(2017) 09 OHC CK 0002

In the Orissa High Court

Case No : 13217 of 2004

Bhagirathi Panda APPELLANT

Vs

Bank of India & others RESPONDENT

Date of Decision : 13-09-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 09 OHC CK 0002

Hon'ble Judges : Sujit Narayan Prasad

Bench : SINGLE BENCH

Advocate : Aswini Ku. Mishra, J. Sengupta, D.K. Panda, G. Sinha, A. Mishra, Jagannath Pattnaik, H.M. Dhal, B. Mohanty, T.K. Pattanaik, S. Das, P.K. Nayak, S. Pattanaik, A. Pattanaik

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 and 227 of the Constitution of India whereby and where under, the direction has been sought for by the petitioner upon the opposite parties to exonerate him by quashing the order of punishment dated 13.05.1999 and 23.08.2001 under Annexure-11 by which the punishment of reduction of pay scale by one stage lower in his existing Scale of pay has been inflicted.

2. Brief facts of the case of the petitioner is that while he was working as Special Assistant at Bhubaneswar Branch, United Bank of India had signed debit transfer and credit transfer vouchers for Rs.9983.09 both dated 6.2.1990 for transferring the balance at the credit of Savings Bank A/c. No.343 in the name of Sri Padmanav Nanda from inoperative SB Ledger to operative SB Ledger without any application/request letter from the Account Holder and also without any instruction from Higher Authority to this effect. He has put his signature in the aforesaid vouchers at the place of Deputy Manager without any officer order

issued to him in this regard. By the above process he has duped the other signatories to sing the aforesaid vouchers. On 19.07.1990 he took initiative to get the sum of Rs.7651.30 credited as interest to the aforesaid SB A/c of Sri Padmanav Nanda by the Relieving Officer of SB Department of the Branch at the relevant time. Subsequently, it was revealed that the above account holder Padmanav Nanda had died on 11.12.1970. Due to the aforesaid acts, a sum of Rs.17,500/- was fraudulently withdrawn from the SB A/c. No.343 against the above two credits made in the account vide two withdrawal slips for Rs.8,000/- dated 2.6.1990 and Rs.9,500/- dated 12.09.1990 drawn under forged signature of the deceased account holder and thereby his alleged acts exposed the Bank to financial loss. He was alleged to have committed gross misconduct within the meaning of Clause 19.5 (J) of Bipartite Settlement dated 19.10.1966 which stated "doing an act prejudicial to the interest of the Bank".

He was directed to submit his explanation within seven days from the date of receipt of charge-sheet. After receipt of charge-sheet, the petitioner wrote representation to the disciplinary authority, United Bank of India requesting him to supply the documents, but the documents has not been supplied and in absence thereof, reply has been submitted, enquiry proceeded wherein the enquiry officer has found none of the charges proved against him, enquiry report has been forwarded before the disciplinary authority but the same has been differed along with the note of difference asking the petitioner to submit his representation within 15 days, which was replied by him, the disciplinary authority, having not found the reply satisfactory, has imposed the punishment of reduction of basic pay by one stage lower in the present scale of pay.

The petitioner has approached to the appellate authority raising the points of consideration but the appeal has also been dismissed affirming the order passed by the disciplinary authority.

The petitioner is before this Court against both the orders by way of the instant writ petition.

3. The petitioner has assailed the orders on the ground that the enquiry officer, after consideration of the entire material available on record and also taking into consideration that the relevant documents related to the framing of charge, has not been brought on record i.e. the application of request to operate the inoperative account and also the vouchers. The enquiry officer has also taken into consideration that Mr. A.B. Rao, the officer of the SB Department who was directed the petitioner to prepare the transfer voucher of inoperative A/c. to operative A/c. has not been brought before the enquiry officer for its cross-examination. The submission of the petitioner is that the disciplinary authority while differing with the finding of the enquiry officer has not taken into consideration that the relevant documents have not been brought before the enquiry officer and in absence thereof, the finding of the enquiry officer has been disagreed to, hence the disciplinary authority has acted only in order to harass the petitioner.

4. Learned counsel for the Bank opposing the grounds and submission of the petitioner, has submitted that the allegation leveled against the petitioner is very serious and that cannot be expected from an employee working in the Bank. Here, in the instant case, the account which has become inoperative due to death of the account holder in the year 1970 has been made operative after lapse of 20 years. The plea of the petitioner is that on the basis of the request letter, the account has made operative but it was the duty of the petitioner to verify the signature contained in the request letter with that of the signature of the account holder but he has not done so, which led to irregularities thereafter the amount has been withdrawn by putting the account operative illegally. He further submits that the amount has been withdrawn on the strength of the withdrawl slip even the signature in the withdrawl slip has not been verified by the petitioner who was holding the post of Special Assistant. He submits that the bankers who are dealing with the cash is required to verify the signature before making disbursement of money from the Bank of an account holder.

He further submits that the enquiry officer has merely gone on technicality that the request letter has not been placed before the enquiry officer and Mr. A.B. Rao, the officer of the SB Department, has not been produced for its cross-examination, and merely on technicality, has given finding that the petitioner has not committed irregularity rather the petitioner since was working for last 20 years, he cannot escape from saying that he was not knowing about the process of making disbursement from the account or to act on the basis of an application to make inoperative account as operative account.

He further submits that so far as the allegation that he has put his signature as Deputy Manager and the ground has been taken that it can be done on the oral instruction of the higher authority that cannot be accepted for the reason that the Special Assistant cannot put signature just above than the post of Deputy Manager, even when it was instructed by the higher authority, unless written in writing. The Enquiry Officer has gone merely on technicality and thereafter found the charges not proved. But the disciplinary authority, after taking into consideration the nature of work, duty assigned and the circular of the Bank to perform duty, has discarded the finding of the enquiry officer by differing with the reason of difference. The disciplinary authority has also provided an opportunity to reply on the point of difference which has been replied by the petitioner, which has not found to be satisfactory and thereafter punishment has been imposed. The appellate authority has also affirmed the decision taken by the disciplinary authority considering the nature of allegation, considering the fact that the petitioner was working in the Bank who is supposed to discharge his duty with utmost discipline, sincerity and all diligence but he has failed to discharge his duty, accordingly, there is no illegality in the order of punishment. The authorities have taken into consideration even on quantum of punishment and as such taking lenient view, only one stage has been lower down.

Heard learned counsel for the parties and perused the documents available on record.

5. The fact which is not in dispute that the petitioner while working as Special Assistant, United Bank of India, Bhubaneswar Branch was proceeded departmentally for commission of irregularities for unauthorisedly preparing and signing debit transfer and credit transfer vouchers for Rs.9983.09 both dated 6.2.1990 for transferring the balance at the credit of SB A/c. No.343 in the name of Sri Padmanav Nanda from inoperative SB Ledger to operative SB Ledger without any application/request letter from the Account Holder and without any instruction from higher authority. It has further been alleged that he has put his signature in the aforesaid voucher at the place of Deputy Manager without any office order issued in this regard. It has been alleged that by these process he has duped the other signatories to sign the aforesaid vouchers. He also took initiative to get the sum of Rs.7651.30 on 19.07.1990 credited as interest to the aforesaid SB Account of Sri Padmanav Nanda by the Relieving Officer of SB Department of the Branch at the relevant time. Subsequently, it was revealed that the above account holder Padmanav Nanda had died on 11.12.1970 i.e., much prior to preparation and signing of debit transfer and credit transfer vouchers dated 6.2.1990 as well as crediting the interest on 19.07.1990 to the said SB A/c.

Due to the aforesaid acts, a sum of Rs.17,500/-was fraudulently withdrawn from the said SB A/c. No.343 against the above two credits made in the account vide two withdrawl slips for Rs.8000/- dated 2.6.1990 and Rs. 9500/- dated 12.9.1990 drawn under forged signature of the deceased account holder and thereby put the Bank into financial loss.

The petitioner has been asked to give reply within seven days. It is evident from the material available on record that the petitioner has submitted an application for getting the relevant documents but some of the documents has been said to be not available, however some of the documents has been supplied to the petitioner. The documents which has not been supplied to the petitioner are; copies of application dated 6.2.1990 of the A/c holder for transferring the inoperative A/c to operative ledger, the Account Opening Form relating to SB A/c No.343, Specimen Signature Card of the said SB Account, while copies of the Death Certificate, Police Report, Judgment order of Court and the F.I.R. filed by the Bank has been supplied to him.

The petitioner has submitted his response before the enquiry officer. The enquiry officer considering the deposition placed before him and also considering the fact that the request letter has not been brought on record before the enquiry officer and also Mr. A.B. Rao has not been brought to cross-examine has found the charge not proved. The enquiry officer has forwarded the report before the disciplinary authority who has differed with the finding by giving reasons for disagreement with an opportunity to the petitioner to rebut the same. The petitioner has given response with respect to the reasons of difference which has not found to be satisfactory by the disciplinary authority, accordingly the order of punishment has been passed on 13.05.1999 inflicting punishment of reduction of Basic Pay by one stage lower in existing scale of pay.

The petitioner has filed an appeal before the appellate forum which has been rejected by affirming the order passed by the disciplinary authority. The petitioner is before this Court against these orders by way of the instant writ petition.

6. This Court has thought it proper to examine the enquiry report vis-a-vis the reason of disagreement with the finding given by the disciplinary authority, in order to reach the rightful conclusion as to whether the decision taken by the disciplinary authority is proper or not ? The finding given by the enquiry officer is totally based upon technical approach i.e. the request letter basis upon which, the inoperative account has been made operative has been taken into account. The enquiry officer has also taken a ground that Mr. A.B. Rao, an officer of the SB Department working in the Branch has not been brought for his cross-examination. The enquiry officer has also taken into consideration the voucher marked as M.E.6 and M.E.7 which was alleged to be unauthorisedly prepared, but the enquiry officer has come to finding that there was existence of existence of the request letter for operation of the inoperative SB A/c.

7. So far as this finding is concerned, this Court is of the opinion that the specific charge framed against the petitioner by the disciplinary authority is that the inoperative SB A/c. has been operative without any application or the request letter from the Account Holder. This specific charge has never been denied by the petitioner in his defence reply rather he has made requisition to supply copy of the application which has been denied to be given since not available. When in the charge itself it has specifically been mentioned that the accounts have been made operative from inoperative in absence of any application, the finding of the enquiry officer for not blaming the petitioner on account of non-existence of the request letter cannot be said to be correct finding.

8. The admitted position herein is that the Account Holder has died way back in 1970 and after 20 years there is no question of any request letter by a dead person, even assuming that impersonation has been made by forging the signature of dead person by anyone, then it was the duty of the petitioner being holding the post of Special Assistant to verify the signature of the request letter with the signature of the account holder containing in the register as per the norms of the Bank in 1990. Even assuming that an application was there then also it was the duty of the petitioner to verify the signature with the original signature of the account holder which was the minimum requirement of duty to be discharged since he was dealing with the public money but he has not done this part of the duty. In view thereof, this finding according to the considered view of this Court is not correct.

9. So far as the finding of the enquiry officer regarding preparation of M.E. 6 and M.E.7, the same has been said to be not proved merely on account of the fact

that the request letter and other documents has not been produced to prove the unauthorized preparation of M.E.6 and M.E.7 but the question is when there is no request letter as has been reflected in the memorandum of charge, then preparation of vouchers (M.E.6 and M.E.7) will certainly said to be unauthorized since it must have been signed by the person who was not the account holder as because the account holder has already died way back in the year 1970, hence this finding is also not correct.

10. According to the considered view of this Court, due to this action of the petitioner which he was to perform, but not performed, gross irregularities has been committed and in consequence thereof, the money has also been withdrawn from the Bank which is gross irregularities.

11. The disciplinary authority, after taking into consideration these aspect of the matter, has differed with the finding, hence according to the opinion of this Court, the reason of disagreement with the finding of the enquiry officer cannot be said to be illegal. The petitioner has submitted reply but the reply has found to be not satisfactory, accordingly the petitioner has been inflicted with the punishment of reduction of basic pay of one stage lower in the present scale of pay which has been affirmed by the appellate authority.

12. This Court has taken into consideration the scope of judicial review with respect to concurrent finding of the authority in the matter of departmental proceeding. It is settled that scope of judicial review is very limited and it can only be exercised in case of perversity of the finding in the enquiry report. It is the admitted position herein that the petitioner has been provided due opportunity in the enquiry proceeding and also by the disciplinary authority, hence the procedure has well been followed by the authority.

13. So far as jurisdiction of this Court, scope of judicial review is very limited. For ready reference the proposition laid down in the judgment rendered by Hon''ble Apex Court in case of Union of India and Others Vrs. P. Gunasekaran, AIR 2015 SC 545 the Hon''ble Apex Court has been pleased to laid down a guideline in order to make interference with the order of punishment which is being quoted herein below:- "13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Art.226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

a. The enquiry is held by a competent authority;

b. The enquiry is held according to the procedure prescribed in that behalf;

c. There is violation of the principles of natural justice in conducting the proceedings;

d. The authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. The conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. The disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. The disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. The finding of fact is based on no evidence.

Under Article 226 / 227 of the Constitution of India, the High Court shall not:

(i) Re-appreciate the evidence;

(ii) Interfere with the conclusions in the enquiry, in case the same has been conducted in a accordance with law;

(iii) Go into the adequacy of the evidence;

(iv) Go into the reliability of the evidence;

(v) Interfere, if there be some legal evidence on which findings can be based.

(vi) Correct the error of fact however grave it may appear to be;

(vii) Go into the proportionality of punishment unless it shocks its conscience."

This court has examined the factual aspect of the matter and the case in hand in the guideline in the case referred herein above and has found that this case is not come under the parameter to make interference in the finding or the decision in exercise of power conferred upon the High Court under Article 226 of the Constitution of India.

14. Moreover, since the instant case relates to an employee of the Bank, as such it needs to refer the judgment rendered by the Hon''ble Supreme Court in the case of Avinash Sadashiv Bhosale vrs. Union of India and others reported in (2012) 13 SCC 142, the Hon''ble Apex Court while dealing with the case of Bank has observed at para-56 which is being reproduced herein below:- "56. It must be emphasized that bank officials act as trustees of funds deposited by the public with the bank. They have an obligation to earn the trust and confidence of not only the account-holders but also the general public. The standard of integrity required of the bank officials, particularly the cashiers, accountants, auditors and

the management at all levels, is like the Caesar''s wife, they must be above suspicion." In view of entirety facts and circumstances, according to the considered view of this Court, there is no merit in this writ petition.

Accordingly, the writ petition fails and dismissed.