
(2012) 04 OHC CK 0017
In the Orissa High Court
Case No : Writ Petition (C) No. 9316 of 2003

Nirakar Sahoo

APPELLANT

Vs

Neelachal Gramya Bank and Another

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Regional Rural Banks Act, 1976 — Section 14

Citation : (2012) 135 FLR 284 : (2012) LLR 1001

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : Sanjit Mohanty, Mr. S.P. Panda, Mr. S.P. Sarangi, Mr. S. Patnaik, Mr. M. Banerjee and Mr. S. Nanda, for the Appellant; G. Rani Dora, G.A.R. Dora and Mr. J.K. Lanka, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner in this writ application assails the order of the disciplinary authority dated 27-3-1997 (in Annexure-7) dismissing him from service and also directing recovery of 50% of pecuniary loss caused to the Bank as a measure of punishment in pursuance of a disciplinary proceeding and the order of the appellate authority rejecting the appeal. The petitioner, while serving as Branch Manager in Kunjam Branch of Neelachal Gramya Bank, was served with a charge-sheet on 12-10-1995 on the allegation that while he was working as Manager of Babandha Branch, Rs. 4.1,750 had been deposited on different dates in different savings bank accounts and loan accounts, but the same had been misappropriated without being accounted for in the Bank's cash. As a Branch Manager, the petitioner had authenticated the credit entries in the respective Savings Bank ledgers and loan ledgers without verification and in the process, allowed one Promod Kumar Sahoo, the then Clerk-cum-Cashier of the said branch to manipulate different G.L. heads in the General Ledger and General Ledger Balance and helped him to misappropriate the aforesaid amount. The petitioner filed his reply to the said charges denying the same, but the reply

submitted by the petitioner was not accepted by the Bank and a disciplinary proceeding was initiated. One Shri Sribatsa Kumar Panda, an officer of the Bank, was appointed as inquiry officer. After completion of the inquiry, the Inquiry Officer submitted his report finding the petitioner guilty of all the charges and on the basis of the said inquiry report, punishment of dismissal from service was imposed by the disciplinary authority apart from directing recovery of 50% of the alleged misappropriated amount. The appeal filed by the petitioner was dismissed, as a result of which, the petitioner approached this Court in O.J.C. No. 16584 of 1997 challenging the order of punishment imposed by the disciplinary authority as well as the appellate authority dismissing the appeal. This Court disposed of the said writ application on 9th January, 2003 holding that there was contravention of subsection (2) of section 14 of the Regional Rural Bank's Act, 1976 and, accordingly, remitted the matter back to the appellate authority for consideration of the appeal afresh in accordance with law. Thereafter, the appellate authority again considered the appeal, dismissed the same and intimation thereof was given to the petitioner in Annexure-11 dated 23-6-2003. Again challenging the order of disciplinary authority as well as the order of the appellate authority passed after remand, this writ application has been filed.

2. Learned counsel appearing for the petitioner assailed both the orders basically on two grounds. The first ground taken by the learned counsel is that appeal of the petitioner was taken up in the 129th Meeting of the Board where the Chairman absented himself but no decision could be taken on the appeal. Again in the 130th Meeting of the Board, Chairman of the Bank participated to have the quorum and dismissed the appeal. Therefore, again there has been infraction of sub-section (2) of section 14 of the aforesaid Act. The second ground of challenge is that in the inquiry proceeding, the petitioner has only been found guilty of negligence and the actual misappropriation has been done by Promod Kumar Sahoo and, therefore, the order of punishment dismissing the petitioner from service and directing recovery of 50% of pecuniary loss caused to the Bank is disproportionate and should be interfered with.

Learned counsel appearing for the Bank submitted that after the matter was remitted back by this Court for reconsideration of the appeal, the same was considered in the 129th Meeting of the Board and the Board did not find any merit in the appeal and, accordingly, a decision was taken in the said meeting to dismiss the appeal. It was further contended by the learned counsel for the Bank that the matter never came up for taking a decision in the 130th Meeting of the Board as alleged by the petitioner.

3. So far as the second ground taken by the petitioner is concerned, learned counsel for the opposite party submitted that misappropriation of funds in a financial institution is not to be considered lightly and the petitioner was the Manager at the relevant time and he should have noticed the irregularities committed by his subordinates and taken action. Silence on the part of the petitioner resulted in misappropriation of funds by one of the subordinates and,

therefore, the petitioner cannot say that he was not responsible for the same. According to the learned counsel for the Bank, quantum of punishment imposed by the disciplinary authority is justified.

4. So far as the first ground taken by the learned counsel for the petitioner is concerned, we have perused the record of the appellate authority produced by the learned counsel appearing for the Bank. From the record, it appears that 129th Meeting of Board of Directors was held on 13th May, 2003 and the appeal filed by the petitioner was taken up as item No. 27th in the agenda. From the record, we find that the Board of Directors have taken into consideration each and every ground taken by the petitioner in the appeal and did not accept the same with reasons. The Board further observed that the petitioner admitted that fraud had been committed during his tenure as Branch Manager and stated that the said fraud had been committed by one Clerk-cum-Cashier of the said Branch. The question of quantum of punishment was also considered by the appellate authority, but it was of the view that the order of dismissal from service is justified. We are therefore unable to accept the contention of the learned counsel appearing for the petitioner that the Board of Directors did not act in terms of the direction of this Court in the earlier writ application. In the 129th Meeting itself in absence of the then Chairman eight other Directors present in the meeting considered the appeal of the petitioner, applied their minds to each ground taken by the petitioner and ultimately decided to dismiss the same. The contention of the learned counsel for the petitioner that the actual decision was taken in the 130th-Meeting is not borne out from the record.

5. The second ground taken by the learned counsel for the petitioner relates to quantum of punishment. There is no dispute that the petitioner has been found guilty of all the charges. The first imputation was that the amount deposited by the customers on various dates in different Saving Bank Accounts and Loan Accounts were misappropriated without being accounted for in the Bank's cash. The said imputation was proved but it was found that the petitioner as a Manager of the Bank failed to discharge his supervising duty. There is no finding that the petitioner actually misappropriated the said amount. Imputation No. 2 was that even though the said amounts were not entered/reflected in the cash scrolls, credit entries in the respective Savings Bank ledgers and loan ledgers the same had been authenticated by the Manager. The inquiry officer found that crooked initials have been put against the credit entries so as to confuse the matter, whereas the petitioner had put his initial in the G.L., G.L.B. and balance books and, accordingly, the inquiry officer found the petitioner guilty of the said charge. The other imputations also relate to conduct of the petitioner in submitting Branch Manager's Certificate from Babandha Branch stating tally of all balances, and by his conduct permitting the said Promod Sahoo to misappropriate the funds. In the concluding paragraph, the inquiry officer specifically found that only due to the negligence of the petitioner, ineffectiveness to exercise control and supervision, casual approaches, such type of fraud has occurred. It is therefore clear from the findings of the inquiry officer that the petitioner was only found to

be negligent in his work, but the actual misappropriation of funds had not been done by him.

6. Since the petitioner is not involved in misappropriation of the Bank's fund, we are of the view that only on the ground of negligence in duty, order of punishment of dismissal from service is not only disproportionate, but shockingly disproportionate considering the nature of charges levelled/proved against him. Since law does not permit this Court to substitute a punishment, ordinarily we would have remitted the matter back again to the appellate authority for reconsideration of the quantum of punishment. We find that the order of punishment was passed by the disciplinary authority in March, 1997 and in the meantime, fifteen years have passed. In the case of G. Vallikumari Vs. Andhra Education Society and Others, , under similar circumstances, the Hon''ble Supreme Court instead of remit ting the matter back for reconsideration on the question of punishment, substituted a punishment. In the said reported case, the employee had been removed from service by way of punishment and her case was taken up by the Hon''ble Supreme Court thirteen years after the said order of removal from service was passed. Considering the same, the Hon''ble Supreme Court in paragraph-17 of the judgment held that ends of justice will be met by, substituting the punishment of removal from service and imposed some other punishment.

7. In the present case also, fifteen years have passed in the meantime and the petitioner is also due to reach the age of retirement. We are of the view that instead of remitting the mater back to the appellate authority, a suitable punishment can be imposed by this Court Accordingly, we set aside the order of punishment of dismissal from service and direct stoppage of three increments without cumulative effect, ft is further directed that for the period the petitioner has not worked, he would be entitled to 30% of the salary which he would have got. So far as second punishment is concerned, we set" aside the same completely as there is no finding that the petitioner misappropriated the amount and, accordingly, no order of recovery can also be passed against him.

8. The writ application is accordingly allowed.

B.K. Patel, J.

I agree.