(2012) 12 DEL CK 0226

In the Delhi High Court

Case No : Writ Petition (C) 439 of 2005 and CM Application No''s. 335 of 2005 and 21644 of 2010

Canara Bank APPELLANT

Vs

Naresh Kumar Gupta RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Citation : (2013) 1 AD 389 : (2013) 1 LLJ 475 : (2013) LLR 190

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Naveen R. Nath and Mr. Darpan K.M, for the Appellant; Jyoti Singh with Mr. Amandeep Joshi and Ms. Saahila Lamba, for the Respondent

Final Decision : Disposed Off

Judgement

Hon''ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner impugners the award dated 4th October, 2004 whereby the learned Tribunal after holding that the enquiry was fair and legal re-appreciated the evidence placed before the enquiry officer and came to the conclusion that the charges against the Respondent were not proved and hence the action of the Petitioner in dismissing the Respondent from services with effect from 13th June, 1998 was neither just nor proper and valid. It was directed that the Respondent be reinstated with effect from 13th June, 1998 with full back wages. Learned counsel for the Petitioner contends that the learned Tribunal grossly mis-conducted itself inasmuch as it sat as an appellate Court on the findings of the enquiry officer on the basis of evidence adduced before the enquiry officer. The learned Trial Court misread the evidence in its totality and came to the conclusion that there was no evidence against the Respondent to prove his misconduct. The findings of the learned Trial Court that the second charge is wholly erroneous is contrary to the evidence on record. Further even on the third charge, the learned Tribunal did not consider the fact that the Respondent had admitted that the cash receipt stamp was in his custody and

thus it was for him to show who received the amount of Rs. 6600/- from the customer which was not credited in his account. Reliance is placed on State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, to contend that the Tribunal exceeded in its jurisdiction in appreciating the evidence adduced during enquiry as an appellate Court and grossly misread the evidence. Relying on State Bank of India Vs. Tarun Kumar Banerjee and Others, it is contended that the disciplinary enquiry cannot be vitiated on account of non-joining of the customer of the bank, as the same is not conducive to proper banker-customer relationship and thus is not in the interest of the bank. Reliance is also placed on State Bank of India and Another Vs. Bela Bagchi and Others, and State Bank of India and Others Vs. S.N. Goyal, to contend that every employee of the Bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence. The charges against the Respondent of temporary embezzlement were very serious in nature and called for no interference by the learned Tribunal who erroneously misconducted itself and set aside the order of dismissal of the Respondent.

2. Learned counsel for the Respondent on the other hand contends that the letter of the customer Abdul Alim was not considered by the enquiry officer though the same was an admitted document and in view of this illegality the learned Tribunal was justified in scrutinizing the entire evidence adduced before the enquiry officer and coming to the conclusion that the misconduct of the Respondent was not proved. As regards the third charge, admittedly the Respondent has not signed the pay-in-slip and thus he cannot be held liable for non-accounting of Rs. 6600/-. The Respondent deposited the amount of Rs. 6600/- on 13th August, 1996 under pressure, as is evident even from the endorsement of the cashier made at the back of ME10. In any case even if the charges are proved against the Respondent, the punishment of dismissal was not proportionate and a lesser punishment like compulsory retirement etc. ought to have been awarded to the Respondent.

3. I have heard learned counsel for the parties and perused the records. The facts in brief leading to filing of the present petition are that the Respondent was appointed as a clerk with the Petitioner bank on 6th September, 1980 and was working as such with the South Extn. Branch, New Delhi from 27th July, 1991 till 13th August, 1996. It is alleged that on 18th July, 1996 one account holder namely Ms. Omshree Sharma S/B A/c No. 19923 remitted a sum of Rs. 10,000/- in cash in her saving bank SB Account. On 19th July, 1996 Shri Abdul Alim holder of SB A/c No. 18384 remitted a sum of Rs. 30,000/- to his SB account. On both the dates the Respondent was the cashier and had issued the counterfoil to the customer. However, he failed to credit the said amounts on the same day and credited the amounts to the respective accounts on the next day i.e. 19th July, 1996 and 20th July, 1996. Similarly, on 20th July, 1996 one Shri Surender Kumar holder of S/B A/c No. 5511 remitted a sum of Rs. 6600/-. The said amount was not credited to the account of the said account holder though the account holder produced the copy of the counterfoil with the stamp on it, and having failed to

credit the said amount on the same day he misappropriated the said amount with malafide intention. This fact was further confirmed when on 13th August, 1996 on the complaint of the customer, the Respondent remitted the said amount of Rs. 6600/- in the account of the customer from his own pocket. On a charge-sheet being issued on the above three charges an enquiry was conducted. During the course of enquiry the Petitioner produced the relevant records including shroff book. It showed delayed crediting of the amount. The documents exhibited by the Petitioner were from ME1 to ME15 whereas the Respondent exhibited letter dated NIL by Shri Abdul Alim addressed to the Presenting Officer, Disciplinary Action Cell, Canara Bank stating that he deposited the amount of Rs. 30,000/- on the 20th July, 1996. After analyzing the evidence the enquiry officer held that the first charge was not proved, however charges no. 2 & 3 stood proved and returned the following finding.

The Investigating Officer in his report clearly stated that on 20.07.96 the cash received stamp was within the custody of the CSE when the Investigating Officer asked about not accounting of Rs. 6,600/- on 20.07.96 to the CSE he remarked that the CSE could not clarify the reasons for non-credit of the remittance made by Shri Surender Kumar. Even at that time he has not disputed about the amount received and also the issuance of counterfoil. Further, DR contended that in order to avoid further customer complaint against the CSE he immediately arranged for depositing amount which clearly reveals that he has not verified the books and he has immediately arranged for remittance of the amount. Had the CSE not received the amount on 20.07.96, he should not have reimbursed the amount on 13.08.96 in the customer''s account. Further, the defence could not clarify as to who had received the amount other than the CSE, if it is their contention. In the absence of any proof to the defence contention, as per the records and on the basis of oral and documentary evidence produced in the enquiry, it is clear that the CSE has only received the amount on 20.07.96. Further, the cash received stamp was only with him on that day and he has also confirmed the same to the Investigating officer. Hence, I hold the CSE guilty of the charges leveled against him.

Further, on verification of the cash shroff book it shows that the CSE has altered the Bank''s record on 18.07.96 to 20.07.96 which is prejudicial to the interests of the Bank. It is evidenced by ME-6 and the Investigating officer also confirmed the above in ME-13.

4. The disciplinary authority after hearing the Respondent awarded the punishment of dismissal and appeal filed against the order was also dismissed. Hence the Respondent raised an industrial dispute which was referred to the industrial adjudicator on the following terms for adjudication: "whether the action of Deputy General Manager, Canara Bank, Circle Office Marshall Office, Nehru Place, New Delhi in dismissing from services with effect from 13th June, 1998 Shri Naresh Kumar Gupta (31732), New Delhi is justified, proper and valid? If not, what relief and benefits he is entitled". The Respondent filed a statement

of claim wherein he restricted his grounds of challenge pertaining to the charge-sheet and that the proceedings of the enquiry and findings were illegally recorded. The errors in the findings of the enquiry officer were pointed out. The Petitioner/management in their written statement stated that the Respondent committed serious misconduct. He temporarily embezzled Rs. 6600/- on 20th July, 1996, Rs. 10,000/- on 18th July, 1996 and Rs. 30,000/- on 19th July, 1996. The contention of the workman that the complainants were not examined during the enquiry proceedings is immaterial in view of the law laid down by the Supreme Court in State of Haryana and Another Vs. Rattan Singh, and J.D. Jain Vs. Management of State Bank of India and another, . It was stated that the enquiry officer was never prejudiced and his findings were based on cogent evidence. The Respondent was given ample opportunity to defend himself. During the course of hearing before the learned Tribunal, the preliminary issue of fairness of enquiry was not pressed as such the award was given on the entire merits of the case.

5. In view of the contentions of the Respondent the learned Tribunal scrutinized the evidence independently and came to the conclusion with regard to charge no. 2 that at best the Respondent committed negligence in issuing a cash receipt of 19th July, 1996 which was a minor negligence and had no intention of committing any misconduct. If the Respondent had any criminal intention he would not have deposited the money on the next day himself. It was held that the Respondent acted in a good faith. Rather he committed a typographical error in writing 19 in place of 20. As regards the charge no. 3, the learned Tribunal held that the same is not proved as the workman applicant has not received Rs. 6,600/- from the account holder and he cannot be held responsible for the amount which he has not received as there is no evidence of receiving the amount of Rs. 6600/- by the workman applicant. The Tribunal further held that the enquiry officer has not given his findings based on the evidence on the record so the inquiry is not fair and the workman applicant deserves to be reinstated with full back wages.

6. Before adverting to the facts of the present case, it would be appropriate to note the scope of interference by the Tribunal in the findings of the enquiry officer. Their Lordships in State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya (supra) held:

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting

reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi Vs. Union of India and others, , Union of India and another Vs. G. Ganayutham (Dead) by LRs., , Bank of India and Another Vs. Degala Suryanarayana, and The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, .)

7. Considering the facts of the present case on the touchstone of the law laid down by the Hon''ble Supreme Court it is found that not only it is contrary to the law laid down, the Tribunal also wrongly read the documents on record and returned a finding. As regards the charge No. 2 which stood proved, a perusal of ME5 would show that the counterfoil is dated 19th July, 1996 with regard to the SB A/c No. 18384 for Rs. 30,000/-, the shroff book shows entry on 20th July, 1996 with regard to deposit at item no. 2 of Rs. 30,000/- in the account of Shri Abdul Alim A/c No. 18384. The learned Trial Court noted the entry No. 44 in A/c No. 5312 on 20th July, 1996 and wrongly came to the conclusion that the same was not relatable to this case. The finding of the Tribunal in this regard is as under:

I have gone through the findings of the enquiry officer and so far as charge no. 2nd is concerned papers referred to are ME6 and ME8 but ME6 is not relevant as there is no date on this paper and Rs. 30,000/- has not been mentioned in this Shroff Cash Book as it is not clear how the enquiry officer based his findings on ME6. It appears that he has overlooked ME6 and found charge no. 2nd proved on the basis of ME6. The photocopy is not even dated.

8. Having come to the conclusion that no cogent proof has been provided by the Petitioner, the Tribunal also held that at best the Respondent can be said to have committed negligence in issuing the cash receipt on 19th July, 1996. No doubt the enquiry officer did not consider the defence documents of the Respondent i.e. the letter of Shri Abdul Alim wherein he stated that he deposited the sum of Rs. 30,000/- on 20th July, 1996, but the same is not material as the letter does not state as to how or whether the date on the counterfoil was mentioned wrongly as 19th July, 1996. There is no explanation whatsoever of any kind in the defence that this date was wrongly noted and the learned Tribunal on the basis of assumptions came to the conclusion that it could be a typographical error. It may be noted that Shri Abdul Alim had not appeared in the witness box.

9. As regards the charge no. 3 the finding of the learned Tribunal is:

Charge no. 3 is not proved as the workman applicant has not received Rs. 6600/- from the account holder. He cannot be held responsible for the amount which he has not received as discussed above so charge no. 3 is not proved as there is no evidence of receiving the amount of Rs. 6,600/- by the workman applicant. Charge no. 1 regarding of Rs. 10,000/- has not been found proved by the enquiry officer himself.

10. It may be noted that though the counterfoil bears signatures of none, as is the case of both the Petitioner and the Respondent, however it is admitted by the Respondent that the cash receipt stamp was in his custody on the 20th July, 1996. In that event, it is for the Respondent to explain how the counterfoil for Rs. 6600/- was stamped and the money was still not deposited in the account of the customer. The learned Tribunal on the basis of the fact that the handwriting on the counterfoil has not been proved by the enquiry officer by calling the handwriting expert exonerated the Respondent. It may be noted that in enquiry proceedings strict rules of evidence are not required to be followed and the matters can be decided on the basis of preponderance of probability. The learned Tribunal grossly erred in interfering with the findings of the enquiry report by appreciating & considering the same as an Appellate Court. The Hon''ble Supreme Court in State Bank of India and Anr. Vs. Bela Bagchi & Ors. (supra) held:

15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.

11. In State Bank of India & Ors. Vs. S.N. Goyal (supra) it was held:

41. At the relevant point of time the respondent was functioning as a Branch Manager. A bank survives on the trust of its clientele and constituents. The position of the Manager of a bank is a matter of great trust. The employees of the bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the bank. Any misappropriation, even temporary, of the funds of the bank or its customers/ borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the bank receiving such amount is required to credit it immediately to the borrower''s account. If the matter is to be viewed lightly or leniently it will encourage other bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected.

12. It would be thus seen that once there was evidence against the Respondent for having mis-conducted, the learned Tribunal grossly erred in interfering with the same and setting aside the order passed by the disciplinary authority.

13. Learned counsel for the Respondent contends that in case the order of enquiry officer is to be upheld, the punishment awarded to the Respondent being disproportionate be converted to one for compulsory retirement. As held in State Bank of India Vs. S.N. Goyal (supra) even temporary embezzlement of the customer''s money is a serious misconduct which cannot be lightly brushed aside, thus I do not find that the punishment awarded to the Respondent is disproportionate or required to be converted to one under compulsory retirement as prayed by the learned counsel for the Respondent. The impugned award is set aside. Petition and applications are disposed of.