
(2010) 11 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 1106 of 2006

Dehi Ram Baruah

APPELLANT

Vs

Regional Manager, UCO Bank and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 128 FLR 451 : (2011) 6 GLR 806 : (2011) 3 LLJ 200 : (2011) LLR 480

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : M.K. Choudhury, T.N. Srinivasan and M. Dutta, for the Appellant;
None, for the Respondent

Judgement

I.A. Ansari, J.—Heard Mr. M.K. Choudhury, learned Senior Counsel for the Petitioner. None has appeared on behalf of the Respondents.

2. The Petitioner, while working as clerk-cum-cashier at UCO Bank, Mukalmua Branch, a disciplinary proceeding was drawn against him and he was served with a charge-sheet, dated 14.1.2004, which read as under:

That on 22.3.1994 and 29.3.1995, you had given payments of two withdrawal slips in the a/c of Mr. Azir Ali, S/B A/C No. 284/3 for Rs. 9070/- and Rs. 20,000/- respectively without adhering to the bank's laid down guidelines.

(a) You had not scrutinized to see mat the debit instruments (withdrawal slips of Rs. 9070/- and Rs. 20,000/- dated 22.3.1994 and 29.3.1995 of Azir Ali SB 284/3 had not been passed for payments by an officer as per authority vested in him by the Manager. The instruments were passed for payment by Shri Motiur Rahman, Clerk, without any office order. Since the party has complained against their fraudulent payments and claimed payments through the ombudsman and the bank had to make good the loss, as a result of your negligence, you are held responsible for this.

(b) You had made both the payments without taking the signature of the Chief Cashier in token of his agreeing to the payments and also without taking the initial of the clerk on the reverse as per bank's norms. You had not taken the signature of the receiver of the payments on the reverse of withdrawal slip dated 22.3.1994 of Rs. 9070/- and withdrawal slip dated 29.3.1995 for Rs. 20,000/- to ascertain that the token holders and the receiver of payments of the said withdrawal slips are the same persons. Since both the withdrawal slips had only one signature on the reverse you had not ensured that the payments had been made to genuine persons. You had also not recorded the details of currency notes and coins (denominations) paid at the back of the withdrawal slips, which is required as per bank's procedure.

The above allegation constitutes gross misconduct on your part as under:

(a) Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss - a gross misconduct as per Clause 19.5 (i) of Bi-partite Settlement 19.10.1996, as amended.

3. As the Petitioner denied that he had committed "gross misconduct" as alleged against him, an enquiry was held. The enquiry officer found the Petitioner not guilty of the first charge, namely, charge No. 1(a), but found the Petitioner guilty of the second charge, i.e., charge No. 1(b). The findings were accepted by the disciplinary authority; whereupon penalty of dismissal from service was imposed on the Petitioner by order, dated 14.10.2005, passed by the Respondent No. 2. Aggrieved by the findings of "gross misconduct", reached against him, and also the penalty imposed by the order, dated 14.1.2005, aforementioned the Petitioner preferred an appeal. As the appeal has been rejected by an order, dated 18.1.2006, by the Respondent No. 3, the Petitioner has impugned the finding of guilt, reached against him, on charge No. 1(b) and also the penalty of dismissal from service, imposed on him, by filing this writ petition, under Article 226 of the Constitution of India, seeking issuance of appropriate writ(s) setting aside and quashing the orders, dated 14.1.2005 and 18.1.2006, aforementioned.

4. It has been submitted, on behalf of the Petitioner, that since the Petitioner had been found not guilty of the charge No. 1(a), he could not have been found guilty of the charge No. 1(b) inasmuch as, according to what is contended on behalf of the Petitioner, the two charges are inseverably linked with each other and when the first charge could not be proved, the question of finding the Petitioner guilty of the second charge could not have arisen at all.

5. While considering the question as to whether the second charge, framed against the Petitioner, stood proved or not, it may be noted that a careful reading of charge No. 1(b) shows that this charge consists of several ingredients, namely, payments were made by the Petitioner, in respect of two withdrawal slips, into the account of one Azir Ali, for Rs. 9070/- and Rs. 20,000/- though the withdrawal of money was from the account of Badar Ali meaning thereby that the

Petitioner helped Azir Ali in withdrawing money from Badar Ali's account and putting the money in his (Azir Ali's) account. Moreover, before making the payment, the Petitioner was required, as per the Bank's norms, to obtain initial of the Chief Cashier, on the reverse page of the withdrawal slips permitting such withdrawal. Thus, without such signature having been obtained, as indicated hereinbefore, no authority to make payment to the token holder could have been validly derived by the Petitioner. Despite the fact that such an authority had not been obtained in the sense that the Petitioner had not obtained signatures of the Chief Cashier on the reverse page of the withdrawal slips, the payments were made by the Petitioner into the account of Azir Ali. Thus, the Petitioner did not have requisite authority from a competent person to make payment. Furthermore, the Petitioner had not also recorded the details of the currency notes and/or coins (denominations) on the reverse page of the withdrawal slips, which was, otherwise, required as per bank's procedure. This apart, the Petitioner had also not taken, on the reverse page of the withdrawal slips, signatures of the receiver of the payments so as to ascertain if the token holders and the receiver of the payments of the said two withdrawal slips were one and the same person. The fact that the Petitioner had not done the needful for the purpose of enabling him to make payment of the money, covered by the said two withdrawal slips, had stood well established by the materials brought on record. In the face of these admitted and undisputed facts, it could not have been held that the second charge did not stand proved. Consequently, merely because of the fact that the first charge was, according to the enquiry officer, not proved and the said finding had been accepted and upheld by the disciplinary authority, the finding, on the second charge, cannot be said to be incorrect, illegal or unfounded. The finding, therefore, reached by the Enquiry Officer, on the second charge, and acceptance thereof by the disciplinary authority cannot be faulted with.

6. Coupled with the above, it is also noteworthy that it has been pointed out by Mr. Choudhury, learned Senior counsel, that in accordance with the enforceable agreement between the disciplinary authority and the employees, the misconduct, if any, committed by the Petitioner, was a "minor misconduct" and not a "gross misconduct" inasmuch as, according to Mr. Choudhury, the Petitioner's misconduct, if any, was as regards breach of rule of business of the bank or instruction in the running of any department of the bank and/or neglect of work or negligence in performing duties and such acts or omissions were, under the said agreement, "minor misconduct". In the case at hand, no case of gross misconduct, reiterates Mr. Choudhury, was made out against the Petitioner inasmuch as a disciplinary authority, in order to hold that a person has committed gross misconduct, must arrive, in the light of the agreement aforementioned, at the conclusion that his act was an act prejudicial to the interest of the bank or, that his acts constituted "gross negligence" or negligence involving or likely to have involved the bank in serious loss, but the acts or omissions of the present Petitioner can not be said to be prejudicial to the

interest of the bank nor can his acts or omissions constitute gross negligence or negligence involving or likely to involve the bank in serious loss.

7. In the present case, if the acts, committed by the Petitioner, are borne in mind, it is clearly revealed that the Petitioner had not obtained requisite authority enabling him to make payment of the sums, covered by the two withdrawal slips, to a person from whose account the withdrawal of money had not taken place. The Respondent bank is accountable to Badar Ali, i.e., the person from whose account the money was withdrawn, and the bank had to, eventually, make good the loss. In such circumstances, it cannot be said that the act of the Petitioner was not prejudicial to the interest of the bank. Even if, for a moment, it is assumed that the Petitioner had no ill motive, his acts clearly show that he did not take at all such care as he ought to have taken to ensure that the payment is withdrawn from appropriate account and payment is made to appropriate account holder or person. Thus, even if the Petitioner's acts were not intentional, there can be no escape from the conclusion that his acts were acts of utter negligence involving the Respondent bank in serious loss. In short, thus, the fact that the Petitioner had committed "gross misconduct" cannot be doubted. The charge No. 1 (b), therefore, stood well proved.

8. Coming, now, to the penalty imposed on the Petitioner, it may be pointed out that it has been submitted, on behalf of the Petitioner, that the penalty, of dismissal from service, has been imposed on the Petitioner by taking into account his "past conduct", whereas, according to Mr. Choudhury, learned Senior counsel, the past records of the Petitioner could not have been considered against him for the purpose of deciding penalty without giving any opportunity to the Petitioner as regards his "past conduct".

9. For the purpose of appreciating the above submissions, made on behalf of the Petitioner, the relevant part of the order, dated 14.10.2005, whereunder penalty has been imposed, is reproduced below:

Now, in exercise of the powers conferred upon me by the Executive Director of the Bank and circulated vide circular No. CHO/PAS/2/2000 dated 20.6.2000, and taking into account your past track records where you were charge-sheeted for major irregularities committed by you and awarded punishment, I hereby give my decision as under.

10. From a bare reading of what have been mentioned in the order, dated 14.10.2005, it becomes clear that penalty of dismissal from service has been imposed on the Petitioner not merely on the basis of the findings arrived at pursuant to the charge-sheet, dated 14.10.2004, but also by taking into account his past record. Though the materials on record indicate that the Petitioner was given a notice directing him to show cause as to why he shall not be dismissed from service, the fact remains that the Petitioner had never been put to notice that his past conduct would also be taken into account for the purpose of deciding the penalty to be imposed on him. To this extent, therefore, the

impugned order, imposing penalty, suffers from serious infirmity of law.

11. Considering the fact that this Court is of the view that since the penalty of dismissal from service has been imposed on the Petitioner by taking into account his "past conduct", though no notice, in this regard, had been issued to him giving an opportunity to have his say in the matter of his "past conduct", the impugned order, dated 14.10.2005, to the extent that the same imposes penalty, needs interference by this Court.

12. Because of what have been discussed and pointed out above, this writ petition partly succeeds. While the finding of guilt, reached against the Petitioner by the disciplinary authority, in respect of charge No. 1(b), is not interfered with, the impugned order, dated 14.10.2005, is, to the extent that the same relates to imposition of penalty of dismissal from service, hereby set aside and quashed and the proceeding is remanded to the Respondent No. 2 for the purpose of giving requisite notice to the Petitioner and, then, to pass appropriate order(s) as may be warranted by the facts of the case and the law relevant thereto. On the penalty having been set aside, the Petitioner shall stand reinstated for the purpose of being placed under suspension enabling the disciplinary authority to complete the process of imposition of such penalty as may be permissible in law.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to costs.