(2010) 04 AHC CK 0245

In the Allahabad High Court

Kuldeep Kumar Johari — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0245

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—The present petition has been filed for quashing the dismissal order dated 3rd September, 1986 and the order passed by the appellate authority dated 9th February, 1987.

2. The facts in brief are that the petitioner was appointed on the post of Clerk with the State Bank of India (for short "the Bank"). The petitioner while working on the cash counter of the of the Main Branch of the Bank at Lakhimpur Kheri, on 13th December, 1983 made payment in respect of one cheque issued by Sri Munnan Ali of Rs. 4,500/-, which was got encashed by one Kasahat Ali. The said cheque was bearer cheque with the indication "Self" or "Bearer" without any specific name mentioned therein. In the later part of the day Munnan Ali raised a complaint that he was issued token No. 41 but he has not been given payment though he was holding the same. On the cheque, token No. 58 was mentioned while he was holding token No. 41. Munnan Ali happened to be real account holder. The petitioner was suspended on 3rd January, 1984 and a charge sheet was issued to the petitioner on 20th July, 1984. The petitioner was charged of misappropriating the said amount of the cheque. The petitioner submitted his reply and denied the charges. The enquiry proceeded against the petitioner and he demanded cross-examination of Munnan Ali but Munnan Ali was never brought for cross-examination by him. During the course of enquiry, it was found that a written statement has been sent by Munnan Ali which was not in his own hand writing but was only signed by him and the said statement has been relied

upon by the petitioner. On the said statement, names of two witnesses viz. Raseed Khan and Kallan Ali have also been mentioned. It is stated that the petitioner did not get any opportunity to cross-examine them. A show cause notice was issued to the petitioner on 24th July, 1986. The petitioner replied to the show cause notice and denied the allegations. Thereafter an order of dismissal was passed against the petitioner on 3rd September, 1986. The petitioner preferred an appeal against the aforesaid dismissal order. The appellate authority proceeded to dismiss the appeal vide order dated 9th February, 1987 modifying the order of dismissal to an order of discharge while agreeing with the finding recorded by the punishing authority. Hence this writ petition.

3. Learned Counsel for the petitioner has submitted by filing written argument that the charge was never proved before the enquiry officer and the documents sought to be relied upon were never proved by any of the witnesses and even the hand writing expert was not produced before the enquiry officer to prove the hand writing expert report which has been made the basis of dismissal. It has also been submitted that various other persons who were identically situated and they have committed fraud in some of the cases have been reinstated or have been dismissed one day before the date of retirement. He has argued with much stress that Munnan Ali was never produced before the enquiry officer although his statement has been relied upon by the Bank.

4. Learned Counsel for the Bank, on the other hand, has submitted that considering the impact of paragraph 521 (10) (c) of the Sastry Award the appellate authority took a lenient view and discharged the petitioner from service saving him from future disqualification of seeking employment. It has been submitted that misconduct of the petitioner was of gross type and, therefore, he was discharged from service giving him opportunity to seek alternative employment and he was paid one month''s salary and other allowances in lieu of notice. The said discharge can be passed where it is found that the evidence was insufficient to sustain the charge and where the Bank does not for some reason or the other think it expedient to retain the employee in question any longer in the service. Discharge in such circumstances would not be deemed to amount to disciplinary action.

5. Learned Counsel for the Bank has placed reliance upon the judgments rendered in The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., and Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, in respect of loss of confidence and has stated that loss of confidence is a major factor in transactions in respect of the Bank when a person holds a position of trust and since there was loss of confidence in respect of the petitioner, therefore, the Bank has committed no illegality.

6. I have heard learned Counsel for the parties and gone through the record.

7. Argument of the learned Counsel for the petitioner could have been

appreciated had there been an order of dismissal on merit against the petitioner. The opposite parties have relied upon paragraph 521 (10) (C) of the Sastry Award. The Court has to take into consideration as to whether the discharge order passed by the Bank could have been passed for insufficient evidence as argued by the learned Counsel for the petitioner. It has also to be taken into consideration as to whether misconduct of the petitioner falls in the category of gross misconduct or not.

8. The appellate authority after taking into consideration the entire facts and circumstances of the case and the charge against the petitioner found that an amount of Rs. 4,500/-was fraudulently paid to one Kasahat Ali with whom the petitioner was in collusion as the hand writing appended in the Bank and on the cheque was the hand writing of the petitioner who after erasing token No. 41 entered it as 58 and in place of the name of Munnan Ali, he wrote Kasahat Ali. Finger print expert also gave opinion against the petitioner that the said writing was of the petitioner with a view to defraud the Bank and with a view to usurp the money in collusion with Kasahat Ali.

9. The petitioner was handling the cash. As to who was the person who changed the token number. It cannot be presumed that a class-IV employee working as daily wager could have made the aforesaid change in the transit and Munnan Ali who was issued token No. 41 waited for his turn and money was not paid to him. He made a complaint to the Branch Manager. Thereafter a preliminary enquiry was made and it was found that the petitioner was responsible. On the next day when Munnan Ali went to meet the Branch Manager for payment of his amount, one old person, namely, K.K. Saxena was sitting who was told to be father-in-law of the petitioner and he paid the amount of Rs. 4,500/-to Munnan Ali and thereafter Munnan Ali executed a receipt in respect of the amount. The aforesaid circumstance also goes to indicate that the petitioner was responsible for the amount. It has been argued that the statement was made in pressure in order to avoid any sort of police action or dismissal from service cannot be accepted as the petitioner should have been vigilant enough to deny the aforesaid charge levelled against him in case he was not responsible.

10. The argument of the learned Counsel for the petitioner that there was not sufficient evidence before the enquiry officer and neither the charges were proved nor documents were proved in accordance with law before the enquiry officer also falls to the ground on account of the fact that the dismissal order has been modified to the simple order of discharge and considering paragraph 521 (10) (C) of the Sastry Award where the authority finds that the evidence was insufficient to sustain the charge but the Bank for some reason or the other does not think it expedient to retain the employee in service any longer may discharge the employee in such case. In such circumstances, discharge shall not be deemed to amount to disciplinary action. Paragraph 521 (10) (C) of the Sastry Award reads as under:

Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged with or without notice or on payment of a month''s pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the Bank does not for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

11. It seems that the appellate authority was of the view that the evidence was insufficient to sustain the charge, therefore, alternative option was exercised by the appellate authority. Misconduct of the petitioner falls under gross category and the Bank has lost confidence in the petitioner, therefore, the Bank proceeded to discharge the petitioner from service. I find that there is no illegality in the action of the Bank. The Apex Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, and Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, while dealing with the question as to whether there has been any loss to the Bank or not, ruled against the employee and held that loss was not a determinative factor for awarding the punishment when an officer was holding office of trust.

12. Learned Counsel for the petitioner has placed reliance upon a judgment rendered in the case of Roop Singh Negi v. Punjab National Bank and Ors. (2009) 1 SCC (L&S) 398 to contend that the documents are required to be proved during the course of enquiry by examining and cross-examining the witnesses and in absence of any proof in the present case the charge against the petitioner cannot be proved and the dismissal is bad in law. The said proposition would have applied in the case of the petitioner if the opposite parties would have proceeded to dismiss the petitioner relying upon the material during the course of enquiry and forming a positive opinion on the basis of the enquiry report to dismiss the petitioner. Since the enquiry report has not been made the sole basis for dismissal of the petitioner but in addition to it, paragraph 521 (10) (C) of the Sastry Award has been relied upon to award punishment which paragraph can be invoked when the evidence is lacking or insufficient to sustain the charge. The aforesaid case law is not applicable in the case of the petitioner.

13. The next argument of the learned Counsel for the petitioner that discriminatory treatment has been meted out to the petitioner in the matter of award of punishment can also not be accepted as no parity has been placed in regard to discharge whereas the petitioner has been discharged from service. It is also stated that the petitioner has also submitted a report of finger print expert. Learned Counsel for the opposite parties has pointed out that the petitioner himself has filed the statement of Munnan Ali and has also relied upon the said statement and he was defence witness, therefore, it was the duty of the petitioner to have called and produced Munnan Ali. It seems that Munnan Ali was satisfied as he received the amount from the father-in-law of the petitioner. Something must be cooked up with the father-in-law of the petitioner and

Munnan Ali as they were residing in the same city and it appears that Munnan Ali although gave in writing but did not agree to come before the enquiry officer to prove the letter. The letter produced, therefore, can be relied upon to that extent in absence of the same being proved but so far the contents of letter are concerned, it is binding upon the petitioner as in the said letter it has been admitted that the payment was made by the father-in-law of the petitioner to Munnan Ali, therefore, the question of award of discriminatory punishment also falls to the ground.

14. I find no illegality in the order passed by the appellate authority.

15. The petition is devoid of merit. It is accordingly dismissed.

