(2014) 02 JH CK 0036

In the Jharkhand High Court

Case No : W.P. (S). No. 5635 of 2003

Narendra Kumar Verma APPELLANT

Vs

Bank of Baroda and Others RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2014) 2 JLJR 374

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Prashant Pallav, Advocate for the Appellant; Ramit Satender, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner is aggrieved by the original order of punishment dated 28.5.2003 (Annexure-5) passed by the respondent No. 3, Regional Manager cum Disciplinary Authority imposing penalty of withdrawal of special allowance permanently and reduction by one stage in time scale of pay in the departmental proceeding on certain alleged misconduct. The petitioner''s appeal has also been rejected vide order dated 22.9.2003 (Annexure-7) passed by the respondent No. 2, Deputy General Manager cum Appellate Authority, which is also impugned herein.

2. The short facts of the case are that at the relevant point of time when the alleged misconduct took place petitioner was posted as Computer Operator in the Bank of Baroda at the Bokaro Steel Plant Branch. He was served with charge-sheet on 11.1.2002 for the following charges:- (a) that he made entry in the ALPM under transaction No. 378 a sum of Rs. 5,000/- to the debit of savings bank account No. 2243 when no such voucher was in existence; (b) that he made entry in the ALPM under transaction No. 437 a sum of Rs. 5,000/- to the credit of savings bank account No. 3416 when no such voucher was in existence. For such acts of the petitioner it was alleged that it amounted to misconduct in the nature of (i) fraud upon the bank; (ii) acts prejudicial to the interest of the

bank; (iii) attempting to put the bank in financial loss and (iv) that such act was unbecoming of a bank employee. The departmental inquiry was conducted by the Senior Manager, Gulmuri Branch in which the management produced witnesses in support of the prosecution and the petitioner submitted his written defence. Thereafter, the inquiry report was submitted on 2.12.2002 holding the petitioner guilty of the charges. The petitioner submitted his representation before the Disciplinary Authority cum Regional Manager on 23.12.2002, where after the impugned punishment has been imposed by Annexure-5 dated 28.5.2003.

3. Learned counsel for the petitioner has assailed the impugned orders on the ground that it has only been a case of mistake but there was no deliberate act or omission on his part which in fact resulted to any loss to the Bank and neither was there any complain on behalf of the respective account holders. According to the petitioner for each such alleged charge separate punishment has been imposed by the respondent authorities which apparently are in teeth of the memorandum of settlement dated 10.4.2002 (Annexure-8) arrived at between the management of Banks and their workmen. As per the said settlement the employee found guilty of gross misconduct may be imposed with certain punishment which are defined there under but each such punishment is a separate punishment and for one charge two such punishment cannot be imposed in the nature of major penalty. Therefore, the punishment imposed upon the petitioner are also disproportionate and contrary to the settlement arrived at between the Bank and its employees. The petitioner''s appeal has also been rejected, thereafter by the Appellate Authority by the impugned order at Annexure-7 dated 22.9.2003. On these grounds petitioner has challenged the impugned orders.

4. Learned counsel for the respondent-Bank has supported the impugned orders and relied upon the averments made in the counter affidavit to buttress his submission. According to the respondents the act of the petitioner in entering transactions in different accounts without any voucher was a serious misconduct which amounted to gross negligence and irregularity on his part and also act of fraud for which he was proceeded against on the basis of evidence on record, circumstantial evidence and statements of witnesses and after that the said punishment was imposed which is proper in the eye of law. The petitioner''s appeal was also considered and has been rejected by the Appellate Authority as there was no merit in the said appeal. It is further submitted that the action of the respondent was neither arbitrary nor mala fide and stand taken was within the four corners of the statute by the authority, who has jurisdiction to impose such punishment. Each punishment has been imposed for different charges which is in accord with the memorandum of the settlement at Annexure-8. Learned counsel for the respondent has also submitted that the action of the petitioner reflected upon the efficiency of the Bank as well and the respondent Bank is required to reserve the confidence of the public/depositors by taking appropriate action against such erring official.

5. Petitioner has also filed rejoinder where the defence taken by the petitioner has been reiterated.

6. I have heard counsel for the parties and gone through the relevant materials on record including the impugned orders and the memorandum of settlement arrived at between the Bank and its employees. From perusal of the aforesaid documents on record, it is apparent, so far as the act of the petitioner in making entries in different accounts without any foundational voucher at all being present, in itself is an act of misconduct which has also squarely been established during the course of departmental inquiry on the basis of evidence adduced by the prosecution and after considering the defence of the petitioner. This Court, in exercise of powers of judicial review is not inclined to enter into the merit of the dispute and the findings arrived at on the basis of appreciation of evidence by the Inquiry Officer. So far as the conduct of the disciplinary inquiry is concerned, petitioner has failed to make out a case that the decision making process was vitiated, which may require interference by this Court. It however appears that on the same act of misconduct, though four charges have been levied by the respondents and found to be established but the Disciplinary Authority proceeded to impose punishment against each such established charge. It is contended by the petitioner that withdrawal of special allowance as also reduction by one stage in the time scale of pay are both major punishment and perusal of the disciplinary order of the punishment would show that two such punishment of withdrawal of special allowance and also two such punishment of reduction by one stage in the time scale of pay have been imposed to run concurrently. A perusal of Annexure-8, memorandum of settlement referred to herein by the petitioner, however shows that the punishment indicated for a charge of gross misconduct are dismissal; or removal from service; or compulsory retirement; or discharged from the service with superannuation benefit; or brought down to lower stage of pay; or withdrawal of special allowance etc. The act of the petitioner in making entries in two different accounts, however has not resulted in any loss to the Bank and the entries were also reversed after detection. In such circumstance, he has been imposed with both such punishment by the Disciplinary Authority, which appears to be more than what was justified on the basis of the charges established and can be said to be excessive in nature.

7. On consideration of facts and circumstance of the case and more than one punishments imposed by the Disciplinary Authority, this Court is of the view that the withdrawal of special allowance permanently by the respondents seems to be excessive punishment which coupled with other, punishment of reduction by one stage in time scale of pay appears to be unjustified. Therefore, while interfering with that part of the punishment of withdrawal of special allowance permanently imposed upon the petitioner, this Court however is otherwise satisfied that the other punishment of reduction by one stage in time scale of pay was commensurate with the established charges against the petitioner. Therefore, the writ petition is partly allowed by interfering with the order of punishment in the

manner indicated herein above.