(2010) 09 GAU CK 0093

In the Gauhati High Court

Case No : Writ Petition (C) No. 3598 of 2006

Prasanta Kumar Ganguli APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 2 LLJ 633

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.S. Choudhury, I. Hussain, A. Maleque and S. Kanurigoe, for the Appellant; L. Talukdar, G. Das and A. Gafar, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition, the Petitioner has assailed the Ahnexure 6 order dated 15.3.2005 passed by his appointing'' authority dismissing him from service. The Petitioner has also challenged the Annexure 8 order dated 30.9.2005, by which the appeal preferred by him against the order of dismissal, has been dismissed. The impugned order of dismissal from servicers passod pursuant, to the departmental proceeding initiated Against the Petitioner on the following charges:

ANNEXURE II

STATEMENT OF IMPUTATION OF LAPSES ALLEGED AGAINST SHRI PRASANTA KUMAR GANGULY JMGS-I IN RELATION TO THE ARTICLE OF CHARGEALLEGED AGAINST HIM (VIDE ANNEXURE I) WHILE SHRI GANGULY WAS POSTED AT GOSSAIGAON BRANCH

Allegation I

It is alleged that while you were working as Passing Officer at Gossaigaon Branch you have raised a spurious debit in STDR Account of Rs. 5,51,100 on 28.7.2003 against which 12 (twelve) Bank Drafts aggregating Rs. 5,50,000 were issued in favour of M/s. Economic Drug Distributors proprietary firm of your wife Smt. Tanima Ganguly drawn on Bongaigaon Branch and Exchange account was credited with Rs. 1,100 with mala fide intention. The details of the drafts issued and signed by you as under:

Si. No. Draft No. Amount of droft Exchange Favouring

1. 048456 Re. 49, 000 98, 00 Economic Drug Distributors

2. 048457 Rs. 49, 000 98.00 -do-

3. 048458 Rs. 49, 000 98.00 -do-

4. 048459 Rs. 49, 000 98.00 -do-

5. 048460 Rs. 49, 000 98.00 -do-

6. 048461 Rs. 49, 000 98.00 -do-

7. 048462 Rs. 49, 000 98.00 -do-

8. 048463 Rs. 49, 000 98.00 -do-

9. 048464 Rs. 49, 000 98.00 -do-

10. 048465 Rs. 49, 000 98.00 -do-

11. 048466 Rs. 49, 000 98.00 -do-

12. 048467 Rs. 11, 000 22.00 -do-

Allegation II

It is alleged that TDR form bearing No. 683850 removed and misused by you for issuance of above mentioned 12 Nos. of Bank Drafts amounting to Rs. 5,51,100 inclusive of exchange.

Allegation III

It is alleged that while you were officiating as Branch Accountant you have sanctioned and disbursed 3(three) Demand Loan for Rs. 1,31 000, Rs, 1,00,227 and Rs. 95,000 (Total amount Rs. 3,26,227 to ono Shri S.N. Agarwala on 20.8.2003 against non-existent STD Rs and issued 9(nine) drafts aggregating Rs. 3,25,543 to variouu Drug wholesalers drawn on our Guwahati Branch and all the Drafts were signed by you. Also you have prepared and passed all the credit vouchers (drafts) with mala fide intentions. The details of drafts issued and signed by you us under:

Draft No. Favauring Ammount Exchange

048671 LB Enterprise 35635 72

048672 Solvay Pharma Ltd. 32090 66

048673 -do- 30133 62

048674 Notaries India Ltd 96748 194

048675 Hanman Pharmaceuticals Ltd. 17106 36

048676 LB Enterprise 26159 54

048677 Wallace Pharmaceuticals Ltd. 40042 82

048678 -do- 43493 88

048449 -do- 4137 30.

2. In the departmental proceeding, the Petitioner, duly participated through his defence counsel and on conclusion of the enquiry, the Enquiry Officer submitted his report holding that all the aforementioned charges had been proved. Copy of the enquiry report was forwarded to the Petitioner on 30.11.2004 asking him to submit written representation against the same, if any. Be it stated here that during the pendency of the departmental proceeding, the Petitioner was placed under suspension by order dated 30.9.2003.

3. On conclusion of the enquiry proceeding and furnishing of the report thereof, the impugned order of dismissal dated 15.3.2005 having been passed against the Petitioner, he preferred a departmental appeal, which was also rejected by the aforesaid Annexure 8 order dated 30.9.2003.

4. I have heard Mr. A.S. Choudhury, learned senior counsel assisted by Mr. I. Hussain, learned Counsel for the Petitioner as well as Mr. L. Talukdar, learned Counsel representing the Respondent-Bank, who has appeared along with Mr. G. Das, learned Counsel.

5. The whole basis of challenge to the impugned orders, as has been projected in the writ petition is that the Petitioner alone was not responsible in respect ofthte transaction, for which he had been made liable. In paragraph 16 of the writ petition, the Petitioner has stated about, the details of the procedure to be followed in respect of such transaction. According to the Petitioner, such a detailed procedure being involved in the transaction; the allegation made against the Petitioner is not tenable.

6. As regards the procedure adopted in conducting the enquiry proceeding, the Petitioner has not raised any grievance against the same. However, in paragraph 9 of the writ petition, the Petitioner has discussed about the evidence on record and in fact, has quoted some of the statements made by the witnesses. It is the stand of the Petitioner that on the basis of such evidence, the charges levelled against the Petitoner could not have been held to be proved and, thus, the finding arrived at by the Enquiry Officer being based on no evidence is liable to be interfered With.

7. In the counter affidavit filed by the Respondent-Bank, supporting the impugned orders, it has been stated that the departmental proceeding was

initiated against the Petitioner pursuant to a preliminary investigation relating to the, illegality committed by the Petitioner. As regards the allegation of the Petitioner that no question was directly put to him in the enquiry proceeding, it has been stated that since the Petitioner was repesented by his defence counsel and as he defended his case through the said counsel and thus, it is not correct to say that the Petitioner was not put any question.

8. In paragraph 4 of the counter affidavit, it hat been categorically stated that the Petitioner, on being transferred to Gossaigaon Branch on 1.3.2003, served there as Assistant Manager and also Discharged the function of Passing Officer/ Officiating Accountant till he was dismissed from service on 24.2.2005 pursuant to the aforementioned departmental proceeding

9. Mr. L. Talukdar, learned Counsel representing the Respondent-Bank has produced the records of the enquiry proceeding. He has also placed reliance on two decisions of the Apex Court of which, one is High Court of High Court of Judicature at Bombay through ite Registrar Vs. Udaysingh Nimbalkar and Others, The other judgment on which Mr. Talukdar, learned Counsel has placed relianco, is one dated 11.8.2006 passed by the Apex Court in Civil Appeal No. 2055/2003 State Bank of India and Others Vs. Ramesh Dinkar Punde, The aforesaid decisions have been pressed into service so as to remind the scope of interference of the writ Court in the matter of departmental proceeding.

10. I have considered the submissions made by the learned Counsel for the parties and have also gone through the entire materials on record including the additional affidavit filed by the Petitioner on 17.2.2010. By the said additional affidavit, the Petitioner has brought on record the order dated 4.2.2010 passed by the learned Civil Judge Kokrajhar in Money Suit No. 1/2006, The said money suit was filed by the Respondent-Bank against the Petitioner and his wife for recovery of Rs. 8,77,327. By the said order dated 4,2,2010, the suit was dismissed for non-adducing any evidence by the Respondent-Bank.

11. By referring to the aforesaid order dated 4.2.2010 passed in Money Unit No. 1/2006, it has been contended by the Petitioner that since the Respondent-Bank failed to adduce any evidence towards recovery of the amount, allegedly defalcated by the Petitioner, the whole basis of departmental proceeding falls through and, thus, the impugned orders are liable to be interfered with.

12. Although Mr. L. Talukdar, learned Counsel representing the Respondent-Bank submits that the bank has preferred an appeal against the said order dated 4.2.2010, this aspect of the matter need not detain us. The money suit was filed by the Respondent-Bank for recovery of the particular amount from the Petitioner and his wife. According to the Respondent-Bank, the Petitioner was responsible for sanctioning the particular loans without any authority, which resulted in loss of substantial amount to the bank. Apart from the fact that the suit was not decided on merit, the principle involved in the departmental proceeding is quite distinct and different from that of the test to be applied in a civil proceeding.

Merely because the suit against the Petitioner and his wife was dismissed on technical ground, it cannot be said that the Petitioner is absolved from his liability pursuant to his misconduct, which is tested applying the principle of pre-ponderence of probability.

13. As noted above, it is not the case of the Petitioner that there was procedural irregularity in conducting the enquiry procseding, However, it is the stand of the Petitioner that the other officers allegedly involved in the transaction, which resulted in lose to the bank being not taken up in the departmental proceeding, the Petitioner alone could not have been taken up for such procedure. On being asked-as to whether any allegation has been made to that effect, in the writ petition, Mr. A.S. Choudhpry, learned Counsel for the Petitioner fairly admitted that no such allegation finds mention in the writ petition, However, he submits that based on the evidence on record, it is clearly established that the Petitioner has been made victim of the circumstances and that, the witnesses examined on behalf of the disciplinary authority, who were the real culprits, have been allowed to go free of any liability.

14. Apart from the fact that no such allegation has been made in the writ petition, I also do not find any such allegation, either in the written brief (defence-brief) submitted by the Petitioner or in the proceedings of the enquiry. On perusal of the enquiry proceeding records produced by Mr. Talukdar, learned Counsel representing the Respondent-Bank, I do not find any such allegation made by the Petitioner.

15. The Enquiry Officer in his report furnished charge-wise, has discussed the entire evidence on record, based on which, it has been held that all the charges against the Petitioner stand proved. The Enquiry Officer has discussed the evidence on record in detail including the documents exhibited during the enquiry proceeding. The said , exhibits bear the signatures and handwritings of the Petitioner. As per the discussiors made by the Enquiry Officer, on the basis of the evidence on record, the Drafts "Exhibits Nos. IPEX 13" were prepared under instructions of the Petitioner, which were duly signed by him. At that point of time, the Petitioner was officiating as Branch Accountant. It is the finding of the Enquiry Officer that the Petitioner had completed the entire job all by himself relating to the particular demand loans to a fictitious person against non-existent STD Rs. The handwritings and signatures appearing on the demand loan debit vouchers as per Ext. PEX-28 to 25 are that of the Petitioner, Further, the demand loan ledger (Ext. PEX-29 to PEX-30) also bear the handwritings of the Petitioner and the loans were sanctioned by him against non-existent STD Rs.

16. The aforesaid finding recorded by the Enquiry Officer on the basis of the evidence on record cannot be lightly interfered with and that too, exercising the power of judicial review under Article 226 of the Constitution of India. It is in this context, Mr. Talukdar, learned Counsel representing the Respondent-Bank has placed reliance on the decision of the Apex Court in Rameah Dinkar Punde (supra). In the said decision, the Apex Court placing reliance on its earlier

decisions, has reiterated the ambit and scope of interference in such matters appreciating the evidence like an appellate authority.

17. As has been held by the Apex Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, a Bank Officer is required to excreiso higher standard of honesty and integrity. Dealing with the public money, he is required to take ail possible stops to protect the interest, of the bank and to discharge his duties with utmost integrity, honesty and devotion and diligence and not to do anything, which is unbecoming of a Bank Officer. The good conduct and discipline are inseparable from the functioning of every officer/employee of the bank.

18. The view taken by the Enquiry Officer on the basis of the evidence being plausible one, it is not for the writ Court to sit on appeal over the finding recorded by the Enquiry Officer and re-appreciate the evidence on record to arrive at a different finding. Nothing could be shown by the Petitioner to bring home the argument that the finding arrived at by the Enquiry Officer is based on no evidence and/or suffers from perversity.

19. In Udaysingh (supra), the Apex Court dealing with the scope and ambit of writ Court to interfere with the penalty imposed pursuant to the departmental proceeding, held that once the charge against the delinquent officer is established, it should bo left open to the said authority to impose any of the penalties prescribed and it would not be in the fitness of things to interfere with such penalty imposed pursuant to the departmental proceeding.

20. In the instant case, from the materials on record, what has transpired is that the Petitioner was provided with full opportunity of being heard in the entire enquiry proceeding. He had engaged his defence counsel. The proceedings of the enquiry have been signed by the Petitioner and his defence counsel. The opportunity of cross-examining the witnesses was also provided and the same was duly accepted by cross-examining the witnesses. On conclusion of the enquiry, the defence brief was also submitted. After the impugned order of dismissal from service, the Petitioner preferred an appeal, a copy of which has been annexed to the writ petition as Annexure 7. In the appeal, no ground was urged to the effect that the Petitioner was not responsible in the purported collective decision or that he has been made the victim of the circumstances. The appellate authority also in consideration of the grounds urged in the appeal and the entire materials on record, passed the impugned appellate order rejecting the appeal and I see no reason to interfere with.

21. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed.

