(2018) 04 GAU CK 0067

In the Gauhati High Court

Case No : WP(C) 6528 of 2010

JATIN DAS — APPELLANT

Vs

THE UNITED BANK OF INDIA — RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 409
Indian Evidence Act, 1872 — Section 65(D)(4), 114

Citation : (2018) 04 GAU CK 0067

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.Heard Mr. D.P. Chaliha, the learned Senior Counsel appearing for the petitioner. Also heard Mr. S. Dutta, the learned Senior Counsel appearing for

the United Bank of India (hereinafter referred to as â??the Bankâ??) and their officers (respondents).

2. The matter pertains to a Disciplinary Proceeding, against the petitioner who at the relevant period (14.9.2004â?"5.5.2007), served as the Dy.

Manager in the Doomdooma Branch of the Bank. On the allegation of misappropriation against the Dy. Manager, the FIR was filed on 26.4.2008 by

the Bank, leading to registration of the Doomdooma P.S. Case No.153/2008, under Section 409 of the IPC. The substance of the allegation in the

Criminal Case, inter alia, is that the Dy. Manager had prepared fraudulent Debit Vouchers and gave credit to his own Savings Bank and the Over

Draft accounts. Additionally, fraudulent preparation of demand draft was also mentioned in the FIR, filed against the petitioner.

3. On the very same allegations, the Bank authorities decided to hold an enquiry

under Regulation 6 of the United Bank of India Officer

Employeesâ?? (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as â??the UBI Regulationsâ??). Thus the charge memo dated

18.6.2008 (Annexure-3) was issued to the delinquent. The content of the allegations are extracted here-in-below for ready reference:

â??â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦.

1. You were maintaining SB a/c No.7989 with Doom Dooma branch. Although you had not deposited any cheque in your account for collection, you

debited remittance in Transit A/C. OCC in Transit A/c and Bank A/c on a number of occasions without any valid consideration and credited the

proceeds to your SB a/c No.7989. Subsequently, you had withdrawn the amount credited in such fraudulent manner in cash through withdrawal

slips/cheques drawn in your aforesaid SB a/c. The instances of such misappropriation of bankâ??s funds were furnished in Annexure-I to the charge

sheet.

2. You were maintaining OD a/c No.330018 with Doom Dooma branch. You had credited your said OD account by adopting similar modus operandi

and details of such instances of misappropriation of bankâ??s funds through your OD a/c No.330018 were furnished in Annexure-II to the charge

sheet.

3. You had debited Bank A/c of the branch on three occasions and credited the proceeds to SB a/c No.16243 of Sri Jai Prakash Lahakar, though no

cheque was deposited for collection by Sri Lahakar in his SB a/c No.16243. The A/c holder had subsequently withdrawn the money in cash through

cheques drawn on his SB a/c. You had, therefore, extended undue financial benefit to a customer through fraudulent means. The instances of

misappropriation of bankâ??s funds through SB a/c No.16243 were furnished in Annexure-III to the charge sheet.

4. On 04/05/06, an aggregate amount of Rs.181157/- was credited to the Bank A/c by SBI against three cheques presented under LCC. But before

getting these credits on 03/05/06, you debited Rs.181157/- to the Bank A/c and credited the proceeds to individual accounts of the customers. On

03/05/06, SBI had credited the Bank A/c by Rs.10,70,226/- towards payment of LCCs lodged by the branch. But on 03/05/06, you debited the Bank

A/c by Rs.1116707/- instead of Rs.1070226/-. In the Miscellaneous Sub-cash book, written by you in your own handwriting, Bank A/c was debited by

Rs.181157.00 & Rs.1116707.00 and without preparing any voucher, a further amount of Rs.133.00 was also debited. Thus, the debit entry in the Bank

A/c was inflated by Rs.46614.00 Against this inflated debit entry of Rs.46614.00, you prepared a Demand draft challan for purchasing a Demand

Draft for Rs.46481.00 plus exchange of Rs.133.00, favouring J.B. Auto Pvt. Ltd. payable at Tinsukia. You received the demand draft, even though

the name of the purchaser was not mentioned in the deposit challan. Thus, you have misappropriated Rs.276340.00 through your SB a/c No.7989,

Rs.42136.00 through your OD a/c No.330018 and Rs.46481.00 through the Draft A/c besides effecting fraudulent credits of Rs.70000.00 in SB a/c

No.16243 of Sri Jai Prakash Lahakar. As a result, the bank has suffered financial loss of Rs.435090.00 due to misappropriation of its funds by you for

your personal financial gains. â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦..â??

4. The departmental enquiry was held on the above charges and the delinquent participated in the enquiry proceeding. The Bank produced the Local

Cheque Collection Register, the Credit Vouchers, the Debit Vouchers and other relevant documents to prove the charges. The delinquent was

furnished the copies of the concerned documents and was afforded the opportunity to compare them with the original records available at the enquiry

venue. The enquiry officer in conclusion held on 9.1.2009 (Annexure-5) that, all the charges were proved, baring the Charge No.3(c).

5. The copy of the enquiry report was furnished and the delinquent in his response stated that, he suffered disadvantage in the departmental enquiry

since the criminal trial was proceeding around the same time. The inadequacy of staff in the Doomdooma Branch of the Bank was projected as one

of the cause for the discrepancies in the accounts.

6. The disciplinary authority in his turn noted that the charges have been established on the basis of cogent documentary evidence. As regards the

non-establishment of the Charge No.3(c), the discrepancies in the Bankâ??s records for the cheque cleared on 22.1.2007 vis-Ã -vis the charge was

found. Moreover for this particular charge, the Local Cheque Collection Register was not produced, in support of the allegation. With such minute

examination of the material basis for the findings recorded by the enquiry officer, the concurrence was recorded with the enquiry officerâ??s conclusion. Then the gravity of misconduct was assessed and the major penalty of dismissal in terms of Regulation 4(1) of the UBI Regulations was

imposed on the delinquent, by the order dated 27.2.2009 (Annexure-7). The resultant Appeal was dismissed by the Appellate Authority on 14.5.2009

(Annexure-9) and the Review Petition filed on 29.6.2009 by the Dy. Manager was disposed of on 8.9.2009 (page-102) by the Reviewing Authority,

without disturbing the disciplinary action taken against the delinquent.

7.1. Assailing the legality of the disciplinary action, Mr. D.P. Chaliha, the learned Senior Counsel projects that the delinquent who faced prosecution

under Section 409 of the IPC on the same set of allegation was acquitted on 30.12.2016 in the G.R. Case No.540/2008 and on the basis of such

acquittal ordered, by the Court of the Addl. CJM, Tinsukia, the senior counsel argues that penalization of the Bankâ??s Dy. Manager in the

Disciplinary Proceeding, would not be justified.

7.2. The petitioner contends that he was denied a fair opportunity to defend the charges and it is further argued that the conclusions drawn by the

inquiry officer is not supported by relevant evidence.

7.3. The prejudice caused to the delinquent, who was made to simultaneously face the criminal prosecution as also the Disciplinary Proceeding, is

highlighted by Mr. Chaliha, to discredit the disciplinary action.

8.1. On the other hand, Mr. S. Dutta, the learned Senior Counsel submits that the petitioner as the Dy. Manager, posted in the Doomdooma Branch of

the Bank, was occupying a position of trust and was discharging fiduciary responsibilities and on this basis, the dismissal punishment for the charge of

misappropriation, is projected to be justified.

8.2. The senior counsel submits that the benefit given by the Criminal Court in the G.R. Case No.540/2008, is not a honorable acquittal but is on

account of the failure of the prosecution to produce relevant materials in the manner required by the Evidence Act. It is accordingly argued that the

acquittal in the criminal case will not automatically impact the disciplinary action.

8.3. The Bankâ??s lawyer refers in detail to the departmental enquiry and projects that due opportunities were afforded to the delinquent by the

inquiry officer and moreover the findings on each charge, is based on relevant evidence, produced in the enquiry.

9. When the departmental proceeding and the criminal case are based on identical and similar set of facts and the charge in both proceedings are one

and the same, in the event of an honorable acquittal, the delinquent can claim relief in the departmental action. But the key question here is whether

the petitioner was given the benefit of doubt or it was a case of honorable acquittal, by the Criminal Court.

10. The judgment of the learned Addl. CJM, Tinsukia, in the G.R. Case No.540/2008, reflects that the prosecution failed to produce the Vouchers

prepared by the accused and withholding of those Vouchers from the Trial Court by the prosecution, persuaded the learned Judge to draw up

presumption in favour of the accused, under Section 114 of the Evidence Act. Similarly, the failure of the prosecution to arrange for certification under

Section 65(D)(4) of the Evidence Act, for the printouts of the Bankâ??s electronic system, to prove the Material Exhibit No.1 & 2, was the major

reason for the Trial Court to ignore those material exhibits. Thus the key factor for the acquittal verdict was the failure of the prosecution to prove the

case against the accused in accordance with legal requirement.

11. The responsibility for conducting the criminal trial is in the hand of the prosecuting agency and in cases of this kind, the Bank, after registering the

FIR, has no role to play beyond rendering assistance to the prosecution in the Criminal Trial. The prosecution as can be seen from the verdict, failed to

produce the fabricated Vouchers and they also did not arrange for certification of the Material Exhibit No.1 & 2, as is required under Section 65(D)(4)

of the Evidence Act. In fact, non-production of the fabricated Credit and Debit Vouchers prepared by the accused, led to drawl of negative

presumption by the Trial Court, under Section 114 of the Evidence Act. It is because of such deficient prosecution, the accused was given acquittal

and this cannot be categorized to be a case of honorable acquittal.

12. The Supreme Court, in the R.P. Kapur vs. Union of India reported in AIR 1964 SC 787, as approved in Inspector General of Police vs. S.

Samuthiram, reported in (2013) 1 SCC 598, declared that acquittal of an employee by a Criminal Court would not automatically and conclusively

impact the Departmental Proceeding. The reasoning for such conclusion is analysed in Union of India vs. Purushottam, reported in (2015) 3 SCC 779,

where the Court referred to the disparate degrees of proof in the two proceedings i.e. beyond reasonable doubt in criminal prosecution contrasting

with pre-ponderance of probability, in the departmental proceeding. The failure of the prosecution in assimilation and proper presentation of evidence,

which is not in the control of the disciplinary authority was also highlighted as the reason for the Courtâ??s conclusion. That apart, the obligation of

the Court to render its verdict in criminal matters on the basis of standard of proof beyond reasonable doubt, is projected as the justification for not

accepting the acquittal verdict, to allow automatic exoneration of a delinquent, in a departmental proceeding.

13. Proceeding on the same line, the Supreme Court in S. Samuthiram (Supra), held that the strict burden of proof required to establish guilt in a

Criminal Court, in not required in a Disciplinary Proceeding and the pre-ponderance of probability is sufficient, to draw conclusion against the

delinquent.

14. With the above understanding of law, if we examine the basis for the conclusion drawn by the inquiry officer, what is discernible is that the

charges have been held to be proved on the basis of documentary evidence produced in the enquiry. The Local Cheque Collection Register, the Credit

Vouchers and the Debit Vouchers, which were fraudulently prepared by the delinquent, were the primary materials on the basis of which, the charges

were found to have been established, by the inquiry officer. The proper application of mind to the materials available on record by the Enquiry Officer

can be inferred from the fact that the Charge No.3(c) was found to be not proved because of the mismatch of the concerned documents with the

allegation in the Charge No.3(c).

15. It is further seen that copies of all documents relied by the prosecution were furnished to the delinquent and he was also given the opportunity to

inspect the original documents available at the enquiry venue. In fact, the Dy. Manager was satisfied with the genuineness of the supplied documents

and therefore, he did not feel the need to compare the furnished documents with the original records. The delinquent actively participated in the

enquiry and also submitted defence proof and placed his arguments before the inquiry officer. The concerned materials were matched with the

charges and the conclusions in my perception, were recorded on the basis of cogent evidence.

16. In the above backdrop, no infirmity or error is seen with the disciplinary action. As earlier noted, the acquittal in the Criminal Case was primarily

on account of the failure of the prosecution to discharge their responsibility in the Criminal Trial. If we now apply the principle of pre-ponderance of

probability to test the finding of the inquiry officer, there is no manner of doubt that the conclusions have been drawn on the basis of cogent materials

like the Local Cheque Collection Register, the Credit Vouchers and the Debit Vouchers and contrary evidence could not be brought by the delinquent

for a contrary conclusion in the matter.

17. That apart, I find that the disciplinary authority had taken into consideration all the relevant materials and weighed the gravity of the misconduct

and then penalized the Dy. Manager. The copy of the inquiry report was furnished to the delinquent and his response were taken into account by the

disciplinary authority. The delinquent participated in the disciplinary enquiry without any reservation. Thus it cannot be said that natural justice was

denied to him.

18. In view of above, the suggested interference with the disciplinary action is found to be un-merited. The writ petition being devoid of merit is

accordingly dismissed. No cost.a