(2012) 10 GAU CK 0010

In the Gauhati High Court

Case No : WA No. 36 of 2011

Bijoy Rajkhowa APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 1 GLD 575 : (2013) 2 GLT 418

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : A.M. Bujarbaruah, for the Appellant; S. Sharma and Mr. G. Jalan, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—This writ appeal is directed against the judgment and order of the learned single Judge dated 9.2.2007 passed in WP (C) No. 6723 of 2000 dismissing the writ petition filed by the appellant challenging the order of dismissal from the service of the State Bank of India (Respondent Bank). The facts of the case may be briefly noted.

2. Appellant was an employee of the respondent Bank. At the relevant point of time he was serving as an Assistant (Cash and Accounts). On 19.5.1999 a charge sheet was issued to him by the respondent Bank asking him to show cause as to why a disciplinary proceeding should not be drawn up against him on the charges mentioned therein. The primary charge was misappropriation of an amount of Rs. 3,032/- by the appellant due to an account holder of the respondent Bank Smt. Jyoti Borah. The further charge was that the appellant did not submit his explanation in response to the notice issued to him by the Jorhat Branch of the respondent Bank.

3. Appellant submitted his show cause reply on 28.6.1999 wherein he admitted that he had authenticated the alleged signature of Smt. Jyoti Borah in the bankers cheque. Explanation of the appellant was that the said account holder

was known to him for quite a long period, so he signed on the reverse side of the cheque on good faith.

4. Appellant was also placed under suspension by order dated 28.6.1999.

5. On 17.7.1999 the appellant was informed by the Disciplinary Authority that it was decided to hold a departmental enquiry in respect of the charges framed against him. Enquiry Officer was appointed to conduct the enquiry. Presenting Officer was also appointed to present the case of the respondent Bank in the enquiry. Appellant was informed that he would be permitted if he desired to be defended by a defence counsel.

6. Thereafter, a departmental enquiry was conducted against the appellant wherein he was given all opportunity to defend his case. The prosecution witnesses were examined in his presence and he was given opportunity to cross-examine the prosecution witnesses. Appellant did not produce any witness on his behalf other than himself.

7. At the conclusion of the departmental enquiry, the Enquiry Officer submitted his enquiry report wherein he came to the conclusion that the appellant had forged the signature of Smt. Jyoti Borah which was again verified by him to establish its genuineness. Therefore, he concluded that the charge as communicated to the appellant vide charge sheet dated 19.5.1999 as a whole stood proved.

8. A copy of the enquiry report was forwarded to the appellant. The Disciplinary Authority thereafter proposed to impose the punishment of dismissal from service on the appellant and vide letter dated 30.11.1999 called upon the appellant to submit representation against the proposed punishment. Appellant submitted his representation on 14.12.1999 stating that verification of the signature on the bankers cheque was done in good faith as the person was known to him. He also stated that he had paid the aforesaid amount of Rs. 3,032/- to the account holder to ensure that the good image of the Bank was not affected.

9. The Disciplinary Authority after consideration of the enquiry report as well as the representation of the appellant, passed the final order dated 28.1.2000 imposing the penalty of dismissal from service on the appellant.

10. Appellant filed appeal dated 21.2.2000 before the Appellate Authority against the aforesaid punishment imposed on him by the Disciplinary Authority. The Appellate Authority by a detailed order dated 18.7.2000 rejected the appeal filed by the appellant and upheld the punishment imposed.

11. Appellant thereafter filed writ petition before this Court, which was registered and numbered as WP (C) No. 6723 of 2000, challenging the charge sheet, enquiry report, order of punishment as well as the order of the Appellate Authority and seeking a direction for reinstatement in service. The challenge was made basically on two grounds, namely, there was insufficient evidence before

the Enquiry Officer to hold that the charge against the appellant stood proved and that the Enquiry Officer did not consider the fact that the appellant had paid the amount in question to the customer as he felt morally responsible, and that the punishment was harsh and disproportionate.

12. The respondents resisted the petition by filing counter affidavit. The stand taken was that the departmental proceeding was conducted in accordance with law and the appellant was given full opportunity to defend himself. The Enquiry Officer at the conclusion of the enquiry held the charges against the appellant to be proved. Punishment imposed was justified.

13. Learned Single Judge came to the conclusion that the enquiry was conducted fairly giving reasonable opportunity to the appellant and at the conclusion of which, the Enquiry Officer held that the charges against the appellant stood proved. The order of dismissal as well as the order of Appellate Authority are well reasoned orders and no case for interference was made out. Contention of the appellant that penalty of dismissal from service imposed upon the appellant was shockingly disproportionate was also not accepted. By the impugned judgment, learned Single Judge dismissed the writ petition as being devoid of any merit.

14. Aggrieved, the writ petitioner as the appellant is before us in appeal.

15. Heard Mr. A.M. Bujarbaruah, learned counsel for the appellant as well as Mr. S.S. Sharma, learned senior counsel for the respondent Bank.

16. Since the charge framed against the appellant is central to the proceeding initiated against him, the same may be referred to, which is reproduced hereunder:-

CHARGE SHEET

It has been alleged against you that while you were working as Assistant (C & A) at State Bank of India, Jorhat Branch, you have committed serious irregularities as enumerated below:-

Smt. Jyoti Borah, a teacher deposited at the Bank her monthly salary bill for Rs. 3,032/- for the month of January, 1997 on 04.02.97 for payment. The proceeds of the bill was to be credited to her Savings Bank account, maintained with Jorhat Branch. After the bill was paid on 04.02.97, the proceeds could not be credited to her S.B. account for want of correct account number. Instead a Bankers'' Cheque No. 316047 was issued on 04.02.97 for Rs. 3,032/- favouring Smt. Jyoti Borah. Subsequently, the Bankers'' Cheque was fraudulently encashed on 18.07.97. After verification of her S.B. account, Smt. Jyoti Borah lodged a complaint with the Bank regarding non-credit of her salary bill of Rs. 3,032/- into her S.B. account.

You surreptitiously obtained the Bankers'' Cheque and forged the signature of Smt. Jyoti Borah, the payee on the reverse of the Bankers'' Cheque. Though the signature did not tally, with the recorded one you authenticated the endorsement of the payee through your remark on the back of the instrument as signature of Smt. J. Borah is verified by me. Thereafter, the Bankers'' Cheque was encashed from the Teller Counter on 18.07.97. Thus, it is evident that you misappropriated customer''s money by adopting unfair practice for your own benefit.

Moreover, you did not submit your explanation in reply to Jorhat Branch Memo No. CM/42/164 dated 30.07.98 despite reminder. Your such acts amount to gross misconduct and in-subordination on your part.

17. Thus, it can be seen that the charge against the appellant was that he had misappropriated the money of the customer by first forging her signature and thereafter, endorsing her signature as genuine by mis-using his position.

18. The Enquiry Officer at the conclusion of the enquiry came to the finding that the appellant had received the payment against the bankers cheque in question and for that he had forged the signature of the customer which was thereafter verified by him to establish its genuineness. The enquiry report is quoted hereunder in its entirety:-

REPORT OF THE ENQUIRY OFFICER IN CONNECTION WITH DEPARTMENTAL ENQUIRY AGAINST SHRI BIJOY RAJKHOWA, ASSTT. (C & A) FOR ALLEGED FRAUDULENT ENCASHMENT OF BANKERS'' CHEQUE NO. 316047 DATED 04-02-97 FOR RS. 3032/- FVG JYOTI BORAH, AT SBI JORHAT BRANCH.

Introduction:

The charge framed by the Asstt. General Manager, R-I (Disciplinary Authority) vide charge sheet No. DPS/99-2000/056 dated 19.05.99 has been divided into the following segments for the purpose of this report:

i) Surreptitiously obtaining the bankers'' cheque by Shri Bijoy Rajkhowa.

ii) Forging the signature of Mrs. Jyoti Borah, the payee, on the reverse of the Bankers'' cheque by Shri Bijoy Rajkhowa.

iii) Misappropriation of customer''s money by adopting unfair practice by Shri Bijoy Rajkhowa, for his own benefit.

iv) Gross misconduct and insubordination on the part of Shri Bijoy Rajkhowa, by not replying to Jorhat Branch Memo No. CM 42/164 dated 30.07.98

Findings of the case:

i) Surreptitiously obtaining the bankers'' cheque by Shri Bijoy Rajkhowa:

From the minutes of the Enquiry Proceedings, it appears that the Presenting Officer did not produce any documentary proof or witness to prove this part of the charge. The presenting officer only construed that since Shri Rajkhowa could not prove involvement of any other person in the transaction, it is more than clear that he himself had surreptitiously obtained the cheque. As a matter of fact, the onus of proving surreptitious obtention of the cheque by Shri Rajkhowa lies with the presenting officer rather than the charged employee to disprove it. The presenting officer therefore, could not prove this part of the charge.

ii) Forgoing the signature of Smti Jyoti Borah, the payee on the reverse of Banker''s Cheque by Shri Bijoy Rajkhowa:

Witness No. 1 Smti Jyoti Borah, during her witness, deposed that she never received the banker''s cheque (M-2) and the signatures appearing on the reverse of the bankers'' cheque are not her signatures. On the other hand, the Charged Employee did not make any visible effort during the enquiry to prove that the signatures appearing on the reverse of the bankers'' cheque belonged to the payee. It is therefore, apparent that the payees signature on the reverse of the cheque are forged ones.

The Charged employee during cross examination of the witness No. 2 stated that he verified the signature of Jyoti Borah.

Inference. The forged signature of the payee was verified by the charged employee. The Charged Employee could not prove involvement of any other person whose signature was verified by him. This implies that the signature of the payee was forged by him and the same was verified by him in order to facilitate the payment of the cheque.

iii) Misappropriation of customer''s money by adopting unfair practice by Shri Bijoy Rajkhowa, for his own benefit.

Witness No. 2, during examination stated for sure that the payment of the banker''s cheque was made to Shri Bijoy Rajkhowa.

The Charged Employee, in his report has pointed out certain procedural irregularities on the part of the Teller in making the payment to the former. But fact remains that notwithstanding the irregularities if any on the part of the Teller, which is not the subject matter of this enquiry Shri Bijoy Rajkhowa had taken the payment from the teller.

The Charged Employee, in his report (page-2) stated-"If I had any such intention to fraudulently encashed the amount then I should not in later part to negotiate with Mrs. Jyoti Borah for amicable settlement of the matter and....." This is a clear admission by the Charged Employee that he made some amicable settlement with Mrs. Jyoti Borah for payment of Rs. 3032/- from his pocket as evidence by exhibit M-11.

Mrs. Jyoti Borah had complained to State Bank of India, Jorhat Branch regarding not crediting the amount of bill deposited for credit to her account vide exhibit M-9. But her complaint was not against Shri Bijoy Rajkhowa. The Charged Employee did not produce any exhibit which warranted an amicable settlement in the matter. Therefore, what had provoked the Charged Employee to pay the amount to Mrs. Jyoti Borah and settle amicably is a matter of mystery.

Under such circumstances, there is a strong ground to construe that the Charged

Employee had misappropriated the amount received from the Teller against the cheque and attempted to conceal it by amicably settling it with the complainant.

The Charged Employee in his defence brief stated that Mrs. Jyoti Borah lodged the complaint to the bank after 1 year 4 months from the date of depositing the bill for credit to her account, and hence the Charged Employee sensed doubt about her acts. This doubt should have been clarified by the Charged Employee from Mrs. Jyoti Borah, in as much as, the charged employee had cross examined Mrs. Jyoti Borah (W-1).

The charged employee lastly stated in his defence report "Lastly I like to say that whatever I did with good faith for amicable settlement of the matter with belief to proof my innocence...."

This is an indirect admission of his fault by the Charged Employee. From the facts of the case, it is evident that neither the bank had accused him of the offence till then, nor Mrs. Jyoti Borah lodged any claim with him to repay the amount. All these circumstances and depositions strongly establish that the Charged Employee had taken the payment from the Teller counter and subsequently on the apprehension of being caught, he tried to settle the issue without the knowledge of the bank. Therefore, this part of the charge is proved.

iv) Gross misconduct: The presenting officer had exhibited document No. M-10 which is a copy of Jorhat branch letter No. CM/42/164 dated 30.07.98. The Charged Employee did not submit any exhibit to prove that his reply to the Jorhat branch letter was submitted within the stipulated period as stated in the last but one para of his letter dated 28.06.99 addressed to the Asstt. General Manager (M-6). This part of the charge therefore, holds good.

Conclusion:

The above findings lead to the conclusion that Shri Bijoy Rajkhowa had received payment against the Bankers'' cheque No. 316047 from Jorhat Branch Teller (W2) on 18.07.97.

Circumstances lead to prove that in order to make way to receive the payment, he forged the signature of Shri Jyoti Borah (Payee) which was again verified by him to establish its genuineness. The charged employee was not the custodian of bankers Cheques. But it is proved that he received the payment against the banker''s Cheque. Therefore, circumstances prove that the banker''s cheque was surreptitiously obtained by Shri Bijoy Rajkhowa and subsequently obtained payment thereof.

The Charged Employee did not produce any letter in response to Jorhat branch Memo No. CM/42/164 dated 30.07.98. Therefore, he could not prove that he replied to the letter within the stipulated time.

Remarks:

From what has been discussed above, I find that the charge as communicated to

Shri Bijoy Rajkhowa vide SBI, ZO, Memo No. DPS/99-2000/056 dated 19.05.99 as a whole has been proved.

(T. NAHAR DEKA) Enquiry Officer

19. Once the conclusion was reached after following the due procedure that the appellant had forged the signature of the customer and again thereafter verified it by misusing his position to establish its genuineness to misappropriate the amount, imposition of consequential punishment became inevitable. The situation was further compounded by the appellant himself when he admitted that he repaid the amount in question to the customer, though he says that was done to maintain the good image of the Bank.

20. The imposition of punishment was further scrutinized by the Appellate Authority and after a detailed examination, the punishment was upheld. The following is the relevant portion of the order of the Appellate Authority:-

4. I have carefully examined the various records of the case and observed that on conclusion of the departmental enquiry, a copy of the Enquiry Report-cum-Findings was forwarded to the appellant to enable him to make his submission on the report within 15 (fifteen) days vide Memo No. DPS/99-2000/298 dated 10.09.99 which was acknowledged by the appellant on 22.09.99. The appellant was given ample opportunity to submit his representation to rebut the allegation proved in the enquiry. But the appellant did not submit any representation on the Enquiry Report within the stipulated period. The appellant''s contention that he was in no way involved in the mis-appropriation of customer''s money is not acceptable as the agreement dated 18.09.98 executed between the payee of the Banker''s Cheque Smt. Jyoti Bora and the appellant clearly establishes the refund of the defrauded amount by the appellant. Secondly, the contention of the appellant that Smt. Jyoti Borah (the payee of Banker''s Cheque) was known to Shri Rajkhowa is refuted and disproved in the enquiry proceedings on 20.08.99 wherein it is recorded that Smt. Jyoti Borah came to know the appellant for the first time when he came to her residence to pay her the money. Thirdly, Shri J. Phukan, the concerned Teller confirmed during his witness in regular hearing on 20.8.99 that the payment of Banker''s Cheque was made to the appellant on 18.07.97. Therefore, the appellant mis-appropriated the amount received from the Teller and attempted to conceal the fact by amicably settling it with the complainant, Smt. Jyoti Borah.

5. There is enough evidence to support the allegation against the appellant. I find that the appellant has not brought out any new facts to rebut the allegation established against him except his personal grievances which are not related to the charge framed against him. I have also interviewed the appellant at this office on 12.07.2000 before disposing of the appeal preferred by Shri Rajkhowa. Having regard to the mala fides of the appellant which seriously reflects on his integrity, the penalty inflicted is just and adequate and I do not see any reason to interfere with the order of the Disciplinary/Appointing Authority. I, therefore,

hereby reject the appeal preferred by Shri B. Rajkhowa, Ex-CAT. The punishment is upheld.

21. Learned Single Judge after due consideration held that the departmental enquiry was conducted in accordance with law and that the findings reached as recorded in the report of the Enquiry Officer were based on reasons after discussing not only the statements of the witnesses, but also the material documents which were exhibited in the departmental enquiry. Learned Single Judge further held that in the present case, the appellant himself admitted that he had authenticated the signature of the customer Smt. Jyoti Borah on the reverse side of the bankers cheque. The conclusions of the learned Single Judge have been summarized in paragraphs 20 & 25 of the judgment under appeal, which are quoted herein below:-

20. From the above discussions, this Court is of the considered view that the petitioner has failed to make out his case for interference with the finding of the enquiry officer that the charge against the petitioner is proved and also of the considered view that dismissal and also the impugned order of the appellate authority are well reasoned and valid.

25. Keeping in view of the ratio laid down by the Apex Court in the above cases regarding the power of judicial review of the quantum of punishment and also in the facts and circumstances of the present case, this Court is of the considered view that submissions of the learned counsel of the petitioner that penalty of dismissal from service imposed to the petitioner is shockingly disproportionate is not acceptable.

22. We are in agreement with the view expressed by the learned Single Judge. Power of the writ court in a matter relating to imposition of penalty after holding of regular departmental proceeding is ordinarily limited to ensuring that the delinquent gets a fair opportunity to defend his case; that there is no procedural impropriety or irregularity and that the punishment imposed is not so disproportionate that it is shocking to the judicial conscience. Keeping in mind, the above contours of the writ power, we find that the conclusions and decision of the learned Single Judge does not call for any interference.

23. Conduct of a bank employee must be above board. He is required to maintain absolute integrity, which is of paramount consideration. On his conduct rests the confidence of the customers of the bank. Compromise with doubtful integrity will not only erode the faith of the people using the bank''s facilities but also in the functioning of the bank itself. In such matters, quantum of misappropriation is immaterial, the factum of misappropriation itself would justify the disciplinary action taken. Considering the above, in the present case, we do not find any good and sufficient ground to interfere with punishment imposed. In view of the discussion made above, we find no merit in the appeal. The same is accordingly dismissed but without any order as to cost.

