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(1992) 07 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 2057 of 1987

Arvindkumar Hiralal Mehta APPELLANT

Vs

Bank of Baroda and others RESPONDENT

Date of Decision : 01-07-1992

Acts Referred:

Citation : (1992) 65 FLR 1046 : (1993) 1 LLJ 322

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : S.J. Deshmukh, for the Appellant; S.K. Talsania, for the Respondent

Judgement

1. (a) The petitioner joined the service as a clerk in the first respondent bank from 11th December 1964.

(b) In 1981 there was shortage of cash detected to the tune of Rs. 1,00,000/-in the Crawford Market Branch of respondent No. 1.

(c) By letter dated September 15, 1981 the petitioner was asked to submit his explanation for the said shortage. By the said letter the petitioner was informed that there was a shortage of Rs. 1,00,000/- at the close of business on September 8, 1981.

(d) By letter dated September 19, 1981 the petitioner confirmed the cash shortage of Rs. 1,00,000/-. By the said letter dated September 19, the petitioner stated that the petitioner did give charge of the cash at 1.30 p.m. to Mr. H. M. Patel and handed over the cash Key to Mr. Patel after debiting the amount of Rs. 1,00,000/- to suspense account. He has not gone out of the branch once be reported to work at 10.20 till he was required to go to the police station for giving his statement as Bank had filed the complaint with the Paydhunie Police Station about the reported shortage of cash. By the said reply the petitioner also submitted that he was hard pressed with the work which he had pointed out to the General Secretary of the Bank of Baroda Employees'' Association to which he was attached as a member. He further stated that he bad put in more than 16 years and he had discharged the services without blemish.

(e) By order dated October 5, 1981 the petitioner was suspended.

(f) By chargesheet dated November 29, 1981 the petitioner was informed that on September 8, 1981 while tallying the cash after the business hours cash shortage of Rs. 1,00,000/- was reported. Accordingly, the petitioner was charged inter alia for gross negligence involving the loss to the Bank under Clause 19.5 (j) of Bipartite Settlement.

(g) By letter dated November 16, 1981 being reply to the said chargesheet, the petitioner confirmed that there was loss of cash of Rs. 1,00,000/-. However, he submitted that he had taken all necessary precautions for safe custody of the cash on the day of the incident. By the said reply, he referred to the improper conditions of cash cabins and also the paying cashier''s cabin which he used to occupy as Chief Cashier as not upto the mark. The petitioner also submitted that he was not responsible for the cash shortage.

(h) Thereafter the enquiry before the Enquiry Officer commenced. The first witness on behalf of the Bank one K. N. Suvarna deposed that on September 8, 1981 there was shortage of Rs. 1,00,000/- which had occurred in the branch. He has further deposed that Manager and the Accountant returned to the branch around 4.30 p.m. on September 8, 1981. It may be made clear at this stage that in the present case it is not in dispute that a shortage of an amount of Rs. 1,00,000/- was detected on September 8, 1981. Even according to the petitioner, there was a shortage of the said amount. The only question which is required to be decided in this petition was whether the petitioner was guilty of gross negligence for which he was charge-sheeted as mentioned above. The evidence of Mr. Suvarna does not deal with the question as to whether the petitioner could be said to be guilty of gross negligence. The evidence of Mr. Suvarna only points out that there was a shortage of Rs. 1,00,000/- which was detected in the branch on September 8, 1981. Mr. Suvarna in his cross-examination has also explained the procedure followed by the Bank while taking out the cash from the safe and vice versa. He further deposed that the petitioner was diligent in his work and he was hardworking. It is, therefore, clear from the evidence of Mr. Suvarna that the petitioner''s credentials as a cashier were good. The evidence of Mr. Suvarna does not disclose negligence as alleged against the petitioner.

(i) Coming to the evidence of the next witness of the Bank namely, Mr. Mankard, who was working as Accountant. Mr. Mankard has stated that on September 8, 1981 at 3.35 p.m. he along with Manager went out for business and came back at 4.30 p.m. As soon as they came back Mr. Suvarna, the officer of the Bank who was in the cash department, informed them that there was a shortage of Rs. 1,00.000/- reported to him by the cashier. Immediately he went to the cash department to ascertain about the said shortage. After checking the relevant books it was confirmed that there was a shortage of Rs. 1,00, 000/-. As regards the procedure followed by the branch with regard to the custody of the cash Mr.

Mankard stated that the cash was kept in Godrej safe having dual control having one key with the cashier and the other with the Accountant and some cash was also kept in joint reserve. At the end of the day, the total cash consisting of joint reserve and the box containing cash required by Head Cashier for the day-to-day use was kept in the safe. Mr. Mankard has further stated that when they removed the cash box from the cash safe it was carried by a cash peon and accompanied by the watchman, Head Cashier and the Accountant to the cashier''s cabin. The box was locked by the head cashier and the key of which remained with the cashier. The question was posed to the witness as what is the procedure followed while he deposits the cash in the safe after closing hours of business. The said procedure has also been described by Mr. Mankard and it proceeds on the basis that for the purpose of joint reserve a separate pass-book was maintained. This book was duly signed by the cashier as also by the Accountant. Mr. Mankard has further stated that after the cash box is taken out from the safe in the morning, the cash exclusively remains with the head cashier. He has further explained that the cash taken out from the cash safe was kept with the head cashier in his cabin for day-to-day payment. He has further deposed that a cabin was provided to the petitioner with a locking arrangement. He has further deposed that no other person had any access to the head cashier''s cabin. Mr. Mankard has further deposed that as soon as he entered the branch after the official business hours on September 8, 1981 the shortage of Rs. 1,00,000/- of cash was reported to him which came to be verified by him. He also stated that the petitioner was asked to make good the amount which the petitioner was not in a position to do. In his cross-examination, Mr. Mankard has further deposed that the cash is kept in the safe after verifying in the evening under the dual control of cashier and the Accountant and when the cash is taken out for the day-to-day transactions, the cashier is responsible and not the Accountant. He further stated that every day in the morning as soon as the cash is taken out from the cash safe, the cash box is carried out to the cashier''s cabin along with cashier, Accountant, watchman and the cash peon, and thereafter it is the sole responsibility of the cashier. Mr. Mankard has further stated that the petitioner had taken all precautions that were expected of a cashier to be taken. He has further stated that since the petitioner could not make good this shortage of an amount of Rs. 1,00,000/-, permission was sought from the respondent''s office which debited Rs. 1,00,000/- to suspense account. It is interesting to note that even Mr. Mankard like the earlier witness Suvarna has stated that the petitioner was diligent and hard working employee.

(j) The next witness on behalf of the Bank was one D. M. Bhankharia working as Manager at the Crawford Market Branch. D. M. Bhankharia has narrated the entire incident after he came to the branch at 4-30 p.m. on September 8, 1981. He has further stated that the cash safe is opened by the Accountant and the Head Cashier and the cashier is given sole custody of the cash in the morning which remains in his exclusive custody. He has further stated that there was three cashiers, one paying cashier and two receiving cashiers. He has further stated that on certain occasions the petitioner was found making payments to clients and staff members from the right side of the cabin and the petitioner was cautioned by him personally and through the Accountant. He has further stated that the petitioner''s performance as a head cashier was satisfactory. Even this evidence on behalf of the Bank does not indicate in any manner the charge of gross negligence levelled against the petitioner as mentioned hereinabove. It is not in dispute that the petitioner was a head cashier on that day.

(k) The next evidence was that of Mr. Deepak Shantilal Shah as a defence witness. He was receiving cashier at Vile Parle branch when he deposed before the enquiry officer. Mr. Shah has deposed that he was aware of the shortage of Rs. 1,00,000/- on September 8, 1981. He has further stated that the locking arrangement of the cabin was such that even though it was locked it could be opened without the knowledge of the Chief Cashier. He has further deposed that he has worked at Crawford Market Branch from October 21, 1971 upto September 22, 1981. He has further deposed that the said locking arrangement was defective and the receiving cashier''s cabin had a window near the door through which anybody could place his hand and touch the cash box in the Chief Cashier''s cabin.

(l) Thereafter the evidence of one Mr. Yeshwant Vishwanath Karhadkar on behalf of the defence was also recorded. Mr. Karhadkar was a head cashier on March 1, 1976 to April 14, 1979 in Crawford Market Branch. He has also stated that the locking arrangement of the cabin at Crawford Market Branch was not satisfactory and it could be opened from outside by any person of the staff or outsider if proper care is not taken by the cashier in the cabin. This matter was also reported to the higher authority. According to Mr. Karhadkar, it was possible to have easy access to the cabin or the cash box when the cashier is busy in making payments.

(m) The next witness on behalf of the petitioner was Mr. Shashikant Vishram Ambedkar who has worked for about 17 years and who on the date of the evidence was also working at the Crawford Market Branch. He has categorically deposed that the petitioner had complained about the improper arrangement of the head cashier''s a cabin to authorities.

(n) The next witness was the workman himself. The petitioner in his evidence has deposed that on September 8, 1981 the Accountant and the petitioner opened the safe at 10.45 a.m. and brought the cash box through a peon accompanied by watchman and the petitioner to his cabin. The petitioner closed the cabin door. He has deposed that while balancing the cash the petitioner came across a difference of Rs. 1,00.000/- in cash and that he could not locate the difference with regard to the shortage. The cross-examination further indicates that there was a police investigation with regard to the above incident. He further stated in his cross examination that it is true that after the box containing the cash is taken out from the safe and brought to the head cashier''s cabin, the custody remains with the head cashier during the day. He has described the procedure at length which the head cashier has to follow. He has categorically stated that when he went for lunch at 1. p.m. and when he went for the toilet he did not leave the cash cabin unguarded. He also locked the cash cabin drawers.

(o) On the basis of the said evidence, the Enquiry Officer recorded his findings on June 20, 1984. According to the said findings, the charge against the petitioner was as mentioned of gross negligence involving serious loss to the Bank. The Enquiry Officer in paragraph 11 has dealt with the evidence. The Enquiry Officer found that once the shortage is established the petitioner was liable for gross negligence to be punished as he was Head Cashier on that date. According to the Enquiry Officer the defence was only trying to find out a loophole and there was no chance of outsiders taking away the amount. According to the Enquiry Officer, there was no case made out by the petitioner workman with regard to outsider taking away the money while the cashier was busy in his duties. Accordingly, the Enquiry Officer found the workman guilty of the charges levelled against him.

(p) On February 23, 1985 a show cause notice was accordingly given by the Disciplinary Authority. The said show cause notice was replied to by letter May 10, 1985.

(q) By order dated November 19, 1985 the Disciplinary Authority came to the conclusion that there was a shortage of Rs. 1,00,000/- and since the responsibility of the loss of the cash was only on the head cashier and that as a head cashier, he was responsible to account for the said loss, the petitioner was guilty of negligence. Accordingly, the petitioner was dismissed from the Bank''s service by the said order dated November 19, 1985.

(q) Against the said order an appeal was filed to the Assistant General Manager, who was an appellate authority. The appeal came to be rejected on the ground that the appellant/petitioner neither made good the cash nor submitted any satisfactory explanation. According to the appellate authority the cash shortage of Rs. 1,00,000/-, which was the sole responsibility of the head cashier, was clearly established and there was no evidence to establish an involvement of any other staff or outsider. In the circumstances, on the ground that the head cashier was the petitioner and since the shortage was to the tune of Rs. 1,00,000/-, the appellate authority found the petitioner guilty of gross negligence.

2. Mr. Deshmukh, the learned counsel appearing on behalf of the petitioner, at the outset submitted that in the present case the petitioner had specifically asked for certain documents which according to Mr. Deshmukh would have clearly established that the petitioner could not have been charged for gross negligence. He further submitted that the rules of natural justice require production of the said documents which the petitioner sought from the Bank from February 23, 1983. He further submitted that the Enquiry Officer was not right in rejecting the application made by the petitioner. According to Mr. Deshmukh, the said documents were relevant for the purpose of the said enquiry. Mr. Deshmukh, thereafter submitted that even on merits of the case, it

is not in dispute that there was shortage detected at the close of business hours on September 8, 1981. He further submitted that the locking arrangement of the cabin, where the head cashier has to work, was itself defective. He further submitted that the charge of gross negligence levelled against the petitioner could not be drawn as a matter of inference merely on the basis of the fact that the petitioner was a head cashier on the relevant date and that there was shortage of huge amount of Rs. 1,00,000/-. He further submitted that in the said charge-sheet no details have been given as to under what circumstances the Bank had charged the petitioner for the gross negligence. He further submitted that merely because the petitioner could not repay the shortage till the date of the charge-sheet could not be the ground of alleged misconduct. He further submitted that the evidence on record clearly established that even the representative of the bank who was examined as witness of the Bank had categorically deposed that the petitioner was diligent and hard working and even on September 8, 1981 the petitioner had taken all the requisite steps which the head cashier was required to take and that the normal procedure which was required to be followed by the cashier was duly complied with. He further submitted that the evidence on record particularly of the witnesses on behalf of the workman has established ultimately that from time to time it was pointed out to the management that the locking arrangement of the cabin was not satisfactory and it was possible for outsider to reach the cash box in the cabin. Mr. Deshmukh further submitted that the arrangement was faulty and this was established by the witnesses who have deposed on behalf of the petitioner as the said witnesses have worked at the relevant time in the said Crawford Market branch. Mr. Deshmukh further submitted that in any event the punishment of dismissal was shockingly disproportionate as the evidence on record indicated that the petitioner had put in long and meritorious service; that he was a diligent employee; and in the absence of any evidence of gross neglect he could not have been punished with dismissal. Mr. Deshmukh further submitted that even the police investigation came to be dropped as there was no evidence of misappropriation.

3. On the other hand, Mr. Talsania, the learned counsel appearing on behalf of the Bank, pointed out that once it is established that the amount was in the custody of a head cashier which amount was given to him in the morning after following due procedure as indicated above, it was the duty of the head cashier to account for the said shortage of Rs. 1,00,000/-. He further submitted that the Bank was entitled to draw an inference of gross neglect from two circumstances, namely, that the petitioner was a head cashier and that he was in the custody of the amount on September 8, 1981 when the shortage was verified. He further submitted that there was no evidence on record to indicate that the locking arrangement of the cabin was faulty. Mr. Talsania also drew my attention to the unreported Judgment of this Court in the case of Dattatray Trimbak Kulkarni v. State Bank of India decided on March 11, 1992 in Writ Petition No. 4132 of 1983 and submitted that the facts of the said case are similar to the facts of the

present case and submitted that the present writ petition should be dismissed.

4. There is merit in the contentions raised on behalf of the petitioner :

(a) Firstly, the charge-sheet issued in the present case does not clearly indicate as to the manner in which the Bank could say that the petitioner was guilty of gross negligence. No particulars of act of commission or omission have been enumerated in the Charge-sheet. Where allegation of gross negligence is made the charge-sheet must atleast enumerate the basis for alleging gross negligence. Merely because the petitioner could not make good the shortage would not amount to gross negligence . The charge-sheet proceeds on the basis of an inference drawn by the Bank, namely, that the petitioner was a head cashier on September 8, 1981 and there was shortage of Rs. 1,00,000/- detected and therefore the petitioner was guilty of gross negligence.

(b) The evidence discussed above clearly showed that the petitioner was diligent worker; that the petitioner had followed the normal banking procedure which he was required to follow as a head cashier and that there is no evidence whatsoever that led the Bank to conclude that the petitioner was negligent either by keeping the cabin open or the drawer open. There is no evidence indicate that the drawer was not locked by the head cashier when he went for lunch. These are only illustrations to indicate that when the head cashier is charged for gross negligence the charge must clearly establish that the petitioner as a head cashier was negligent by not observing the normal precautionary measures which he was required to take. On the other hand, as mentioned hereinabove the evidence led on behalf of the Bank goes one step further and states that the cashier had a clean record. Further the evidence led on behalf of the petitioner indicates that the witness after witness have deposed that the locking system of the cabin was not upto to mark. The said witnesses are employees who have worked in the same branch at the relevant time. They have deposed that an outsider could lay his hand on the cash box as the cabin arrangement was not proper. They have further deposed that management was aware of the shortcoming but no steps were taken. It is interesting to note that none of the aspects have been appreciated by the Enquiry Officer who assessed the entire evidence in one paragraph as indicated hereinabove.

(c) Once the Bank concedes that the cashier had taken reasonable steps and followed appropriate procedure and once it is established that the cabin arrangement was not satisfactory and that the higher authorities were made aware of the said fact, one fails to appreciate how in the present case the petitioner who has been found to be diligent and hard working could be branded with the charge of gross negligence. In the present case we are concerned with the case of gross negligence. The charge-sheet is vague. The evidence as discussed above does not indicate how the petitioner was grossly negligent. On the contrary it shows that he was a diligent employee. It is established that the employee had taken all precautionary measures which he was required to take. It is established that the locking system was also faulty. In such an event the petitioner could not be punished by a severe punishment of dismissal. Judicial notice could be taken of the fact that in banking operations many a times, cashiers on account of heavy workload, may be guilty of excess payments but even in those cases the Bank orders certain amounts to be deducted from their monthly salary but certainly the employee is not dismissed. In any event in the present case there is no such charge alleged and in any event no such evidence is brought on record. However, the illustration has been given to show that in the present case in any event the petitioner who was a good worker and who has rendered long service could not have been dismissed and the punishment imposed was therefore shockingly disproportionate.

5. In fact, none of the above facts have been considered by the Enquiry Officer or by the Appellate Authority or even the Disciplinary Authority. Even with regard to the punishment none of the authorities have weighed the evidence on record and none of the authorities have considered the diligent working of the petitioner as a head cashier in the said branch. One more fact which the said authorities have not considered is that even the police investigation has been dropped completely as the Bank was not in a position to further prosecute either the petitioner or any alleged workman. In the circumstances, the findings of the authorities below are perverse.

6. In the present case, therefore, it is not necessary to go into the question any further as to whether the rules of natural justice have been complied with or not as contended by the learned counsel for the petitioner. In any event, the inspection of the documents sought was not relevant for the purpose of holding enquiry and the Enquiry Officer was right in rejecting the application for inspection.

7. Before concluding it may be observed that the Judgment of this Court in the case of Dattatray Kulkarni (supra) does not apply to the facts of the case in hand. In the said case of Dattatray Kulkarni, the charges were that of misappropriation. The said charges were levelled against both the petitioner as well as the Manager. The petitioner was a debtor. The said Dattatray-the petitioner therein was not able to explain the charges levelled against him. In the present case, however, as mentioned hereinabove, the petitioner has clearly established that the petitioner could not be held responsible for gross negligence as the petitioner had complied with all requisite steps which the head cashier ought to have taken. Secondly, as mentioned hereinabove the charge levelled against the petitioner was vague. In the present case, there is no evidence on record to show that the petitioner had violated any of the normal procedures which he was required to follow. On the other hand, he has established that the management has not taken appropriate action despite the fact that the system of cabin locking was not upto the mark. In the present case, therefore, it is established that the petitioner cannot be charged of gross negligence in view of the evidence which I have elaborately discussed. The facts in the case of Dattatray Kulkarni (supra) are distinct from the facts of the present case and

therefore there is no merit in the submission of Mr. Talsania for the Bank that both the cases are on similar facts.

8. In the circumstances, rule is made absolute in terms of prayers (a) and (b).

9. In the circumstances, there will be no order as to costs.

10. Certified copy, if applied for, to be furnished out of turn expeditiously.

