(2002) 09 JH CK 0080

In the Jharkhand High Court

Case No : CWJC No. 3323 of 1999

Nagendra Choudhary APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 421 : (2003) 3 LLJ 394

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

Bench : Single Bench

Advocate : A. Sahay and K.K. Jaipuriar, for the Appellant; Kameshwar Prasad Rajesh Kumar and D.K. Bharti, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred By the petitioner against Memorandum No. 448 dated 23rd March, 1998, whereby and whereunder the disciplinary authority inflicted punishment of dismissal from service without notice on petitioner in terms of Para-521 (S) (a) of Sastry award as retained in Desai award.

2. In the amendment petition, the petitioner has also challenged the appellate order communicated vide letter No. DUM/DPS/R/Genl/326 dated 8th November, 1999, whereby the appellate authority modified the punishment order as compulsory removal from service with superannuation benefit as would be due otherwise at that stage and without disqualification from future employment.

3. The petitioner was suspended in April, 1994 in contemplation of departmental proceeding followed by a charge-sheet dated 27th January, 1995.

4. Initially, charge of misappropriation of Bank money amounting to Rs. 800/-by removing 8 (eight) pieces of currency note from the packet of Rupee one hundred denomination was levelled. Subsequently, another supplementary charge-sheet was served vide letter dated 15th March, 1995, wherein the

petitioner was charged for false reimbursement of leave fare concession bill with intention to misappropriate Rs. 16,344/-.

5. A combined charge-sheet was served vide letter dated 15th July, 1995. In addition to the initial charge-sheet dated 27th January 1995, the subsequent charge-sheet was modified wherein similar allegation of fraudulent withdrawal of L.F.C. bill was leveled.

6. The petitioner having held guilty for the charges by the Enquiry Officer, was served with a show cause notice dated 16th January, 1998, whereinafter, the disciplinary authority on personal hearing dismissed the petitioner without notice vide order dated 23rd March, 1998.

7. The appellate authority, by its order communicated vide letter 8th November, 1999 accepted the petitioner''s plea in respect of short fall in a note packet and granted benefit of doubt. However, the plea that such short fall can occur under any norms of the Bank was not accepted, the charge relating to fraudulent withdrawal of L.F.C. amount was upheld. Taking into consideration the petitioner''s record that penalty of stoppage of three increments with cumulative effect was imposed on him on 16th January, 1992 and the petitioner committed the fraudulent act even before the rigor of the earlier penalty could elapse, as earlier punishment inflicted on him as could not reform the petitioner, the punishment of dismissal from service was modified as compulsory removal from service with superannuation benefits.

8. The counsel for the petitioner submitted that the conclusion of Enquiry Officer relating to non-performance of journey by petitioner''s family based on a so called report from the Road Transport Authority, Varanasi is based on no evidence and is liable to be rejected. No such report of Road Transport Authority, Varanasi was proved by the maker and there is error apparent in the report. The report was sought for Vehicle No. UMV-9921, whereas the report submitted relating to Vehicle No. UMV-9321.

9. Further, according to the counsel, the bill submitted was in accordance with the instructions of the Bank and at the time of making its payment, the Bank had occasion to call for further evidence in support of it, but it did not exercise such power. After lapse of two to three years, the petitioner could not produce the bill, which is not a surprise, as he was not supposed to tender the bill after long period.

10. The report of the Enquiry Officer was stated to be based on surmises and conjunctures.

11. It will be evident that the Enquiry Officer discussed the statement of witnesses and considered the evidence/exhibits. Taking into consideration the fact that there was no route permit issued in respect to bus through which the family members stated to have performed the journey, and other relevant evidence, it held the certificate fake and the charge proved. The Enquiry Officer

noticed that no money receipt or ticket of travel of family members from Hazaribagh to Patna was produced as evidence, nor any evidence relating to travel from Patna to Kanya Kumari by way of hotel bill etc. was produced. The payment of Rs. 18,000/-was shown to have been made in cash, though at par remittance facility was available to the staff.

12. On the request of the counsel for the petitioner, the original records of proceeding was called for, which was produced by the counsel for the Bank.

13. I find that the enquiry was conducted after giving full opportunity to the petitioner in accordance with law. As it is not permissible to re-apprise the evidences under Article 266 of the Constitution and the report is not perverse, I find no reason to interfere with the enquiry report.

14. The appellate authority having taken care of quantum of punishment, the order of dismissal having converted to order of removal with retrial benefits, it requires no interference.

15. There being no merit, the writ petition is dismissed. However, there shall be no order, as to costs.