
(1999) 11 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 9622 of 1995 and W.M.P. No. 15273 of 1995

Narayanan C.T.

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Overseas Bank Officer Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 4, 8(1)

Citation : (2001) 2 LLJ 703

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : C.R. Chandrasekaran, for the Appellant; S. Vaidyanathan, for Row
and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner has filed the above writ petition to issue a writ of certiorari calling or the records pertaining to the

impugned order of the second respondent, dated March 30, 1995, and the impugned order of the third respondent, dated December 30, 1994,

and quash the same.

2. The case of the petitioner is briefly stated hereunder:

According to him he was appointed as a clerk on February 20, 1961 and was promoted to Junior Management Grade Scale I on October 1,

1977 in the first respondent-bank. The Cathedral Currency Chest is one of the money currency chests set up a few years ago mainly to off-load

the huge volume of currency work from Reserve Bank of India (RBI) to different public sector banks. He was issued with chargesheet on August

24, 1994 alleging mat there was a cash shortage of Rs. 30,000 on July 30, 1993

in the bins in vault in the currency chest of Cathedral Branch, that the cash was previously verified and found correct by the RBI Inspectors on October 27, 1992 and that between October 27, 1992 and July 30, 1993 he functioned as key custodian for sometime. He submitted his reply on October 15, 1994. The third respondent arbitrarily came to the conclusion that his explanation was not convincing, and without holding any enquiry held him liable for the loss of Rs. 30,000 jointly or severally with other Joint custodians for various periods. By his non-speaking order, dated December 30, 1994 imposed penalty of recovery of loss to the extent of Rs. 3,340 to be recovered from his monthly salary in instalments of Rs. 500 commencing from January, 1995. This penalty was imposed in terms of Regulation 4(a) read with Regulation 8(1) of Indian Overseas Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 (D & A Regulations for short). Aggrieved by the said order he preferred an appeal before the second respondent without applying his mind, the second respondent dismissed his appeal by an order dated March, 30 1995. In such circumstances, having no other remedy has filed the present writ petition.

3. On behalf of the respondents Assistant General Manager has filed counter-affidavit disputing various averments made by the petitioner. It is stated that the petitioner was working as Assistant Manager at Cathedral Branch and at the relevant time he was joint custodian of the key relating to the vault at the currency chest of the Cathedral Branch. On July 30, 1993, it was revealed that there was cash shortage of Rs. 30,000 in the bins in vault at the currency chest of the Cathedral Branch. Earlier, cash in the vault was verified and found correct by the RBI Inspectors on October 27, 1992. Between that date and the date of detection of loss as above, i.e. on July 30, 1993 the petitioner functioned as custodian of the cash vault for some time. Accordingly, after show-cause notice and after considering his explanation, since his explanation was not satisfactory and convincing, the disciplinary authority imposed on the petitioner, a minor penalty of recovery of the proportionate loss to the bank to the extent of Rs. 3,340 to be recovered from petitioner's monthly salary commencing from January, 1995. The petitioner and 8 other officers who were joint custodians of the currency chest and holding, the key were also imposed the

same minor penalty and the loss of Rs. 30 000 was ordered to be recovered from all the nine officers including the petitioner in equal proportion. The punishment imposed under Regulations 4(b) and 8(1) of the Regulations are perfectly in order. With these averments they prayed for dismissal of the writ petition.

4. In the light of the above pleadings I have heard the learned counsel for petitioner as well as respondents.

5. Learned counsel for the petitioner has raised the following contentions:

- (i) petitioner was not incharge of the cash bins on the relevant date;
- (ii) no police complaint was made by the bank; and
- (iii) inasmuch as the charge levelled against the petitioner is a major misconduct, the original order passed by the third respondent without conducting enquiry cannot be sustained.

On the other hand learned counsel for respondents rebutted all the contentions.

6. I have carefully considered the rival submissions.

7. Learned counsel for the petitioner strenuously contended that the alleged shortage was on July 30, 1993 and petitioner was not having keys on the said date, hence the charge cannot be sustained. In support of the above contentions he has furnished the following dates wherein he held the keys:

5.2.93 to 8.2.93 4 days

23. 3. 93 to 29.3. 93 7 days

29. 5.93 to 02. 6.93 5 days

19.7.93 to 20.7.93 2 days

18 days

It is stated that during this period the official who took charge of the keys from the petitioner on July 20, 1993 ought to have been held responsible

along with his joint custodian as the responsibility of the petitioner for the correctness of currency in the currency chest ceased July 20, 1993. In

spite of the above factual position, I am unable to accept the said contention for this reason. It is relevant to note the statement of imputation, they

are:

While working as Assistant Manager at Cathedral Branch, you had committed the

following irregularities.

It is reported that on July 30, 1993 there was cash shortage of Rs. 30,000 in the bins in vault at the currency chest of the Cathedral Branch as

detailed below:

Bin No. Amount of Shortage Details of Shortage

Rs.

(1) (2) (3)

47/6 10,000 One ten rupee bundle (1,000 pieces of Rs. 10)

49/5 10,000 One ten rupee bundle (1,000 pieces of Rs. 10)

60/1 10,000 One bundle of Rs. 10 was kept instead of one bundle of Rs. 20.

The cash was previously verified and found correct by Reserve Bank of India Inspectors on October 27, 1992. Between that date and the date of

detection of loss as above, you functioned as key custodian for some time. It is charged that you were negligent in the discharge of the duties which

had resulted in the loss of Rs. 30,000 to the Bank.

It is thus charged that you failed to ensure and protect the interest of the Bank and discharge your duties with utmost devotion and diligence. You

had acted otherwise than in your (sic) judgment in the performance of your official duties.

The learned counsel for the petitioner proceeded his argument on the assumption that the shortage was only on July 30, 1993. The said assumption

is misconceived. It is clear that the shortage was noticed only on July 30, 1993. It is also clear that the cash was previously verified and found

correct by the Reserve Bank of India Inspectors on October 27, 1992. The petitioner functioned as a key custodian for some time after the said

date. This has not been disputed. In such circumstance, petitioner was asked to explain for the shortage during the said period. No doubt he

submitted his explanation denying the charges. Since the earlier cash in the vault was found correct by the RBI Inspectors on October 27, 1992

the Disciplinary Authority after considering all the materials found that all the persons incharge of cash after October 27, 1992 and till the date of

detection, i.e., on July 30, 1993 are liable to compensation. Accordingly the loss of Rs. 30,000 was ordered to be recovered from all the nine

officials including the petitioner in equal pro- portion. In such circumstance, I am

unable to accept the contra argument made by the learned counsel for petitioner.

8. Regarding the other contention that no complaint has been made to the police regarding the shortage admittedly the respondents management did not make any complaint to the police. However, immediately after realising the shortage on July 30, 1993, after preliminary enquiry issued show-cause notices to all the persons who were incharge of cash between October 27, 1992 to July 30, 1993. Merely because the bank had not made complaint to the police that does not absolve the liability of the petitioner nor the bank is estopped from taking action under the regulations, accordingly I reject the said contention also.

9. Regarding failure to conduct enquiry, even though it is stated that the charge levelled against him is a major misconduct Sri S. Vaidyanathan, learned counsel for respondents, has brought to my notice that it is only a minor misconduct and as per the D and A Regulations no enquiry is required. Regulation 6 speaks about ""procedure for imposing major penalties."" Regulation 8 refers to ""procedure for imposing minor penalties.

Regulation 4 refers to penalties which contain minor and major. In Regulation 4:

- (a) Censure;
- (b) Withholding of increments of pay with or without cumulative effects.
- (c) Withholding of promotion;
- (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.

Regulation 4(d) is applicable to our case. If that is so, undoubtedly minor penalty alone be imposed. In such circumstance the procedures to be followed for imposing minor penalties is provided under Regulation 8.

8. Procedure for imposing minor penalties. (1) Where it is proposed to impose any of the minor penalties specified in Clauses (a) to (d) Regulation

4, the officer employee concerned shall be informed in writing the imputations of lapses against him and given an opportunity to submit his written

statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the disciplinary authority and

the defence statement. If any, submitted by the officer employee shall be taken

into consideration by the disciplinary authority before passing orders.

(2) Where, however, the disciplinary authority is satisfied that an inquiry is necessary, it shall follow the procedure for imposing a major penalty, as laid down in Regulation 6.

(3) The record of the proceedings in such cases shall include -

(i) a copy of the statement of imputations of lapses furnished to the officer employee;

(ii) the defence statement, if any of the officer employee; and

(iii) the orders of the Disciplinary Authority together with the reasons therefor.

After perusing the above procedures I am satisfied that the respondents have fully complied with the same. It is also clear that for minor penalties

there is no obligation on the part of the Bank to conduct enquiry. As stated earlier the respondents have fully complied with the procedure

provided under Regulation 6, accordingly I reject the last contention raised by the learned counsel for petitioner.

10. All the above aspects have been considered by the appellate authority and rightly dismissed the appeal preferred by the petitioner.

11. Under these circumstances, I do not find any error or infirmity in the impugned orders, accordingly the writ petition fails and the same is

dismissed. No costs. Consequently, connected W.M.P., is also dismissed.