
(2002) 11 AP CK 0072
In the Andhra Pradesh High Court
Case No : WA No. 1598 of 1999

G. Satyanarayanamma

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2003) 2 ALT 8 : (2003) 1 LLJ 604

Hon'ble Judges : S.R. Nayak, J;Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : G. Ramachandra Rao, for the Appellant; Ramesh Ranganathan, A.A.G., for the Respondent

Judgement

S.R. Nayak, J.—The unsuccessful petitioner-delinquent being aggrieved by the order of the learned single Judge dated 31.8.1999 in Writ Petition No.14845/1995 has preferred this writ appeal.

2. The learned Judge by the order impugned in the writ appeal has upheld the disciplinary action taken by the Management of the Canara Bank, the 1st respondent herein in dismissing the appellant-petitioner from service with effect from 13.7.1994 as a disciplinary measure.

3. Before dealing with the contentions raised in this writ appeal, it will be beneficial to have a glimpse of the relevant facts.

4. The appellant was working as Cashier at Nidadavole Branch of the Canara Bank in the year 1993. While working as Cashier at that time, the management of the bank issued Charge Memo on 17.11.1993 to the appellant. It reads as follows:

"On 24.9.1993, you were working as Cashier at the branch. On that day, one Sri C.L. Perraju S7o Sri Appa Rao, M/s. Sri Lakshmi Watch Co., Nidadavole tendered by an oversight actual cash of Rs. 12,000/- to you for opening a KDR for Rs. 10,000/- for six months. The details of cash tendered by him is:

100 x 44 = Rs. 4,400-00 50 x 12 = Rs. 5,600-00 10 x 200 = Rs. 2,000-00 Total: Rs. 12,000-00 You did not return the excess cash of Rs. 2,000/- received from Sri G.L. Perraju nor did you report any excess cash on 24-9-1993. You misappropriated the above sum of Rs. 2,000/-.

To cover up your above actions, you altered the number of pieces under the denomination of Rs. 100/- from 44 to 24 and the amount thereof from Rs. 4,400/- to Rs. 2,400/- in the credit slip.

You admitted your above actions and reimbursed the amount to Sri Perraju on 15-10-1993.

You have thus misappropriated a sum of Rs. 2,000/- remitted by Sri Perraju on 24.9.1993.

By your above actions, you have caused wilful damage to the property of the Bank/ its customer and thereby committed gross misconduct within the meaning of Chapter XI, Regulation 3, Clause (j) of the Canara Bank Service Code.

By your above actions being prejudicial to the interests of the bank, you have committed gross misconduct within the meaning of Chapter XI, Regulation 3, Clause (m) of the Canara Bank Service Code."

5. Even before the issuance of the above charge memo, the appellant was kept under suspension in contemplation of the departmental enquiry with effect from 15.11.1993. The Enquiry Officer after holding a regular departmental enquiry found the appellant guilty of the charges. The management of the bank after furnishing a copy of the report to the appellant-delinquent and giving her an opportunity to have her say in the matter and not being satisfied with the reply of the delinquent thought it appropriate to dispense with the services of the appellant-petitioner. Accordingly on 13.7.1994, a final order was passed dismissing the appellant from the service of the bank. The appellant-delinquent being aggrieved by the said order preferred appeal under the Canara Bank Service Code to the appellate authority on 22.7.1994. The said appeal was also dismissed by the appellate authority on 30.12.1994. That led to the appellant preferring Writ Petition No. 14845 of 1995.

6. Before the learned single Judge, assailing the validity of the disciplinary proceedings and resultant disciplinary action, three contentions were raised. They are: (1) that the allegation levelled against the appellant-delinquent in the Charge Memo even if it is accepted to be true, would not tantamount to a misconduct of corruption and, therefore, the very basis for punishment is missing; (2) that under Clause 19.12(c) of the Bi-partite settlement, the disciplinary authority is required to take into account the previous record of the delinquent before imposing penalty and since the disciplinary authority and the appellate authority have not considered the past record of the delinquent, on that count itself, the disciplinary action taken against the appellant-delinquent could not be sustained; and (3) that having regard to the nature of the misconduct committed

by the delinquent, the extreme penalty of dismissal imposed on the petitioner was totally disproportionate and it should shock the conscience of the Court. The learned Judge having considered all these three contentions, rejected all the contentions.

7. Sri Ramachandra Rao, learned Counsel for the appellant reiterated the same contentions which were advanced before the learned single Judge before us also. On the other hand, Sri Ramesh Ranganathan, learned Additional Advocate-General who appeared for the Management of the Canara Bank would support the order of the learned single Judge and pointed out that none of the contentions of the appellant merits acceptance.

8. We do not find any merit in the first contention of the learned Counsel for the appellant. Should it be noticed at the threshold that the appellant was charged for a mis-conduct specified in Sub-clauses 3(j) and (m) of the Regulation 3 in Chapter XI of the Canara bank Service Code. Clauses J and M read as follows:

"Clause (j) : Wilful damage or attempt to cause damage to any property of the bank or of any of its customers.

Clause (m) : Doing any act which is prejudicial to the interest of the bank"

9. If by a conduct of an employee, damage is caused to the property of the bank or to its customers, then, it is trite to state that the provisions of Clause 3(j) will get attracted. The question is whether the appellant is guilty" of causing damage either to the property of the management of the bank or to the property of its customers. Of course, it is not the case of the bank that by the complained conduct of the petitioner, she caused any damage to the property of the bank. But, undoubtedly the conduct of the petitioner in appropriating a sum of Rs. 2,000/- for a period from 24.9.1993 to 15.10.1993 caused damage to the property of the customer. Similarly, the above conduct of the delinquent is undoubtedly prejudicial to the interest of the Canara Bank. The image of the bank or any public institution very much depends upon the human agency constituting such bank or institution. If an employee of such institution is corrupt or is indulging in conduct prohibited by law, it cannot be gainsaid that such conduct would not impair the esteem or image of the institution in which he functions. Therefore, the conduct of the appellant-delinquent in misappropriating a sum of Rs. 2,000/- belonging to the customer without either reporting to the bank management or to the customer for a considerable time would badly reflect on the image of the bank and the services rendered by it to its customers. Therefore, Clause 3(m) also gets attracted. The only thing to be seen by the Court is whether the charge framed against the delinquent is proved by some substantive legal evidence.

10. As quite often said and reiterated, the reviewing Court cannot go into question of adequacy or sufficiency of evidence. In other words, if the Court finds that the findings are based on some legally permissible evidence, the findings recorded by the Enquiry Officer and accepted by the Disciplinary Authority should

not be interfered. In the first instance, it is not the case of the learned Counsel for the appellant that the findings recorded by the Enquiry Officer and accepted by the Disciplinary Authority are bad for want of evidence. In fact, the receipt of a sum of Rs. 2,000/- from the customer and retention of the same between 24.9.1993 to 15.10.1993 is admitted by the petitioner herself. Therefore, we do not find any flaw legal or factual in the reasoning of the learned single Judge in recording the finding on the first contention. Of course, learned Counsel for the appellant cited the judgment in *Bharat Overseas Bank Ltd., v. Industrial Tribunal and Anr.* 1998 (2) FJR 271, in support of the contention that the conduct of the appellant would not be a mis-conduct within the meaning of that term under the Conduct Regulations. The contention is not acceptable to us. The learned Judge has referred to the facts of that case and stated how that decision would not support the case of the appellant. Therefore, there is no need for us to dilate on the above contention. It needs to be noticed that both before the Enquiry Officer, Disciplinary Authority as well as before the Appellate Authority, the appellant admitted the misconduct alleged against her and pleaded for mercy at the hands of the authorities and having done so, it should not lie in the mouth of the appellant to turn round and say that she did not commit misconduct alleged against her.

11. We do not find any merit in the second contention of the learned Counsel for the appellant. Having perused the records, we find that the Disciplinary Authority as well as the Appellate Authority applied their mind to the contention of the delinquent that her past records are good and she had earned good remarks and therefore in the premises of such records, she could be dealt with leniently. Therefore, it cannot be said that the disciplinary authority and the appellate authority have not applied their mind at all to the past records of the delinquent as contended by Mr. Ramachandra Rao. The appellate authority in unmistakable terms having referred to the past records of the delinquent has opined that the past records will not mitigate the grave misconduct committed by the delinquent. Regulations do not provide that simply because a delinquent's past records are good, he/she should not be awarded extreme penalty of removal or dismissal from service regardless of the gravity of the mis-conduct committed by him/her. Therefore, the decisions cited by the learned Counsel for the appellant, namely, *S. Murugadhas Vs. State Bank of India and Another*, *Andhra Cement Co. Ltd. v. Mohd. Ilyas and Ors.* 1988 (1) APLJ 581 and *P.R. Venkataiah Vs. A.P. Co-op. Central Agriculture Development Bank and Others*, , are of no help to the appellant and they can be distinguished on facts.

12. In all those cases, the Court found that the authorities imposing penalty did not notice the relevant service rules, which require the examination of past record of the delinquent before imposing penalty. That is not the situation obtaining in the present case. As already pointed out, both the authorities, disciplinary as well as appellate, have applied their mind and rejected the submission of the delinquent to take lenient view of the mis-conduct committed by her in the interest of the bank.

13. Coming to the third contention, suffice it to state that the law is almost crystalised by binding authorities of the Supreme Court and this Court too. In the case of corruption and mis-appropriation or mis-conduct akin to that category of misconduct, the minimum penalty is dismissal or removal from service. In State of Punjab and Others Vs. Ram Singh Ex. Constable, , the Supreme Court held that even a single act of corruption would warrant dismissal. While so holding the Court was pleased to observe at para-6 as under:

"Take for instance, the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of mis-conduct."

14. Similar opinion has been handed down by the Apex Court in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, .

Para-4 reads as follows:

"It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting under proviso (a) to Article 311(2) of the Constitution. In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. The Director had interfered with the punishment under a total misapprehension of the relevant factors to be borne in mind in such a case."

15. In the instant case, the highly objectionable moral fibers of the delinquent employee expressed themselves loudly in her attempt not only to retain the illegal money of the customer for whom she acted as a trustee but also in her attempt to manipulate the entries in the challan book. It is not a thing to be proved by the management, because, the delinquent herself has admitted even the alteration of the entries in the challan book. In the circumstances, if the Court were to consider this misconduct of the delinquent employee leniently, it would tantamount to the Court placing misplaced sympathy on an undeserved person. Time has come that the unscrupulous and corrupt elements in the public organisations/institutions should be weeded out to up keep the integrity and credibility of the institutions. Otherwise, the public institutions would sink under the heavy weight of corrupt elements and that the Court will never be a privy to such a calamity.