
(2007) 02 PAT CK 0179
In the Patna High Court
Case No : CWJC No. 215 of 2003

Jai Kumar Singh

APPELLANT

Vs

The State Bank of India and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : (2007) PLJR 426

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the parties. The challenge by the petitioner in the present writ application is to the order dated 1.6.2002 (Annexure-21) and 15.12.2002 (Annexure-22) which is the order inflicting punishment of stoppage of three increments with cumulative effect as well as further treating the period of suspension of the petitioner from 12.1.1984 to 13.11.1989 as not on duty.

2. The background to the case is that at the relevant time the petitioner was posted in the State Bank of India, Samastipur Branch as a Clerk-cum-Cashier. On 6.12.1982, while he was working in the Government Receipt Counter of the aforesaid branch of the Bank the Incharge of the Savings Bank Counter Shri Vinod Nath Mishra asked the petitioner to assist Shri Manoj Kumar Jha, working on the Savings Bank Counter, since he was a new hand having joined the Bank only on 14.11.1982. The petitioner opened two Savings Bank Accounts on 16.12.1982, namely, 6280 and 6281. 6280 was opened in the name of one Suresh Chandra Singh. The petitioner assisted by filling in the card etc. as well as the pay-in-slip of Rs. 20/- for opening the account. Subsequently, a fraud was detected on 13.12.1983 in account No. 6280 from where a sum of Rs. 32,800/- was withdrawn without any deposits except Rs. 20/- which was initially deposited. On discovery of the fraud the then Branch Manager, Shri S.P. Singh reported the matter with the Regional Office and a detailed enquiry was ordered

to be made. The petitioner vide order dated 12.1.1984 was placed under suspension and attached to Madhubani Branch of the Bank during the period of suspension.

3. The Bank decided to handover the aforesaid case to the Central Bureau of Investigation (hereinafter to be referred to as the CBI), who registered case No. R-2/84. The CBI investigated the matter but subsequently in the year 1985 decided to return the matter to the Chief Vigilance Officer of the State Bank of India as it did not think the matter was fit to be investigated by the CBI.

4. On 22.12.1986 a memo of charge was served upon the petitioner to show-cause as to why the disciplinary proceeding should not be initiated against him. The basic charge was with regard to the petitioner opening the Savings Account No. 6280 of Shri Suresh Chandra Singh, who turned out to be a fictitious person. Since the petitioner had opened the account and made entries in the documents, even though he was not the person assigned to the Savings Account but was on Government Receipt Counter of the day he had committed grave misconduct.

5. The petitioner submitted his reply to the charges on 14.3.1987 and he admitted having opened the account in the background that it was at the request/ direction of Shri Vinod Nath Mishra that he assisted Shri Manoj Kumar Jha in opening the savings account but there was neither any complicity or mala fide involved in the action of the petitioner.

6. The Bank did not accept the explanation offered by the petitioner and decided to initiate a departmental enquiry into the charges leveled against him. The Enquiry Officer was one Mr. D.C. Guha, J.M.G.S.-I. The enquiry was conducted by the Enquiry Officer and on behalf of the Bank three P.Ws. were examined. The petitioner examined himself as a defence witness. Out of three management witnesses, namely, Shri B.K. Jha, the Officer in the Savings Bank Section, Shri S.P. Singh, the then Branch Manager and one Shri D.D. Goyal, the Handwriting Expert were examined. After a detailed examination of the witnesses and evidence, the Enquiry Officer came to submit his report dated 23.6.1989. The enquiry report has been brought on record, which is Annexure-10 to the writ application. The Enquiry Officer after discussing the case of both the prosecution as well as the defence side gave his findings in paragraph 4.1 to 4.6 and concluded thus:--

"On the basis of the available evidences I have come to the conclusion and to state without any hesitation that the charges leveled against the employee is not proved".

7. The matter traveled to the disciplinary authority, who was one Mr. L.N. Prasad, Regional Manager, Region-IV. The Disciplinary Authority in his wisdom decided to disagree with the findings of the Enquiry Officer and vide his order dated 12th September, 1989 (Annexure-11) recorded his reason disagreeing with the findings of the Enquiry Officer.

8. This Court at this stage can only state that the Disciplinary Authority does have the necessary powers to disagree with the findings of Enquiry Officer but while giving its reason on disagreement he must refer to the findings and evidence which has already come on record and with which conclusions he disagrees and why. The Disciplinary Authority is not holding a parallel enquiry into the matter and it is not open to him to write a kind of enquiry report of his own as seems to have been done by him in the present case. The punishment of stoppage of three increments with cumulative effect and as also the period of suspension being treated as one of absence from duty was imposed against the petitioner after giving him opportunity on the so-called proposed punishment.

9. The appeal by the petitioner against the order of punishment imposed by the Disciplinary Authority as provided under para 521(12) of the Sastry Award and as retained in the Desai Award was filed by the petitioner. However, the appeal of the petitioner was rejected vide order dated 14.2.1990 (Annexure-14) by the then Deputy General Manager working as the Appellate Authority dittoed the order of Disciplinary Authority.

10. The petitioner thereafter filed C.W.J.C. No. 2067 of 1990 challenging the order of punishment. The matter was heard and vide order dated 8.2.1999, the High Court dismissed the writ application. Thereafter an appeal, namely, L.P.A. No. 792 of 1999 was filed by the petitioner and a Division Bench, while disposing of the above L.P.A. vide its order dated 1.2.2000 remitted the matter back to the disciplinary authority with a direction that it should serve upon the appellant a notice recording its reasons for disagreement with the findings of the Enquiry Officer. The Court also called upon the appellant to make a representation before the Disciplinary Authority and the Disciplinary Authority was directed to pass such order or impose such punishment as it may consider appropriate in the facts and circumstances of the case. The petitioner, therefore, was again put back before the Disciplinary Authority in terms of the order passed by the Division Bench of this High Court. The petitioner carried out the directions of the Court and placed his points before the Disciplinary Authority. The Disciplinary Authority came to pass its order on 1.6.2002 (Annexure-21).

11. Both counsels for the petitioner as well as the respondent State Bank of India took me through the impugned orders and made their submissions. One fact which surely emerges from perusal of this order is that the second order of the Disciplinary Authority is a kind of repetition of the earlier order passed by the then Disciplinary Authority, which is contained in Annexure-11. Not only that the Disciplinary Authority while passing the present order dated 1.6.2002 has gone many miles ahead of the evidence, which has been brought on record during the course of enquiry by the Enquiry Officer. In fact reading of the order also reflects that it is more a sermon of what an employee ought to have done or should do as a competent and efficient employee of the Bank instead of what he had actually done. A perusal of Annexure-11 as well as Annexure-21 would show that the Disciplinary Authority wanted to set an example and used the present

punishment as a deterrent rather than evaluating the conduct of the petitioner based on the evidence, which came against him in the enquiry. This, to my mind, is not the ways and means by which a Disciplinary Authority is expected to disagree with the finding of an Enquiry Officer.

12. Learned counsel for the petitioner also submitted that Disciplinary Authority has not indicated in its orders as to how it disagreed with the findings and with which part of the conclusion it did not agree with and in that view of the matter the order of the Disciplinary Authority also cannot be said to be in consonance with law. He further submits that the petitioner at the very initial stage did accept before the authorities as well as before the Enquiry Officer the fact that he had assisted in opening the account on request/direction of superior but that by itself was not misconduct. That the account was operated for quite a while and it was only on 13.12.1983 i.e. almost one year thereafter that fraud was committed through that account. In absence of any evidence to link the petitioner with the account-holder and in absence of also the fact that the role or responsibility of other employee under whose jurisdiction the account was operated for over a year was not gone into speaks for itself. The mere fact that the petitioner helped in opening an account would not be enough to bring home the charge of guilt against him. Therefore, it is at the best a case of non-application of mind, if not an order being passed on extraneous material being fit to be set aside.

13. Learned counsel for the respondents, however, submitted that the Disciplinary Authority had applied its independent mind and had the requisite authority to come to its conclusion. Having considered the matter the necessary order of punishment was imposed.

14. After going through the record of the case and hearing the counsel for the parties, a few things do emerge that after the petitioner was exonerated by the Enquiry Officer, the Disciplinary Authority twice over have laboured to punish the petitioner not based on the material which had come in the enquiry but more motivated by the fact that a message must go to other employees of the Bank. This punishment was held out as a deterrent to others rather than to get down to the bottom of the delinquency which invited the punishment of the kind which was imposed upon the petitioner.

15. As already indicated above the Disciplinary Authority surely did have the authority to disagree but then the Disciplinary Authority does not have the power to rewrite its own orders de hors the evidence which was available on record by virtue of the enquiry held against the delinquent. The order of the Disciplinary Authority to that extent is more a sermon on what the petitioner ought to have done rather than the fact as to what he had actually done. Further, whether the same said omission could amount to indiscipline or misconduct, which could visit him with serious civil consequence.

16. That being the position this Court is of the opinion that the Disciplinary

Authority has failed in its duty and has exceeded its jurisdiction by disagreeing with the findings of the Enquiry Officer and bringing home punishment of guilt against the petitioner by adopting a methodology unacceptable in law. Even otherwise if for the sake of argument the basic charge against the petitioner of having assisted in opening the savings account is accepted on face value that by itself should not be enough to impose the punishment which according to this Court is excessive and disproportionate. A warning or a censure may have had a better effect than the severe punishment which has been imposed on him, which in turn has jeopardised his future career progression in the Bank.

17. In view of the above factual and legal position, the order of punishment dated 1.6.2002 contained in Annexure-21 and the order dated 15.11.2002 contained in Annexure-22, which is the appellate order passed by the Appellate Authority confirming the order of punishment dated 1.6.2002 are hereby set aside. This writ application is accordingly allowed. However, there shall be no order as to costs.