an authority for what it decides and not what can logically be deduced therefrom. The Court cannot blindly follow a precedent without considering whether the ratio laid down therein fits in with the facts of the case at hand or not. In the given facts and circumstances where the petitioner admitted most of the charges and was unsuccessful in his attempt to persuade the enquiry officer not to act on such admission, the said decisions do not come to his rescue.

37. The writ petition stands dismissed without any order for costs.

38. However, having regard to the fact that the petitioner very fairly admitted to his lapses during the enquiry proceedings and there may be some justification in his stand that heavy pressure of work load vis-?-vis shortage of staff had led to acts of omission/commission without any ulterior motive, nothing in this order shall preclude the Chairman-cum-Managing Director of the bank to consider whether the petitioner can be granted relief by reinstatement in a lower post without back wages so that he can eke out a living in these hard days. This observation is made considering the fact that for the last 15 years the petitioner has survived with the ignominy of being branded as a dismissed employee and in such circumstances, one further opportunity may be extended to him to enable him wipe of the stigma.

39. Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.