(1999) 08 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14845 of 1995

G. Satyanarayanamma APPELLANT

Vs

Canara Bank, Bangalore and others RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:
Canara Bank Service Code — Regulation 11, 3
Constitution of India, 1950 — Article 226

Citation : (2000) 1 ALD 120 : (1999) 5 ALT 727

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. G. Ramachandra Rao, for the Appellant; Mr. Ramesh Ranganathan, SC for Canara Bank, for the Respondent

Judgement

1. The petitioner was a clerk-cum-cashier of the Canara Bank-first respondent. Pursuant to the disciplinary proceedings she was dismissed from service by order of the third respondent dated 13-7-1994. The petitioner preferred an appeal to the second respondent, which was also rejected by orders dated 30-12-1994 and consequently she is before this Court assailing the penalty of dismissal visited on her. Having regard to the ultimate contentions urged for consideration before this Court, the brief conspectus of the facts relevant to be noted are as under:

(a) While working as clerk-cum-cashier at Nidadavole Branch of the Bank on 24-9-1993 a customer approached the petitioner seeking opening of a Kama Dhenu deposit in an amount of Rs.10,000/-. Admittedly an amount of Rs.12,000/- was tendered. The customer recorded the number of notes and denomination correctly in a slip, but in the totalling instead of Rs.12,000/- the amount was recorded as Rs.10,000/- and on the basis of the said slip, the peon of the Bank, who assisted the customer''s representative in filling up pay in slip also reproduced the error and consequently though the denomination and number of notes were correctly reflected, the totalling was recorded as Rs.10,000/-. Consequently the excess amount of Rs,2,000/- tendered by the customer was received by the petitioner as an employee of the Bank incharge of the particular transaction, and a deposit receipt in an amount of Rs.10,000/- only was given to the representative of the customer.

(b) A preliminary enquiry, consequent on the customer''s complaint, was held in the Bank on 15-10-1993 wherein the petitioner admitted of having received the excess amount after having made overwritings in the pay in-slip and also in scroll cash book, and agreed to return the amount to the customer and infact returned. The petitioner also expressed contrition at her conduct.

(c) On 15-11-1993 the petitioner was placed under suspension pending enquiry and on 17-11-1993 a charge-sheet was issued to the petitioner.

In view of the submissions in this writ petition touching upon the grave allegations and imputations in the charge-sheet, it is necessary to extract the relevant portion of the charge-sheet as under:

Charge

"You have been working as Clerk at Nidadavole Branch since 3-5-1993.

On 24-9-1993, you were working as Cashier at the branch. On that day, one Sri G.L Perraju, s/o. 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. 4,40000

50 X 112 = 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, yon 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.

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."

2. The petitioner submitted an explanation, and a regular enquiry was also conducted regarding which there is no complaint. The Enquiry Officer submitted his report on 14-5-1994 giving a finding that the petitioner was guilty of the charges levelled. Subsequently, the petitioner was also issued a notice enclosing a copy of the enquiry report. The explanation of the petitioner was received and on 20-6-1994 another notice was issued to the petitioner proposing penalty of dismissal and calling upon the petitioner to attend personal hearing on 27-6-1994 in that behalf.

3. The petitioner attended the personal hearing on the said date and by orders dated 30-7-1994 the third respondent/disciplinary authority issued orders dismissing the petitioner from service on the basis of the charges found proved by the Enquiry Officer on examination of the evidence.

4. As already stated, the appeal preferred by the petitioner was rejected by orders dated 30-12-1994 communicated to the petitioner on 7-1-1995.

5. Sri G. Ramachandra Rao, learned Counsel for the petitioner contends that the facts alleged and found proved against the petitioner do not tantamount to misappropriation of the property of the Bank or of the customer. He would contend that admittedly the customer wanted to deposit only an amount of Rs.10,000/-, but paid Rs.12,000/-. The excess of Rs.2,000/- paid by the customer, according to the learned Counsel, amounts to entrustment to the petitioner in her personal capacity and would therefore, does not constitute misconduct genetically or misappropriation in specie qua of any enumerated heads of the misconduct specified in the service rules- According to Sri Ramachandra Rao, the remedy of the customer for such an act would be a resort to private law remedies. In any view of the matter, according to him, the facts would not amount to misconduct falling within the parameters of employer and employee service relationship.

6. The second contention of Sri G. Ramachandra Rao is that the disciplinary authority has not considered the past conduct of the petitioner as was warranted tinder clause (c) of para 19.12 of the Bi-partite settlement, which corresponds to Regulation 11 of the Canara Bank Service Code. Both the provisions are ipsissima verba.

It is lastly contended by Sri G. Ramachandra Rao that, at any rate, having regard to the fact that the petitioner and, even prior to initiation of present disciplinary proceedings, admitted receipt of the excess amount and also reimbursed the amount to the customer, the Bank ought not to have, in all fairness, imposed the ultimate penalty of dismissal and that the quantum of penalty is also disproportionate to the proved charges, in the circumstances of the case.

7. Sri Ramesh Ranganadhan, appearing for the respondent-Bank contends that the charge is not misappropriation simplicitor, hut is one among several

imputations set out in the charge memo (which has already been extracted). According to the respondent, the imputations are in brief:

(a) that the petitioner did not return the excess cash received from the customer nor was a report submitted in that behalf and consequently the petitioner indulged in misappropriation of the said amount;

(b) that to cover up the said action, the petitioner altered the relevant records specified; and

(c) that the above action has been admitted and the amount was reimbursed to the customer on 15-10-1993.

the conspectus of (a) to (c) the charge is that the petitioner has misappropriated a sum of Rs.2,000/-remitted by the customer.

The above imputations, Sri Ramesh Ranganadhan, contends, the misconduct alleged fall under enumerated heads viz., clauses (j) and (m) of Regulation 3 in Chapter XI of the Canara Bank Service Code. These enumerated heads for gross misconduct are, causing wilful damage to the property of the Bank or its customer (j), and action prejudicial to the interests of the Bank (m). It is urged that the allegations and the facts proved during the course of enquiry clearly bring the petitioner within the ambit of the above two heads of gross misconduct. The learned Counsel for the respondent also contends that in the totality of the circumstances, the amount of Rs.2,000/- constitutes the property both of the customer and the Bank. That it constitutes the property of the customer is in no doubt, since that amount was not intended to be deposited or to be invested in a deposit. It was however entrusted to the Bank by inadvertance and consequently it becomes the property of the bank to beheld in trust for the purpose of return to the customer. At any rate, contends Sri Ramesh Ranganadhan, the amount has been entrusted to the petitioner not in her personal capacity but as an officer of the Bank and therefore, her conduct in not reporting the matter and in appropriating the amount, as admitted, amounts to gross misconduct and is thus an act prejudicial to the interests of the Bank.

8. Regarding the petitioner''s contention that the disciplinary authority failed to consider past conduct of the petitioner, the Counsel for the respondent contends that the order of the third respondent imposing the penalty of dismissal clearly reproduces the submissions made by the petitioner at the personal hearing to the effect that she has unblemished past record of service and that the disciplinary authority has clearly recorded the fact that he has considered the above submissions and all aspects of the case. According to the respondent''s Counsel in the context, the quantum, degree and quality of reasons vouchsafed in disciplinary proceedings, the said reference in the disciplinary order is sufficient indication of the consideration of past record of the petitioner by the disciplinary authority to his satisfaction as to the penalty to be imposed. It is further contended that, in any view of the matter, the appellate authority has clearly considered the past record of the petitioner and found that such record

would not entitle the petitioner to be visited with a lesser penalty than the one imposed by the disciplinary authority. According to the respondent Bank, since the primary order merges in the appellate order and inasmuch-as the appellate order clearly reflects application of mind in the past record of service, the ultimate visiting of penalty on the petitioner cannot be interfered on the technical ground that the disciplinary authority has not clearly and unambiguously recorded the reasons on this aspect, ft is lastly contended by Sri Ramesh Ranganadhan that in the absence of any prejudice alleged and demonstrated, merely urging non-consideration of the past record, and absent anything to satisfy this Court that such consideration would have clearly or even possibly lead to a different conclusion as regard the quantum of penalty, no interference would be called for in the discretionary rubric of this Court''s jurisdiction under Article 226 of the Indian Constitution.

9. In support of his contention Sri G. Ramachandra Rao, Counsel for the petitioner relied upon a decision of the Madras High Court in Sharat Overseas Bank Ltd, v. Industrial Tribunal and another 1998 (2) FJR 271, to the effect that the entrustment of money to a bank employee by a customer and appropriation of such amount by the customer would not automatically amount to misappropriation of the property of the Bank. The facts arising in the decision considered by the learned single Judge of the Madras High Court are, a bank employee gave an amount to a colleague for the purpose of obtaining a demand draft and the colleague employee did not return the amount to the employee or get the demand draft but admittedly used the amount for his personal purposes and also went on unauthorised leave during that period. On this factual matrix, the High Court came to the conclusion that although the amount could not be said to have been tendered to the bank employee as an employee of the bank, but on account of the personal relationship between the two, this could not amount to misconduct or misappropriation of the property of the Bank or the customer. In the case on hand, the charge is not only misappropriation. All the imputations put together are to the effect that the amount tendered by the customer, may be on an erroneous calculation, has been appropriated by the petitioner, who further indulged in tampering with the records of the bank to cover up her conduct. The facts clearly prove not a mere negligence on the part of the petitioner, but a positive act of misconduct inconsistent with the high degree of trust that is warranted in an employee of the bank in regard to the transactions with its customers.

In the considered view of this Court, the conduct of the petitioner clearly falls within both the clauses (j) and (m) of Regulation 3 in Chapter XI of the Canara Bank Service Code and the conduct of the petitioner constitutes gross misconduct as rightly held by the disciplinary authority. In the circumstances, the order of the appellate authority confirming the same cannot be faulted on the ground that the petitioner has not found guilty of the misconduct on the basis of the allegations proved.

10. Coming to the second contention, Sri G. Ramachandra Rao for the petitioner, relies on the decisions of this Court in Andhra Cements Co. Ltd., v. Mohd. Ilyas and another 1988 (1) APLJ 581 and P.R. Venkataiah Vs. A.P. Co-op. Central Agriculture Development Bank and Others, and urged that the past conduct of the employee ought to be considered by the employer and non-consideration thereof vitiates the penalty imposed on the petitioner by the disciplinary proceedings. Sri Ramesh Ranganadhan for the respondent relies upon a decision of a Division Bench of this Court in State Bank of Hyderabad and others v. N. Narayana Rao 1989 (3) ALT 10, in support of his contention, wherein it was held that, any infraction by the disciplinary authority of the requirement of consideration of previous record of service before imposing punishment would not ipso facto vitiates the enquiry and the consequent punishment, in cases where the appellate authority has considered the previous record and come to appellate determination on the matter. An analysis of the order of the disciplinary authority, in the view of this Court clearly posits consideration of previous record of the petitioner''s service. Cryptic as it is, the recording of the disciplinary authority is sufficient record of reasons that would clearly warrant an inference that the past record of service was within the knowledge of the disciplinary authority while considering the appropriate penalty that should be imposed in the totality of the circumstances. In this view of the matter, the order of the disciplinary authority cannot be held to be vitiated on account of non-consideration of the past record of service of the petitioner. Be that as it may, having regard to the clear consideration of the past record of the petitioner by the appellate authority any misapprehension on the part of the petitioner that the employer did not positively consider this aspect of the matter, must be held misconceived, vide 1989 (3) ALT 10 (supra).

11. Having regard to the allegations found proved, held rightly by this Court, it cannot be said that the punishment of dismissal is disproportionate to the gravity of the charges proved, which are of misappropriation of the property of a customer by a cashier of the Bank. The doctrine of proportionality is not to be invoked to subvert discipline. When the law is clear and the misconduct established and the gravity warrants dismissal, sheer benevolence by the Court is not warranted.

12. In the premises and on the basis of the above analysis, this Court finds no error in the application of law or of discretion in the issuance of the impugned orders. The writ must consequently fail and is accordingly dismissed, but in the circumstances without costs.

