(2013) 01 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18599 of 1993

Om Prakash Singh APPELLANT

Vs

Regional Manager, Punjab National Bank and Others RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 4 ADJ 55 : (2013) 4 AWC 4208 : (2013) 3 UPLBEC 1916

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : H.N. Sharma, K.D. Tripathi and S.K. Tyagi, for the Appellant; Ramesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri K.D. Tripathi, learned counsel for the petitioner and Sri Ramesh Singh, learned counsel for the respondent. By means of the present writ petition, the petitioner is challenging the order dated 6.3.1993 passed by Regional Manager, Disciplinary Authority, dismissing the petitioner from service.

2. Brief facts of the case are that the petitioner was working with respondent as Clerk/Cashier. When the petitioner was posted in the Satwara Branch he was suspended by letter dated 3.11.1991 on the alleged fraud committed by the petitioner. First information report has also been lodged against the petitioner alongwith Sri S.P. Singh, Special Assistant in the same branch and inquiry proceeding has been initiated. The petitioner has been provided the copy of charge-sheet dated 14.12.1992. Thereafter, vide order dated 8.1.1993 the respondent No. 1 has communicated to the petitioner the decision to hold inquiry under the provisions of Chapter XIX of Bipartite Settlement to detect the truth of the charges levelled against the petitioner. From the inquiry report it appears that initially the petitioner has not cooperated in the inquiry proceeding but later on he appeared on the date fixed. The inquiry officer has given the opportunity to the management to put its case and in pursuance thereof Sri C.B. Mathur, Officer Incharge and Sri M.C. Rustogi appeared and presented the necessary

documents. During the course of proceedings, the petitioner sought certain documents which have also been produced except the two documents, DE-6, Certificate regarding the non-availability of officer order No. 54/90 to 46/91 and DE-7, Certificate regarding the non-maintenance/non-availability of the Arrangement register prior to 1.9.1990. The petitioner has been given opportunity to cross-examine both the aforesaid officers of the bank, who presented the case of the management.

3. The inquiry officer submitted the inquiry report on 2.2.1992. In the inquiry report the petitioner has been held guilty of the charges.

4. On the receipt of the inquiry report, the disciplinary authority issued notice dated 20.2.1993 proposing the punishment of dismissal from the bank''s service in terms of Clause 19.6 (a) of Chapter XIX of Bipartite Settlement.

5. The petitioner has been given opportunity to reply and opportunity of personal hearing. The petitioner appeared before the disciplinary authority on 3.3.1993. During the course of hearing, certain questions have been made by the disciplinary authority, which have been replied by written submission. The said questions and reply are annexed as annexure CA-6 to the counter affidavit. The said proceeding has been signed by the petitioner. The English version and the reply of the petitioner is incorporated in the impugned order. By the impugned order the petitioner has been terminated from the service.

6. Learned counsel for the petitioner submitted that the petitioner has not been provided the documents demanded by him. Further Regional Manager, who was disciplinary authority has not made the inquiry himself and, therefore, the entire proceeding is vitiated. He further submitted that supplementary affidavit dated 12.4.2012 has been filed annexing various documents to show that no fraud has been committed by the petitioner.

7. Sri Ramesh Singh, learned counsel for the respondent submitted that the Regional Manager was fully authorised either to conduct the inquiry himself or to appoint any person as inquiry officer. It is not necessary that Regional Manager should make the inquiry himself. He further submitted that in the inquiry proceedings the petitioner has been given fullest opportunity and further the disciplinary authority has also given full opportunity of hearing. The submissions made by the petitioner before the disciplinary authority clearly reveals that he has virtually admitted the fraud committed by him. With regard to the supplementary affidavit he submitted that the writ petition was filed in the year 1993 and the supplementary affidavit has been filed on 12.4.2012, after lapse of nineteen years annexing the various fresh documents, which cannot be entertained at this stage. Therefore, the supplementary affidavit should not be entertained and is liable to be rejected.

8. I have considered the rival submissions and perused the record.

9. The writ petition has been filed in the year 1993 and the supplementary

affidavit has been filed after nineteen years annexing various fresh documents, which I decline to entertain at this stage, inasmuch as these are fresh documents and the writ petition is to be decided on the basis of the documents filed along with the writ petition, counter and rejoinder affidavits and the submissions made in the said affidavits.

10. To appreciate the dispute it would be appropriate to refer the charge-sheet. The charge-sheet reads as follows:

CHARGE-SHEET

While working at BO: Satwara it is alleged that you perpetrated frauds as per details given below:

1. You fraudulently passed the following withdrawal slips drawn on your own Savings Fund A/C No. 562 and obtained the payments without actually debiting the amount to your SF A/C No. 562:

2. You connived with Shri C.P. Singh, Special Assistant (under suspension), BO: Satwara who fraudulently passed your following withdrawal slips drawn on your SF A/C No. 562 without actually debiting your SF A/C No. 562 and you fraudulently obtained payment of the same:

3. You drew withdrawal slip dated 26.12.1989 on your SF A/C No. 562 for Rs. 1400/- and obtaining the payment of the same. It has been revealed that only Rs. 1000/- have been debited by you in your SF A/C fraudulently instead of Rs. 1400/- thereby perpetrating fraud to the extent of Rs. 400/- on 26.12.89.

4. You drew withdrawal slip dated 2.3.1990 for Rs. 2200/- on your SF A/C No. 562 and fraudulently obtained payment of the same in connivance with Shri C.P. Singh, Special Assistant (under suspension) who passed the above withdrawal slip for payment without debiting the amount of Rs. 2200/- in your SF A/C No. 562. As a matter of fact the balance outstanding/your above account as on 2.3.1990 was not sufficient to cover the amount of your aforesaid withdrawal slip of Rs. 2200/-. Further, in order to avoid detection of fraud you simply made entry of Rs. 2200/- in your SF A/C Ledger Sheet on the debit side against the credit entry dated 6.3.1990 for Rs. 266.29.

5. The balance outstanding in your SF A/C No. 562 as on 16.10.89 was Rs. 7.88 but you fraudulently changed it to Rs. 487.88 and withdrew Rs. 300/-on 16.10.1989 and again withdrew Rs. 600/- on 17.10.1989 by wrongly casting the extension as Rs. 787.88. The above fraudulent withdrawals were neutrilised on 24.10.1989 by way of credit of Rs. 1503.31 and the balance outstanding in your above SF A/C at the close of the day was Rs. 11.19. Again, you withdrew Rs. 1000/- on 28.10.89 from your SF A/C No. 562 against the outstanding of Rs. 11.19 and fraudulently cast the extension as Rs. 11.19.

(i) You fraudulently passed your following cheques drawn on your overdraft A/C No. 36 (limit Rs. 5000/-against Fixed Deposit) and obtained their payments without actually debiting the cheques in your overdraft A/C No. 36:

(ii) You fraudulently received the payment of your following cheque drawn on your overdraft A/C No. 36 in connivance with Shri C.P. Singh, Special Asstt. (under suspension) who passed the cheque for payment without actually debiting the cheque in your overdraft account:

You deposited the following amounts in cash for the credit of your overdraft A/C No. 36 but the same were not posted in your account, in connivance with Shri C.P. Singh, Special Assistant (Under suspension) in order to conceal your aforesaid fraudulent withdrawals:

The above transactions were accounted for (within the Drawing Power) when the frauds as stated hereinabove were detected.

In this way you defrauded the bank by a net amount of Rs. 25000/-.

Your above act is prejudicial to the interests of the Bank and constitutes gross misconduct in terms of Clause 19.5 (j) of the First Bipartite Settlement.

You are advised to submit your statement of defence, if any, within a maximum period of 10 days from the date of receipt thereof. In case you wish to refer to the relevant records you are hereby permitted to visit BO: Satwara for one day. In case no reply is received within the stipulated period of 10 days (including the time for reference of relevant records) it shall be presumed that you have no defence to offer, admit the charges and the matter shall be considered ex-parte.

11. The inquiry report reveals that, earlier the petitioner has not cooperated in the inquiry proceedings but subsequently appeared before the inquiry officer and demanded certain documents. The documents demanded by the petitioner have been produced by the management except DE-6, Certificate regarding the non-availability of Office order No. 54/90 to 46/91 and DE-7, Certificate regarding the non-maintenance/non-availability of the Arrangement register prior to 1.9.1990. The petitioner was not able to show the relevancy of these documents with the charges levelled against him. The petitioner has been given opportunity to cross-examine Sri C.B. Mathur, Officer Incharge and Sri M.C. Rustogi, who were also posted in Satwara branch. In the cross-examination nothing favourable has come out. The petitioner was not able to extract any material in his favour. The Inquiry Officer has discussed each and every evidence and has concluded as follows:

In view of the above discussions and analysis, the records placed before me and documentary and oral evidences adduced during the enquiry, I arrive at the following conclusions:

CSE has perpetrated the frauds to the tune of Rs. 25,000/- as follows while working as a Clerk/cashier at BO: Satwara:

(a) CSE has prepared, passed and obtained the payments fraudulently to the extent of Rs. 13550/- on different dates without actually debiting his SF A/C No. 562 (ME-3) vide 8 withdrawal slips (ME-4, 7, 10, 13, 15, 18, 21.....

(b) CSE has prepared and obtained the payments fraudulently in connivance with Sri C.P. Singh to the extent of Rs. 7850/- on different dates without actually debiting his SF A/C No. 562 (ME-3) vide 7 different withdrawal slips (27, 30, 32, 35, 38, 41 and 44).

(c) CSE has obtained fraudulently an excess payment of Rs. 400/- on 26.12.1989 vide ME-47 for Rs. 1400/-by fraudulently debiting the same in his Ledger A/C No. ME-3 within Rs. 1000/-.

(d) CSE has perpetrated a fraud of Rs. 2200/- on 2.3.1990 vide ME-50 by not debiting the same in his SF A/C No. 562 (ME-3) on 2.3.1990 and by casting fraudulently a wrong extension in his SF A/C on 6.3.1990.

(e) CSE has perpetrated a fraud of Rs. 1000/- in his SF A/C No. 562 (ME-3) vide ME-60 by casting a wrong extensions fraudulently and intentionally.

(f) CSE did perpetrated a fraud of Rs. 500/- through his OD A/c No. 36 (ME-63 & ME-77) by intentionally not posting ME-64,67, 70, 71 and 74 in the said A/c. However, the said fraud of Rs. 500/- has been accounted for within available D.P.

12. On the receipt of the inquiry report the disciplinary authority has given the show-cause notice proposing the dismissal from bank''s service in terms of Clause 19.6(a) of Chapter XIX of Bipartite Settlement. The petitioner has been given opportunity to show-cause and has also been given opportunity of personal hearing fixing 15.3.1992. The petitioner personally appeared and replied queries made by the disciplinary authority. The copies of the queries and the reply of the petitioner is annexed along with the counter affidavit. The queries made by the disciplinary authority and the reply given by the petitioner, which are referred in the impugned order read as follows:

The personal hearing was held at the aforesaid time, date and place and Shri Singh was heard in person. Shri Singh mainly made the following submissions in the personal hearing:

That he has not perpetrated any fraud.

That the then Officer Incharge had verbally allowed/authorised him to overdraw his A/C upto Rs. 25,000/-. Had he had any intention to perpetrate frauds like Shri C.P. Singh, Special Assistant (Under Suspension) who has perpetrated frauds aggregating Rs. 6.00 lacs approximately, he (Shri Om Prakash Singh) would not have restricted his drawings to Rs. 25,000/- only but at least to Rs. 2.00 lacs because whatever amount he drew through his overdraft A/C beyond the sanctioned limit the same was repaid (deposited) by him.

That whatever he has drawn the amount, either the Special Asstt., Shri C.P. Singh or Shri Ashok Kumar Agarwal, the then Officer Incharge or both were present in the branch.

That whatever mistake he has committed it was because of verbal instructions of the then Officer Incharge but there is no written evidence of such verbal instructions.

That he is ready to accept any punishment except that of ''Dismissal from. Bank''s Service'' and that he may be given one more chance to serve the bank.

13. On the consideration of the inquiry, report and the material on record the disciplinary authority recorded the following findings:

I have carefully examined the above submissions of Charge-sheeted Employee, Shri Om Prakash Singh vis-a-vis the Enquiry Records and find that no evidence has been produced by him either during the enquiry proceedings or during the personal hearing to substantiate his claim that the then Officer Incharge had allowed/authorized him to overdraw his A/C upto Rs. 25,000/-. It is immaterial whether the Special Asstt. or the Officer Incharge or both were present in the branch when he perpetrated frauds. A close scrutiny of Enquiry Records reveals that the submissions made by Shri Om Prakash Singh during personal hearing are rather indirect admission of charges.

It is apparent that he drew Rs. 13550/-fraudulently vide (Management Exhibits) ME-4, ME-7, ME-10, ME-13, ME-15, ME-18, ME-21 and ME-24 without debiting the amount of the withdrawal slips in his SF A/C No. 562 (ME-3). Similarly, he drew Rs. 7850/- fraudulently in connivance with Sh. C.P. Singh, Special Asstt. (Under Suspension) vide ME-27, ME-30, ME-32, ME-35, ME-38, ME-41 and ME-44 without debiting the amount of withdrawal slips in his SC A/C No. 562 (ME-3). He fraudulently drew Rs. 1400/- vide ME-47 though the amount has been debited in his SF A/C No. 562 (ME-3) Rs. 1000/- only. Further, he fraudulently drew Rs. 2200/- vide ME-50 without debiting the amount in his SF A/C No. 562 (ME-3) in connivance with Shri C.P. Singh, Special Assistant (Under Suspension). He fraudulently drew Rs. 300/-and Rs. 600/-vide ME-53 and ME-56 respectively and neutrilised the amount so drawn fraudulently vide ME-59. And again drew Rs. 1000/- fraudulently vide ME-60.

He fraudulently drew Rs. 500/- and Rs. 1064/- vide ME-64 and ME-67 respectively without debiting the amount of the cheques in his overdraft A/C No. 36 (ME-63). He further drew Rs. 1500/-fraudulently vide ME-70 in connivance with Shri C.P. Singh, Special Asstt. (Under Suspension) without debiting the amount of the Cheque in his overdraft A/C No. 36(ME-63). Further, he deposited Rs. 64/- and Rs. 2500/- vide ME-71 and ME-74 respectively for the credit of his overdraft A/C No. 36 but the same were not posted in his overdraft A/C No. 36 in connivance with Shri C.P. Singh, Special Asstt (Under Suspension) in order to conceal fraudulent drawals made by him vide ME-64, ME-67 and ME-70. In this way Shri Singh has defrauded the bank by a net amount of Rs. 25,000/-.

Keeping in view the seriousness of the charges proved vis-a-vis the submissions made by Shri Singh in the personal hearing, I do not find any merit warranting change in the proposed punishment. Thus, the punishment of ''Dismissal from Bank''s Service'' in terms of Clause 19.6 (a) of Chapter XIX of First Bipartite Settlement, as proposed vide letter dated 20.2.1993, upon Shri Om Prakash

Singh is hereby confirmed. Further, Shri Om Prakash Singh will not be entitled to any wages for the period he remained under suspension excepting the subsistence allowance payable in terms of Provisions of Bipartite Settlement.

I order accordingly.

14. I do not find any error in the impugned order. From the documents it has been fully proved that the petitioner has committed fraud and embezzled the amount. The cashier of the bank is custodian of the bank money and public money. The fraud and the misappropriation of even a single penny on his part can not be ignored. The job of the Cashier is fully based on the trust, faith and integrity.

15. In the case of Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , the Apex Court has observed that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.

16. In the present case, it is proved beyond doubt that the petitioner has withdrawn the money from the bank without making debit entry in his account and further the entry of lesser amount than the amount withdrawn has been made in his account. It is a full proof case of fraud and embezzlement and if therefore, the petitioner has rightly been dismissed from service. In the circumstances, no interference is called for.

In the result, the writ petition fails and is, accordingly dismissed.

