
(2016) 05 OHC CK 0024

In the Orissa High Court

Case No : O.J.C. No. 6048 of 1994 (In the matter of an application under Article 226 of the Constitution of India)

Kalakar Chakra

APPELLANT

Vs

Orissa Gramya Bank

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Regional Rural Banks Act, 1976 — Section 29

Citation : (2016) LIC 3486

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. Subir Palit, Advocate, for the Petitioner; Mr. G.A.R. Dora, Senior Advocate, for the Opposite Party Nos.1 and 2

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J.—This petition challenges the enquiry report dated 31.7.1992, vide Annexure-4, submitted by the Enquiry Officer, opposite party no.3; order of dismissal passed by the disciplinary authority on 29.9.1992, vide Annexure-7 and the order of the appellate authority dated 18.7.1994, vide Annexure-11, confirming the said order.

2. Shorn of unnecessary details, the short facts of the case of the petitioner are that he was appointed as Sweeper-cum-Water Boycum-Messenger on temporary basis in Baitarani Gramya Bank, Soso Branch, in the district of Keonjhar. He worked there upto August, 1986. Thereafter, he was transferred to Bato Branch and then to Dhanda Branch. While working there, he was placed under suspension pending disciplinary proceeding on 18.6.1991. On 14.8.1991, the charge sheet was served to enquire into the following charges:

"Charge-I : Sri Kalakar Chakra got prepared a round stamp for the branch without any approval/sanction. This round seal was found to be affixed on forged credit advices purported to be drawn by Soso branch of Keonjhar branch.

Charge-II : Sri Kalakar Chakra is alleged to have prepared 5 credit advices totalling Rs. 79,900/- purported to be drawn by Soso branch of Keonjhar branch favouring one Sri Subash Chandra Samal, a fictitious account of the branch, which was withdrawn subsequently from the said fictitious account, thereby causing heavy loss to the Branch."

He submitted his explanation on 27.8.1991 stating therein that the transaction of the alleged amount was not the business of the messenger. At no point of time, he had been deputed to place any order before "Biswakarma Book Binding Works" or deliver the same. The Branch Manager was the custodian of the stationary and stamps and, as such, the charges were baseless. Thereafter, the opposite party no.3 was appointed as Enquiry Officer. After conducting enquiry, he submitted the report stating therein that the charges had been proved. The disciplinary authority issued second show cause upon submission of the enquiry report. While the matter stood thus, the petitioner was dismissed from service on 29.9.1992, vide Annexure-7. Thereafter, he approached this Court in OJC No. 7065 of 1993 assailing the order of punishment. The said writ application was disposed of on 7.4.1994 granting liberty to the petitioner to file an appeal before the appellate authority. Thereafter, he filed an appeal before the opposite party no.4 on 26.4.1994, which was eventually dismissed.

3. An additional affidavit has been filed stating therein that the incident occurred in the year 1985. The Central Bureau of Investigation (CBI) lodged an FIR on 15.1.1989 and took up the investigation. After completion of investigation, charge sheet was submitted against three employees of the Bank, namely, Banshidhar Sahu, Nityananda Das and Kunar Hansdah. The petitioner was interrogated by the CBI. No charge sheet was filed against him. The departmental proceeding initiated against Banshidhar Sahu was stopped during pendency of the criminal case. He was acquitted in the criminal case. No departmental proceeding was initiated against other two employees.

4. During pendency of the writ application, Baitarani Gramya Bank was merged with the Orissa Gramya Bank and accordingly an application was filed and the same allowed.

5. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties 1 and 2. It is stated that the findings arrived at were in conformity with the requirements of law. The principle of natural justice had been followed during enquiry. The criminal case pertained to the role of the Manager, 2nd Officer and a Clerk of Keonjhar Branch where the credit advices were encashed. The same had nothing to do with the petitioner's misconduct. It is further stated that M.Es. 5 to 9 were five credit advices, total Rs. 79,900/-. M.Es 5 and 6 on which the petitioner affixed the round seal were written in his own handwriting. The other three advices were written at his instance after his transfer from Soso Branch. He could not affix the round seal on the three advices as the said round seal was left in Soso Branch. Thus the other three advices were written at his instance and on his instructions. It was established during enquiry

that the petitioner was entrusted with the work of getting the Bank's old seals repaired and new seals prepared from "Biswakarma Book Binding Works". It is further stated that the role of the petitioner was not investigated by the CBI. There is no bar to initiate the departmental proceeding against the petitioner. It is further stated that as a sub-staff, the petitioner was doing the despatch work after affixing the Branch seal on the official letters and other documents. There was no Daftary and the petitioner was using the table of the Daftary. The round seal was recovered from the drawer of the table used by the petitioner. Further, the word in the original seal of the Bank was "Baitarani" whereas in the round seal, it was spelled as "Baitarini". This was deliberately done to give an impression that the credit advices did not originate from Soso Branch where the petitioner was working. Credit, Advices M.Es 5 and 6 were written by the petitioner before his transfer in which the round seal was affixed by him and the impression of the seal was the same as that of the seal found from the Daftari Table used by the petitioner. Therefore, recovery of the seal after his transfer was not material. Since M.Es 5 and 6 were prepared by him, the other credit advices M.Es. 7,8 and 9 were prepared on his instructions and with his cooperation. The CBI investigation against the staff of Keonjhar Branch where the credit advices were encashed had got nothing to do with the departmental proceeding against the petitioner. It is further stated that M.W-1 was the Manager and M.W-3 was the Field Officer of Soso Branch. They were examined in the presence of the petitioner and his defence counsel cross-examined them. M.Ws. 1 and 3 categorically stated that they were acquainted with the handwriting of the petitioner and they confirmed on the basis of petitioner's leave applications, reminder notices written by him. Signatures in the opening account related to staff of Keonjhar Branch and the CBI filed criminal case against them.

6. Heard Mr. Subir Palit, learned counsel for the petitioner and Mr. G.A.R. Dora, learned Senior Advocate for the opposite parties 1 and 2.

7. Mr. Palit, learned counsel for the petitioner, argued with vehemence that in the absence of any specific evidence as to the involvement of the petitioner in the alleged fraud, the finding of the Enquiry Officer that the petitioner had prepared the seal and used it on ME-5 and ME-6 with an intention to make way for fraudulent transaction at Keonjhar Branch is perverse inasmuch as the same is based on mere surmises and conjectures. The petitioner worked for sometime at Soso Branch and had no connection with the Keonjhar Branch. The alleged seal was recovered much after the petitioner's departure from the Soso Branch on transfer. Further, for the self-same allegations, CBI had lodged FIR, investigated the matter and submitted charge sheet against three employees. In course of investigation, the petitioner was interrogated but no charge sheet was submitted against the petitioner. Thus initiation of the departmental proceeding is bad in law. Further, the proceeding initiated against the persons who faced criminal charges had been dropped. He further submitted that even if the charges against the petitioner are proved, the punishment is too disproportionate. To buttress his submissions, he relied on the decisions of the apex Court in the case of B.C.

Chaturvedi v. Union of India, AIR 1996 SC 484, Union of India v. G. Ganayutham (Dead) by LRs, AIR 1997 SC 3387, Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625, Govt. of A.P. & others v. Mohd. Nasrullah Khan, AIR 2006 SC 1214, State of Rajasthan & another v. Mohammed Ayub Naz, AIR 2006 SC 856, Indian Airlines Ltd. v. Prabha D. Kanan, AIR 2007 SC 548 and Om Kumar and others v. Union of India, AIR 2000 SC 3689.

8. Per contra Mr. Dora, learned Senior Advocate for the opposite parties 1 and 2, submitted that the scope of interference in a disciplinary matter under Article 226 of the Constitution of India is limited. This Court cannot scan the evidence, unless it is perverse. The Enquiry Officer, after affording opportunity of hearing to the petitioner, submitted a detailed report stating therein that the charges against the petitioner were proved. The disciplinary authority accepted the same and awarded punishment of dismissal, which was upheld by the appellate authority. The principle of natural justice had been followed. He relied on the decisions of the apex Court in the case of Divisional Controller N.E.K.R.T.C. v. H. Amaresh, AIR 2006 SC 2730 and Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy, AIR 2005 SC 2769.

9. The scope of interference of the order of punishment passed by the disciplinary authority in an application under Article 226 of the Constitution of India is no more res integra.

10. In the case of State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 SC 1723, the Supreme Court in paragraph 7 of the report held:

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair

decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

11. The same view was echoed in Mohd. Nasrullah Khan (supra). In para-11 of the report, it was held thus:

"By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority."

12. As has been propounded by the apex Court in the decisions cited supra, the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. The jurisdiction is confined to correct errors of law or procedural law resulting in manifest miscarriage of justice or violation of principle of natural justice.

13. On the anvil of the decisions cited supra, the case of the petitioner is required to be examined. The Enquiry Officer submitted a detailed report stating therein that the charges levelled against the petitioner had been proved. The Enquiry Officer came to hold that hand writings of the petitioner in ME-5 and ME-6 proved his involvement in preparation of forged credit notes. He further held that since the round seal of Baitarini Gramya Bank, Soso Branch was affixed on ME-5 and ME-6 and the impression of the seal was the same as that of the seal found in the Soso Branch from the Daftari Table used by the petitioner during his time, the petitioner had prepared the seal and used it in ME-5 and ME-6 with intention to make way for fraudulent transactions. The petitioner had prepared the seal without approval/sanction of the branch. Since ME-5 and ME-6 had been prepared by him, it indicates that other credit advices (ME-7,8 and 9) were prepared at his instructions.

14. The enquiry report was accepted by the disciplinary authority and punishment was awarded. The petitioner unsuccessfully challenged the order of punishment of dismissal passed by the disciplinary authority before the appellate authority, which was eventually dismissed. The departmental authorities are the sole judges of facts. The enquiry was conducted according to the prescribed procedure. The disciplinary authorities had provided reasonable opportunity to the petitioner to defend his case. In fact an officer of the bank, at the request of

the petitioner, was appointed as defence representative to defend his case. In an elaborate report, the Enquiry Officer came to hold that the charges were proved. The finding of the Enquiry Officer cannot be said to be perverse.

15. In *Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar*, AIR 2003 SC 1571, a disciplinary proceeding was initiated against the respondent. It was alleged that he had committed several acts of misconduct while functioning as Assistant Manager of Mirzapur Branch. He was placed under suspension and the disciplinary proceeding was initiated in terms of Regulation of the Uco Bank. The charges were found to be established in respect of charge nos.1,2,3,6,7 and 8. On the basis of findings recorded by the Enquiry Officer and as endorsed by the Disciplinary Authority, the order of dismissal was passed. The appeal preferred by the respondent did not bring any relief. Similar was the fate of the review application. The matter was carried in the writ application before the Allahabad High Court. One of the points highlighted to question the quantum of punishment was that in a similar situation, lesser punishment was imposed on one M.L. Keshwani though the allegations against him were of much serious nature. The High Court accepted the plea and allowed the writ application. Thereafter, the matter was carried to the apex Court. The apex Court held that the scope of interference with quantum of punishment cannot be a routine matter. It was further held that a Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank.

16. The punishment awarded to the petitioner cannot be said to be too disproportionate to the charges. In view of the same, the decisions cited by Mr. Palit, learned counsel for the petitioner are distinguishable.

17. On taking a holistic view of the matter, this Court is of the considered opinion that no case is made out for interference.

18. Accordingly, the writ application is dismissed. No costs.