
(2007) 07 PAT CK 0129
In the Patna High Court
Case No : CWJC No. 5456 of 2005

Ashok Kumar Chaudhary

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : (2008) 2 PLJR 463

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Manish Kumar, for the Appellant; S.D. Sanjay, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioner and learned counsel for the respondents-State Bank of India. By virtue of order dated 7.4.2003, contained in Annexure-11 to the writ application two orders of punishment have been passed against the petitioner. The punishments are dismissal without notice in terms of paragraph 521 (5)(a) of Shastri Award as retained by the Desai Award and subsequent modifications thereafter vide memorandum of settlement dated 10.4.2002. The other punishment was that the petitioner would not get the benefit of any other payment for the period he was under suspension. Petitioner was working as a Cashier-cum-Assistant, S.B.I., Dhaka Branch, East Champaran, District-Motihari. While working in that position petitioner is supposed to have committed certain fraudulent acts of illegal withdrawals from accounts of certain account holders of the Branch. Based on a complaint received from one account holder, matter was enquired into and the authorities decided in their wisdom to hold a departmental enquiry against the petitioner. Charge-sheet thereafter came to be issued to him listing out the charges as contained in Annexure-7. Reading 6f the charges related to certain dishonest act which the petitioner committed in the three accounts which are indicated in the charge-sheet. An enquiry was held and charges came to be proved against the

petitioner. It is significant to note that in the enquiry petitioner accepted the charges as such but he tried to explain it in a way that these were lapses because of the pressure of work in the Branch.

2. The court has gone through the findings which have been given in the enquiry report. The explanation offered by the petitioner has been considered by the Enquiry Officer but then from the evidence which has come, the present case does not seem to be of the kind where these omissions have happened because of the pressure of work. There has been deliberate actions which have been taken by the petitioner in manipulating the accounts of the account holders. There was effort on his part to not acknowledge a sum of Rs. 20,000 deposited by account holder despite receipt in this regard having been issued by the Branch.

3. Based on the findings recorded by the Enquiry Officer, the disciplinary authority issued him a second show cause, considered his explanation which was offered in person and thereafter decided to impose the punishment in question. The punishment has been upheld by the appellate authority looking at the evidence, findings and the conduct of the petitioner.

4. Learned counsel for the petitioner has challenged these orders of punishment on the ground that he did not get an effective second show cause in the matter. His submission was that since he was not allowed to file his written explanation to the second show cause therefore, prejudice has been caused to him. He further submits that he was only orally heard by the disciplinary authority and may be in absence of the written submission, his personal hearing is not effective enough to make an impression upon the disciplinary authority.

5. This court only observes that there is no fixed modality so far as responding to the second show cause is concerned. The requirement of second show cause emerges from the principle of natural justice and of giving a hearing to a person before he is punished. Admitted position is that petitioner presented himself before the disciplinary authority and in his wisdom decided to make oral submissions to the disciplinary authority. Subsequently if he thinks that non-furnishing of show cause in writing was reason for the disciplinary authority not accepting his explanation then it is misplaced kind of submission and is more an afterthought. In the opinion of the court the requirement of natural justice was made.

6. The second submission of the petitioner is that the second punishment of non-payment of his salary etc. for the period he was put under suspension is also hit by the principle of audi alteram partem. His submission is that since it is a punishment, therefore, on this issue he should also have been given a hearing. Learned counsel for the petitioner tried to fortify this submission on the basis of a Division Bench decision rendered in the case of Pramod Kumar Vs. The Champaran Kshetriya Gramin Bank and Others, . The Division Bench of this court held that even if the rules as such of the Bank do not provide for hearing before

the order of withholding pay and other allowances for the suspension period is given, still the employee concerned is entitled to hearing and the Bench drew parallels from Rule 97 of the Bihar Service Code where a categorical provision has been made in this regard.

7. The Division Bench judgment cited by the petitioner as such has no application to the present case because perusal of Annexure-10 would certify that the second show cause was issued to the petitioner on both the counts. The authorities clearly indicated to the petitioner that two penalties were proposed to be imposed upon him. Petitioner had occasions to make submissions in this regard when he appeared before the disciplinary authority. It is not a case where the petitioner was taken by surprise with regard to the punishments. It was against both the punishments against which the petitioner had to respond to the disciplinary authority. This being the position the requirement of natural justice to that extent has been fulfilled and even this contention and submission of the petitioner, therefore, cannot be accepted.

8. The last submission on behalf of the petitioner is that the punishment imposed upon him is disproportionate to the charge and therefore is shocking to the conscience. This is good enough for this court to interfere with the order. To this, this court can only observe that the nature of charges are quite serious which have been proved in the enquiry. A dishonest employee cannot be allowed to continue in service if it has been established in the enquiry that he has misconducted himself and has caused certain financial loss in the accounts of various accounts holders of the Bank, dismissal is the order of the day especially when the charges against the petitioner is one of dishonest, deceit and fraudulent act. This being the position in my opinion even the order of punishment is not disproportionate.

9. In the given facts and the legal position this court is of the opinion that there is no occasion to interfere with the order of punishment which has been passed against the petitioner. There is no illegality in the order of punishment, which has been passed against the petitioner. The writ application is without merit and the same is accordingly dismissed.