

(2013) 08 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2736 of 2004

Kalive Pratap Kumar Alias K.P. Kumar

APPELLANT

Vs

The State Bank of India and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2014) 1 AJR 287

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Babban Lal and C.S. Pandey, for the Appellant; Rajesh Kumar, Maninder Kr. Sinha and Amit Kumar, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has challenged the impugned order of punishment passed by the Disciplinary Authority dated 6.6.2000, contained at Annexure-7 in Departmental Proceeding No. D.G.M./R/Vig/14 dated 29.05.1998, the appellate order dated 3rd May, 2001, contained at Annexure-8 and the order in review communicated vide letter dated 24th July, 2002 contained at Annexure-9.

2. When the petitioner was serving as Branch Manager, MMGS-II in the Respondents-Bank he has been served with a charge-sheet dated 29th May, 1998 by Deputy General Manager of the Respondents-Bank. Prior to that, the petitioner had been placed under suspension by order dated 30th September, 1996 issued by the General Manager, (D & PB) for certain alleged serious irregularities in sanction and conduct of advances during his period as Branch Manager at Bishrampur Branch.

3. The statement of allegations annexed to the charge-sheet dated 29th May, 1998 contained 9 charges. At this stage the entire allegations, contained in all the charges are not necessarily to be noticed hereunder as in the departmental inquiry which was conducted against the petitioner, the Inquiry Officer found the charges contained in allegation Nos. 3, 5(a), 7 and 8 only to be proved while the

charges contained in allegation Nos. 1, 2a, 2b, 2c, 4 and 5b, 6 and 9 were found not to be proved.

4. The impugned order of punishment has been passed on the charges, which was found to be proved against the petitioner. Therefore, the relevant charges Nos. 3, 5a, 7 and 8 are being referred to hereinbelow for the purposes of adjudication on the issues raised by the petitioner in the instant case.

5. The Charge No. 3 was in relation to the allegation that he had misappropriated the bank's loan and subsidy in 23 cases for purchase of milch cattle and there was no credit in the account towards repayment till 11th August, 1996. The supplier made cash deposit of Rs. 1000/- each in these 23 borrowers' Accounts on 12th August, 1996, on which day the second installments aggregating Rs. 1,32,448/- was released. The vouchers did not record the thumb impression of the borrowers and were prepared in his own handwriting. In absence of recovery in respect of first dose of loan, the loanees were not eligible for the second dose of financing. Therefore, by manipulation the amount of Rs. 1,000/- was credited on the date of second dose of disbursement. The Inquiry Officer in respect of instant allegation, however, after discussing the case of the prosecution and the defence, came to a conclusion that an amount of Rs. 1000/- each was, in fact, credited in all 23 borrowers' Account and vouchers were initialed by one person, namely, Sri K.P. Kumar on 12th August, 1996 for purchase of second cattle. Therefore, the aforesaid charges were proved.

6. The Charge No. 5(a) was in relation to the allegation that he sanctioned and disbursed an amount of Rs. 24,000/- on 20th November, 1995. (A/c No. ACC/95/19), in the name of Sri Mahabir Prasad, the landlord of Branch premises, without appraisal and in excess of the discretionary powers vested with him, the said amount was used to liquidate the outstanding earlier crop loan (A/c No. ACC 19/1) in the name of said landlord. Thereby he allowed diversion/misuse of the advance sanctioned. The petitioner's defence for the said charge was that the landlord of the branch premises of the Bank was a respectable man and prominent farmer having 40 acres of land and therefore the petitioner cannot be said to have exercised his power when he submitted the P.C.R. (the control return) on time to the controller. The loan was repaid well in time. The Bank sustained no financial loss in this regard. The Inquiry Officer however held that the sanctioned of Rs. 24,000/- was in excess of his discretionary power and was used to liquidate earlier crop loan that amounted to diversion of fund to liquidate earlier loan. Therefore the allegation is proved.

7. The Charge No. 7 was in relation to the allegation that he had disbursed a loan of Rs. 1.94 Lacs although the Zonal Office had sanctioned this loan for Rs. 1.58 Lacs only. By taking advantage of a simple clerical error on the heading of Zonal Office letter conveying the sanction, he had proceeded to disburse the loan of Rs. 1.94 lacs. During the course of inquiry, the petitioner defended himself by stating that heading of the sanction letter indicated advance for agriculture tractor of Rs. 1.58 Lacs to Sri Umeshwar Rai Bux and Sri Gajendra Rai Bus. However inside the

letter, it was clearly mentioned that you have our sanction from the competent authority to grant A.T.L. for Rs. 1.94 Lacs for purchase of a new tractor on usual terms and conditions. According to the petitioner, the captioned loan proposal has been forwarded by Bishrampur Branch vide letter dated 10th April, 1995 and therefore it was disbursed in the name of the person for purchase of Mahindra Tractor and its accessories. However, there was nothing intentional or with his ulterior motive to give any undue favour to borrower. As soon as he came to know of his error he acted promptly and got the additional sum recovered from the borrower, for which branch Letters of 23rd September, 1995 and 30th September, 1995 were referred to on his behalf. However, the Inquiry Officer proceeded to hold that the petitioner guilty for having erroneously disbursed Rs. 1.95 Lacs, though the sanction amount was of Rs. 1.58 Lacs. Therefore, the allegation No. 7 was held to be proved.

8. The allegation No. 8 related to enhancement of cash credit limit of Rs. 40,000/- of one M/s. Kisan Khad Bhandar, to Rs. 1 Lac in November, 1994 and thereafter to Rs. 1.50 Lacs within a period of 6 months in June, 1995 without any proposal from the borrower but only an undated request letter was obtained by delinquent for making such enhancement without appraisal and assessment. The petitioner defence was not found convincing and on this account also the allegation was found to be proved.

9. The Disciplinary Authority thereafter has proceeded with the said inquiry which was started on 24th January, 2000. The petitioner was served with a second show-cause notice enclosing the inquiry report to which he also submitted his reply by letter dated 27th March, 2000. Thereafter, the order of punishment has been passed by the General Manager (CB), the Appointing Authority of the petitioner, finding him guilty of all these four charges i.e. Charge Nos. 3, 5(a), 7 and 8 as referred to hereinabove. The Disciplinary Authority found that the petitioner had failed to serve the Bank with utmost devotion and diligence in violation of Rule 50(4) of State Bank of India Officers Services Rules. Therefore, he has been imposed with a punishment of penalty of reduction in basic pay by two stages for two years with effect of postponing his future increment. He will not earn any increments during the period of two years. The period of suspension shall be treated as such i.e. not on duty.

10. The petitioner preferred an appeal before the Appellate Authority-cum-Chief General Manager, which however has rejected it by the impugned order annexed to the communication dated 3rd May, 2001 (Annexure-8). The Appellate Authority has also after considering his appeal concurred with the findings of the Inquiry Officer and upheld the punishment imposed by the disciplinary authority.

11. It is the case of the petitioner that the Reviewing Authority has thereafter also refused to interfere in the order of punishment and the appellate order. It is the contention of the petitioner that none of the allegations which was found to be even proved against the petitioner, established that he had indulged in misappropriation of Bank's money or had caused loss to the Bank by such acts.

According to him, the amounts credited in 23 loan Accounts were in the name of the borrowers and the same were done at the time of disbursal of second loan amount due to public pressure exerted by the local members of the Legislative Assembly and there was no irregularity in such acts on the part of the petitioner. Even in respect of advance made for purchase of Tractor of Rs. 1.94 Lacs the error was in the sanction letter of Respondents Bank itself and no sooner he realized the error, the amount was recovered. In respect of other two charges, also claimed himself to be innocent and reiterated that no loss was caused to the bank. The loan amount issued in favour of the landlord of the branch premises was also repaid well in time.

12. Learned counsel for the petitioner has also assailed the impugned order of review on the ground that the order of suspension was issued by one Mr. S.A. Farooque, who was the Appointing Authority of the petitioner at the relevant point of time and who subsequently was promoted to the post of Chief General Manager. He however sat on the Board of Review and rejected the petitioner's review. Such action on his part raised a real likelihood of bias in the minds of the petitioner and therefore the principle of natural justice stood violated. On the question of bias the petitioner has relied upon the judgment of Hon''ble Supreme Court rendered in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, as also in the case of Baidyanath Mahapatra Vs. State of Orissa and Another, thereof. He also submits that the charge-sheet which was issued after order of suspension by Deputy General Manager who was not Appointing Authority. Therefore such inquiry proceeding itself is vitiated in view of the judgments rendered by Hon''ble Supreme Court in the case of Steel Authority of India, Succesor of Bokaro Steel Limited Vs. Presiding Officers, Labour Court at Bokaro Steel City, Dhanbad, and Another, as also in the case of The Management of D.T.U. Vs. Shri B.B.L. Hajelay and Another,

13. Learned counsel for the petitioner has also assailed the impugned order on the ground that the order of punishment, imposes an imaginary punishment which are not contemplated in the Rules by treating his period of suspension as being not on duty. Such an order of punishment is therefore contrary to the Rules and the original order of punishment passed by the disciplinary authority is suffering from non-application of mind. He has relied on the judgment of the Apex Court in the case of R.P. Kapur Vs. Union of India (UOI) and Another, in support of his aforesaid submission. He also submits in the wake of the circumstances that the petitioner has not been found to have caused any loss to the bank or misappropriation of public money, as such the punishment imposed is disproportionate to the alleged misconduct said to have been established against the petitioner. On these grounds, therefore, the impugned order is unsustainable in law.

14 Learned counsel for the respondents, on the other hand, has argued in support of impugned orders by referring to the same findings of the Inquiry

Officer in respect of Charges Nos. 3, 5(a), 7 and 8 which are found to have been proved and established against the petitioner. It is submitted that these allegations are not frivolous, but are serious charges in relation to discharge of his duty as a Branch Manager of the Respondents-Bank in the matter of financial transaction. Settled Rules and Guidelines are to be followed by the officials employed in the Bank and the petitioner was supposed to be aware of the irregularities which were being committed on his behalf. He submits that in respect of first charge there was no occasion for him to sign the vouchers and ensure credit of the amount of Rs. 1,000/- each in 23 loan Accounts of borrowers after the last date just to ensure that the second installment of the loans are issued in favour of the supplier. He also submits that that instead of verifying the sanction of loan in respect of the Charge No. 7, he proceeded to disburse Rs. 1.94 Lacs instead of Rs. 1.58 Lacs to the loanee. He further submits that there was no justification for him to issue the second loan to the landlord of the Branch premises whose earlier crop loan had not yet been repudiated. Therefore, his acts led to diversion of funds, as the same disbursed amount of loan was used to repudiate the outstanding crop loan by the said landlord. He further submits that without any assessment or appraisal in respect of Charge No. 8, the petitioner proceeded to enhance the cash credit limit of the account holder of Rs. 40,000/- to Rs. 1 Lac and then Rs. 1.5 Lacs within successive six months period again in violation of terms and conditions of the Bank's Rules and that too without any proposal on his behalf. He submits that the entire inquiry proceedings have been held in accordance with law after due opportunity to the petitioner and there is no infirmity in the decision making process. Once the charges against the petitioner have been found to be established, the disciplinary authority after considering his reply and inquiry report has rightly imposed such punishment which are neither disproportionate nor shocking to the conscience. He submits that there are no grounds made out in appeal or in review by the petitioner for interference of the original order of punishment. It is further submitted on his behalf that the petitioner has not raised any grievance about the issuance of charge-sheet by Deputy General Manager, which is now being made a ground to assail the legality of the disciplinary enquiry. He further submits that the remedy of review otherwise is not a statutory remedy and it is open for the reviewing body to call for the records in order to ascertain the correctness of legality and findings of the appellate authority of the original body. Therefore, no difference could have been made as Mr. S.A. Farooque was only the member of the reviewing body where other members were also present. Moreover, when the original order and the appellate order does not suffer from any infirmity in law or on fact, no grounds are made out to interfere in the impugned punishment in exercise of judicial review by this Court.

15. I have heard learned counsel for the parties at length and gone through the relevant materials on record, the inquiry report, the order of punishment, the appellate order and the review order. The charges alleged in respect of the petitioner have been discussed in some detail in earlier part of the judgment.

Perusal of the findings of the Inquiry Officer, on the one hand, indicate that the petitioner may have been responsible for not following the guidelines in the matter of credit of loan accounts, or in the matter of disbursal of loan to the landlord of the branch premises. He may also have been responsible for issuance of loan of amount Rs. 1.94 Lacs instead of 1.58 Lacs as alleged under the sanction letter, but the fact remains that the petitioner has not caused any financial loss on account of such irregularity. The petitioner has, on the other hand, explained that in respect of Charge No. 1 also no allegations of financial misappropriation was made out against the petitioner. In respect of Charge No. 7 as soon as the petitioner realized that instead of 1.58 Lacs, 1.94 Lacs have been issued based upon the sanction letter of the Headquarters, the amount was immediately recovered as stated by the delinquent in his defence to the said charge during the course of the inquiry by referring two letters dated 23rd September, 1995 and 30th September, 1995. In respect of Charge No. 5(a) which related to disbursal of loan amounting to Rs. 24,000/- to the landlord of the branch premises without appraisal acting in excess of his discretionary power, in the said case also it appears that loan was repaid well in time and therefore the Bank sustained no financial loss in that regard.

16. Similarly in respect of Charge No. 8, which is said to have been proved that the petitioner proceeded to enhance cash credit limit of Rs. 40,000/- to Rs. 1 Lac and then Rs. 1.5 Lacs, but in respect of this charge also no findings of loss of public money or misappropriate is made out against him. In any case, the charges which are found to be proved, definitely show that he had not followed the set guidelines in proper manner laid down in the Bank. On the other hand, the disciplinary authority imposing the punishment appear to have not acted without proper application of mind by imposing punishment that the suspension period shall be treated as being not on duty though such punishment is not contemplated under the disciplinary rules under which the petitioner as Branch Manager of the Bank was proceeded against.

17. In case of punishment in departmental proceeding, the disciplinary-authority is required to take a decision as to whether the period of suspension is to be treated for payment of full salary, as period on duty or the delinquent is entitled to the subsistence allowance alone. However, the period of suspension could not have been treated "not on duty" by the disciplinary authority. It also appears that the reviewing body comprised of a person Mr. S.A. Farooque, who had issued the order of suspension against the petitioner for the alleged irregularities for which the departmental proceeding was initiated subsequent thereto and the order of punishment was passed against him which is impugned in the present writ application.

18. It is also not in dispute that the reviewing body consisted of two members, one of them Mr. S.A. Farooque who had not rescued himself from the said proceeding. The member of reviewing body Mr. S.A. Farooque obviously had applied his mind at the time the petitioner was placed under suspension for the

alleged irregularities and later on sat on review against she impugned orders passed by the disciplinary authority and the appellate authority. The apprehension of the petitioner of real likelihood of bias in the decision of Reviewing Body therefore cannot be said to be misplaced. The judgment relied upon by the learned counsel for the petitioner as reported in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, and Baidyanath Mahapatra Vs. State of Orissa and Another, thereof are in support of his case. It is also one of the well settled principles of the natural justice i.e.: "Nemo debet esse judex in propria causa" (no man shall be a judge in his own cause).

19. It further appears that in a circumstance where the conduct of the petitioner in respect of the charges though found to be established did not entail 1 loss of public money or amounted to misappropriation of public money by the petitioner, the punishment of reduction in basic pay by two stages for two years is rather disproportionate to the established misconduct.

20. In view of the totality of facts and circumstance and the reasons recorded hereinabove, therefore, the impugned orders of punishment passed by the disciplinary authority dated 6.6.2000 contained at Annexure-7, the appellate order contained at Annexure-8 dated 3rd May, 2001 and the order in review communicated vide letter dated 24th July, 2002 contained at Annexure-9, cannot be sustained in law as well as on facts. They are accordingly quashed.

21. It is informed by the learned counsel for the petitioner that the petitioner has since retired from service. Therefore, it would be futile exercise, at this stage, to remand the matter to proceed afresh against the petitioner in respect of said charges. Accordingly, the writ petition is allowed in the aforesaid terms. The petitioner would be entitled to the consequential benefits pursuant to the quashing of the impugned orders in the matter of payment of salary for his suspension period as also in the pensionary benefits. The said exercise may be done within a period of 16 weeks from the date of receipt/production of a copy of this order.