(2013) 08 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6526 of 2003

Manik Ratan Banerjee APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(6)(b)
Penal Code, 1860 (IPC) — Section 120(B), 409, 420, 465, 468

Citation : (2014) 1 AJR 613

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Shekhar Prasad Sinha, for the Appellant; Rajesh Kr., Amit Kr. and Mr. Manindra Kr. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. By the impugned order dated 24th January 2003 contained at Annexure-11 passed by the Disciplinary Authority-cum-General Manager (GB) of the respondent State Bank of India, the petitioner has been dismissed from service. He preferred an appeal before the Chief General Manager-cum-Appellate Authority of the respondent Bank vide Annexure-12 which was also dismissed by speaking order dated 18th June 2003 (Annexure-13).

2. The petitioner was served with a charge sheet in respect of certain misconduct which he is said to have committed while posted as Dy. Manager at Dhanbad branch of the respondent Bank. The petitioner had earlier been placed under suspension by order dated 16th February 2000 (Annexure-1). The order of suspension indicate that during his incumbency as In-charge, Draft Issue Section at Dhanbad Branch, serious irregularities have been committed by him. The Disciplinary proceeding thereafter followed on the charges alleged in the charge sheet dated 7th November 2001. The statement of allegations which were

annexed to the charge sheet inter-alia contain seven different allegations against the petitioner, which are as follows:

i. He irregularly passed for payment of five drafts by cancellation on 22nd July 1997 in a fraudulent manner and got issued a banker''s cheque favouring ACC Ltd. for Rs. 49,496 and passed on the pecuniary benefits to one M/s. Sandeep Enterprises, Chandankiary, a retail cement shop allegedly owned by one Sandeep Banerjee who happens to be the son of the petitioner. The details of the drafts were annexed as Annexure-A to the charge sheet. In all the cases, he did not obtain application from the bonafide purchasers of the drafts and did not mark noting in the Draft issue Register. He did not even mention the fact of payment by cancellation over the relative vouchers.

ii. On 9th April 1999, he irregularly paid twenty-one drafts amounting to Rs. 2,31,862.40 by cancellation. All these drafts were purchased by the Director, BIT, Sindri. These drafts were tendered at the branch for payment by cancellation and credited to Government Account head "0202". Instead of crediting the proceeds to Government Account (Head 0202), he got issued a draft No. 421878 dated 9th April 1999 for the same amount drawn at Hirapur branch favouring M/s. Gopal Agencies. The same was presented for payment through clearing by Canara Bank and was paid on 10th April 1999. M/s. Gopal Agencies, an authorized distributor of Century Cement, received payment on account of cement supplies to the firm M/s. Sandeep Enterprises, Chandankiary allegedly owned by his son. He thus passed the pecuniary benefit of the drafts in question to his son in a fraudulent manner. The details of the drafts were annexed as Annexure-B.

iii. On 24th May 1999, he allegedly removed twenty-one drafts amounting to Rs. 62,381.08 issued by Dhanbad branch and passed those drafts for payment by cancellation. From the proceeds, he got issued a banker''s cheque drawn in favour of Dhanbad Central Co-operative Bank Ltd. "Account Gopal Chandra Banerjee". The said banker''s cheque was presented by Cooperative Bank Ltd. through clearing for crediting the amount of S.B. A/c No. 334/3 of Shri Gopal Chandra Banerjee maintained at their end. It has been alleged that later on, he obtained a cheque from Shri Gopal Chandra Banerjee for similar amount of Rs. 62,381.08 and got credited the amount on 31st May 1999 in his joint current account with his wife Mrs. Gouri Banerjee. (C.A./c No. 30/1093) maintained at the Branch. The details of the drafts are furnished in Annexure-C.

iv. On two more occasions i.e. on 24th July 1999 and 05th August 1999, four drafts on each date for Rs. 17,934.42 and Rs. 10.870.67 respectively were paid by him by cancellation. The drafts were purchased by various Government Agencies and remained undelivered. It is alleged that he got issued the banker''s cheque no. 518411 dated 24th July 1999 for Rs. 17,934.42 and another banker''s cheque no. 518500 dated 05th August 1999 for Rs. 10,870.67 in favour of Punjab National Bank from the proceeds of the drafts paid by cancellation. Subsequently, the payee''s names on the banker''s cheque were altered to read as "Punjab National Bank-Account G. Banerjee". The proceeds of these banker''s cheques were allegedly credited to the account no. 6024 maintained by him in the joint names with his wife Smt. Gouri Banerjee at Punjab National Bank. The details of the drafts are furnished in Annexure-D.

v. On 14th February 2000, he passed for cash payment by cancellation of six drafts for an aggregate amount of Rs. 30,400/- issued in favour of Secretary, STA. U.P., Lucknow. The purchasers signature on the reverse of the instruments in question was prima facie found to be forged by him and received the payments in cash in a fraudulent manner. The relevant entries in draft account reversing debit schedule (No. 65) were allegedly also issued by the petitioner. The details of drafts are furnished in Annexure-E.

vi. On the same day, when the matter came to light, he surrendered Rs. 13,400/- in cash and a draft for Rs. 17,000/- purchased on the same day by him from the proceeds of the payment taken against six drafts which is mentioned above.

vii. He allegedly passed for payment on 25th February 1997 a forged draft amounting to Rs. 92,000/- favouring M/s. New Alankar Jewellers issued by Bankura branch (Bengal Circle) presented through clearing by Canara Bank, Dhanbad. He did not verify the signatures of the signing officials appearing in the impugned draft with the specimen signature recorded with the Bank before authorizing payment thereof.

List of documents which are referred to in the charge sheet, were enclosed with the statement of imputation of allegations as Annexure-III. There-after, it appears that a criminal case was also registered against the petitioner being Dhanbad P.S. Case No. 110/2000 under sections 420 /465 /468 /471 /477(A) /409 /120(B) of the Indian Penal Code.

3. Thereafter, it appears that the inquiry was conducted by the Inquiry Officer R.K. Jaiswal and the Inquiry Report was submitted on 25th July 2002 (Annexure-8). It however appears that a truncated document has been filed as Inquiry Report on the part of the petitioner and no statement has been made in the writ petition to allege that the petitioner was not supplied with the complete inquiry report. As a matter of fact, even in the Memo of Appeal which is annexed as Annexure-12 after imposition of punishment of dismissal by the Disciplinary Authority, there is no such ground taken that full Inquiry Report was not served upon him.

4. Thereafter, the order of punishment has been passed after giving the petitioner due opportunity to submit reply in respect of the charges levelled against him.

5. From perusal of the order dated 24th January 2003 contained at Annexure-11, it appears that the Disciplinary Authority found the petitioner responsible for perpetrating a number of frauds and committing various irregularities while being posted at Dhanbad Branch in the Draft Issue Section. The Disciplinary Authority

came to the conclusion that he failed to serve the Bank with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank official in violation of Rule 50(4) of SBIOSR. In such circumstances, the punishment of dismissal from service was imposed in terms of Rule 67(j) of SBI Officers'' Service Rules. The period of his suspension would be treated as not on duty. Payment of Gratuity would be forfeited in full in terms of Section 4(6)(b) of Payment of Gratuity act, 1972.

6. In the appeal preferred by the petitioner which is annexed as Annexure-12, the petitioner has not alleged any procedural infirmity in the inquiry proceedings. As a matter of fact, the grounds taken in the appeal are inter-alia that there was no complaint against him from any quarter; there is no direct or indirect benefit accrued to him out of any transaction; he has put in 34 years of service which has not been taken into account and the punishment of dismissal from service has brought him and his family on road.

7. The Appellate Authority after considering each of these grounds, dismissed his appeal and confirmed the original order of punishment. Perusal of the appellate order dated 18th June 2003 (Annexure-13) passed by the Appellate Authority-cum-Chief General Manager reveals that the inquiry officer had held allegation nos. 1 and 2 as partly proved and allegation nos. 3 to 7 as proved. The Appellate Authority after discussing the grounds taken in appeal, had also concurred with the findings of the Disciplinary Authority and confirmed the order of punishment. The perusal of Memo of Appeal shows that the appeal was preferred for condonation of punishment and as indicated herein above, no ground of any infirmity in the conduct of departmental proceeding or denial of principles of natural justice was made out. From the submission of the learned counsel for the petitioner and the grounds taken in the instant writ application, it appears that one of the grounds taken by the petitioner to assail the impugned order is that for the same charges, a criminal case was instituted before the Criminal Court having competent jurisdiction and therefore, the departmental proceeding should not have been proceeded.

8. In this regard however, it is well settled in view of the judgment rendered by the Hon''ble Supreme Court from time to time that the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department. The petitioner may have been proceeded in a criminal case for the alleged offences which are made out for his conduct. However, if the charges in the disciplinary proceedings have been found to be established which were in the nature of serious misconduct, the employer had all the reasons to loose confidence in the employee, who was serving the bank in a relationship of faith where huge transactions of public money take place. Learned counsel for the petitioner has not been able to show from any material on record that the inquiry proceeding conducted in respect of the alleged charges, suffer from any procedural infirmity

or violation of principles of natural justice. For strange reasons, the petitioner has himself not annexed full inquiry report and as already indicated earlier, no averments at all have been made in the writ application that he was not served with the complete inquiry report.

9. Learned counsel for the respondent Bank, on the other hand, has submitted that earlier, he was charge sheeted for misconduct and after due opportunity of hearing, he was imposed with penalty of reduction in pay scale by three stages vide office letter dated 12th June 1987 for the lapses found to be proved against him both at Jamua Branch and Petarwar Branch. The instant departmental proceeding which has resulted in passing of the impugned orders, were in relation to the seven charges alleged against him while serving the respondent Bank as Dy. Manager at Dhanbad Branch.

10. Facts of the case therefore, which have been referred to herein-above in some detail, disclose that on each of the occasions, the petitioner, in the capacity of In-charge of the Draft Issue Section, had indulged in gross misconduct in matters relating to the cancellation of unused drafts. The Appellate Authority has also found that out of seven charges, two were partly proved and the rest three to seven charges were fully proved. Each of the charges were of the similar nature, except charge no. 7 where he has passed a forged draft without verifying the signature of the issuing authority. In the totality of the facts and circumstances which have been discussed herein above and the reasons indicated therein, the impugned orders imposing punishment of dismissal from service upon the petitioner who was working as Dy. Manager in the respondent State Bank of India at relevant point of time, do not appear to suffer from any procedural error or infirmity in the decision making process and, therefore, do not require any interference in exercise of judicial review by this Court under Article 226 of the Constitution of India. The writ petition is devoid of any merit and is therefore dismissed.