(2011) 11 DEL CK 0324

In the Delhi High Court

Case No : LPA 824 of 2011

Punjab and Sind Bank — APPELLANT

Vs

Vijay Kumar Sharma — RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Citation : (2011) 126 DRJ 622 : (2012) LLR 193

Hon'ble Judges : S.P. Garg, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jagat Arora with Mr. Rajat Arora, for the Appellant; V.K. Rao with Mr. Pramod Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—Appellant Punjab & Sind Bank has preferred the present appeal against the judgment and order dated 25.08.2011 passed by the learned Single Judge whereby the writ petition filed by the respondent in the year 1997 has been allowed granting the following reliefs:

(a) The impugned orders dated 18th September 1995 passed by the DA of the Bank and 16th May 1996 passed by the AA of the Bank are hereby set aside.

(b) The Petitioner will be reinstated in service forthwith with full back wages and all consequential benefits including seniority, promotion and increments as and when they fell due. The Petitioner is also entitled to full salary and allowances during the period of his suspension.

(c) The Bank will pass the appropriate consequential orders implementing the above directions within a period of four weeks from today. The arrears of back wages will be paid to the Petitioner within a further period of four weeks.

(d) The Bank will pay the Petitioner within four weeks a sum of Rs. 1 lakh towards compensation for his unfair dismissal from service and for subjecting him and his family to mental agony and trauma for over sixteen years.

(e) The Bank will, within a period of four weeks from today, also pay to the Petitioner a sum of Rs. 20,000/-being the costs of litigation.

(f) If there is a delay in making the payments as directed above, the Bank will pay the Petitioner simple interest at 12% per annum on the aforementioned amounts for the period of delay.

2. It is firstly prayed that the impugned order be set aside and penalty of dismissal from service inflicted upon the respondent be restored; alternatively it is prayed that if the finding returned by the learned Single Judge that there is no evidence to hold respondent guilty even qua a part of charge-1, as held by the enquiry officer, is upheld, directions to pay full back-wages and grant promotions as also compensation in sum of Rs. 1 lakh be set aside for the reason the respondent was facing another departmental enquiry when he was dismissed from service and thus the appellant would be entitled as per service rules applicable to take into account said departmental proceedings which were dropped since the service rules do not envisage any disciplinary action against a dismissed employee.

3. In January 1988 the respondent was posted as Branch Incharge of the Sherpur Khaddar rural branch of the appellant bank. It is a place in the interiors of Uttar Pradesh. There were only four employees in the branch; two in the officer cadre and two in the workman category. Besides the petitioner, the other officer was a cashier. The two employees in the workman category were a peon and a guard. On 11.01.1991 the cashier of the branch left early on the pretext of some work and did not return to the branch.

4. The safe in which the cash in the branch used to be kept for safe custody had two keys, one with the respondent and the other with the cashier; and needless to state the safe had to be operated at the same time by the respondent and the cashier using a key each with them so that the chance of defalcation was minimized. As per the respondent he was anxious to keep the branch running and having no other option, recovered the key from the drawer of the cashier and operated the safe using both keys in the presence of the peon and the guard. When on 12.01.1991 the cashier did not report for duty, he sent an intimation to the Regional Office discovering some anomalies in the record as also that the cashier was not reporting for duty and that he was operating the safe using both keys i.e. the one which was entrusted to him and the other which was entrusted to the cashier. The respondent claims to have sent another intimation to the Regional Office on 18.01.1991 regarding embezzlement by the cashier. He also claims to have sent a telegram dated 21.01.1991 and having lodged an FIR in consultation with the Regional Office.

5. The cashier absconded and continues to abscond till date. As regards the respondent he was suspended on 20.2.1991 and was served with a charge memo on 19.6.1991. Four charges were listed as under:

1. Sh.Vijay Kumar Sharma, Asstt.Manager (U/S), B.O. Sherpur Khadar handled

both sets of keys illegally and unauthorizedly from 11.1.1991 to 21.1.1991 as Sh.K.P.Sharma, Cashier (U/S) was absent from the branch on these dates. Shri Vijay Kumar Sharma did not inform the competent authority that he was handling both sets of cash keys and that this was in violation of H.O. Instructions.

2. Sh.Vijay Kumar Sharma issued the cash receipt of Rs. 1000/-(Rs.one thousand only) to Sh.Karam Singh s/o Sh.Nathan on 20.11.1990 being the cash deposited by the party to be credited in his account. The "deposited cash" was not deposited in the account and pocketed the amount.

3. Sh.Vijay Kumar Sharma, Asstt.Manager committed dereliction of duty and breach of faith in the performance of official duties with dishonest motives. Sh.Vijay Kumar Sharma did not check as to why Sh.K.P.Sharma Casher was making payments of more than Rs. 5,000/-on withdrawal forms instead of issuing loose cheques or using the cheques issued to the depositors.

4. Sh.Vijay Kumar Sharma also did not keep proper control on the working of the branch. It was in the explicit knowledge of Sh.Vijay Kumar Sharma that Sh.K.P.Sharma, cashier was receiving cash from various parties and making payments to them without actually entering the either the pass book or bank''s ledgers. Some of the withdrawal forms were filled by Sh.K.P.Sharma and verified by Sh.Vijay Kumar Sharma. As such Vijay Kumar Sharma aided and abetted the fraudulent act(s) committed by Sh.K.P.Sharma cashier and failed to exercise any check on the activities of Sh.K.P.Sharma cashier and in consequence, a fraud of about of Rs. 20.00 lacs was perpetrated on the bank.

6. Highlighting that pertaining to article 1 of the charge, respondent justified handling both keys to keep running the affairs of the branch i.e. pleaded necessity by way of defence to do so, he denied the second limb of the charge that while doing so he did not inform the Competent Authority and for which he referred to the fact that on 12.1.1991 he had duly intimated the Regional Office that he would be operating the safe using both keys.

7. As per report dated 3.9.1993 submitted by the enquiry officer, the respondent was held not guilty of charge No.2, 3 and 4. He was held not guilty of unauthorizedly using both keys as per the first limb of charge No.1, but was held guilty of the second limb of charge No.1 wherein it was alleged that the respondent did not inform the Competent Authority that he was handling both keys.

8. As noted herein above, the respondent was heavily relying upon his having written a letter dated 12.1.1991 to the Regional Office. In respect of said letter which was exhibited as DEX-29, the enquiry officer opined as under:

I have carefully considered all the aspects and observe that letter dated 12.1.91 (DEX-29) does not bear any dispatch number and even the telegram (DEX-15) does not have any reference of this letter dated 12.1.91 and version of the first para of DEX-27 is different from the version of DEX-29. As such I do not give weightage to the same and conclude that the part of allegations that CSO did not inform the competent authority that he was handling both set of cash keys stands proved.

9. Highlighting that the telegram DEX-15 is the one which respondent claims to have sent on 21.1.1991, relevant would it be to state that meaningfully read, the reasoning of the learned enquiry officer qua letter dated 12.1.1991 DEX-29 is that since it does not bear a dispatch number and there is no reference of the said letter in the telegram dated 21.1.1991, the same would be a suspect document.

10. A word needs to be spoken at this juncture qua article 1 of the charge. It has two limbs. The first is of handling both keys illegally and unauthorizedly and the second limb is of not informing the Competent Authority of doing so. It is the first limb which is incriminating from an angle of turpitude and the second is incriminating not from an angle of turpitude but from the angle of a procedural lapse. We have our doubt whether qua a procedural lapse the penalty of dismissal would be proportionate keeping in view that the enquiry officer accepted the defence of necessity pleaded by the respondent to operate the locker using both keys. But we express no final opinion inasmuch as, as would be evident hereinafter, we concur with the reasoning of the learned Single Judge, that article 1 of the charge held partly proved qua the second limb thereof is a result of perversity in the conclusions arrived at by the enquiry officer and gullibly gulped down by the disciplinary authority as also the appellate authority of the respondent.

11. The disciplinary authority to which the report of the enquiry officer was submitted for further action, did not disagree with the findings recorded by the enquiry officer absolving the respondent of charge No.2, 3 and 4 and partly from charge No.1. Accepting the report holding respondent guilty of part of charge No.1, the disciplinary authority served the enquiry report upon the respondent under cover of a letter dated 18.10.1993 requiring respondent to furnish his response, which respondent did on 6.11.1993 and highlighting that he was absolved of the first limb of charge No.1 and was completely absolved of the other charges, qua his being indicted partly i.e. for the second limb of charge No.1 he highlighted the patent absurdity in the conclusion arrived at by the enquiry officer. The respondent highlighted that Ex.DEX-29 i.e. the letter dated 12.1.1991 was not produced by him during enquiry. He highlighted that if he had produced the letter, there would have been a scope to argue that he had contrived the letter. The respondent highlighted that he had moved an application that the department should produce the said letter as it was relevant to his defence and that on behalf of the branch manager, the Presenting Officer for the bank, had produced and filed the letter in question. The respondent highlighted that since the letter came from the custody of the branch office, to the office where the respondent had written the letter and not from the rural branch where he was working, it was apparent that the letter had reached the

competent authority and thus merely because it did not have a dispatch number, which was a probable omission, there was no scope to doubt that the letter was not written by the respondent. As regards the telegram dated 21.1.1991 not having a reference to the said letter, it was highlighted that telegrams, by their very nature have to be cryptic and not exhaustive memorandums on the subject matter.

12. Unfortunately, while passing the order dated 18.9.1995 accepting the report of the enquiry officer and levying the penalty the disciplinary authority held that: He did not make any satisfactory reply. The order in question has not even dealt with the contentions raised by the respondent, and as noted herein above, qua part of charge No.1 for which the respondent was indicted. In a cavalier manner, the penalty of dismissal from service has been inflicted. Respondent preferred an appeal which met the same fate vide order dated 16.5.1996 and we are sad to say that even the appellate authority has not dealt with the core issue raised by the respondent.

13. Fortunately for the respondent, the learned Single Judge has seen reason and logic. The reason and the logic is plain and simple. It hardly needs a hammering into the head of any reasonable person. Where ''A'' claims of having written a letter to ''B'' and ''B'' denies the said claim of ''A'', but at the enquiry the letter in question emanates from the custody and possession of ''B'', unless ''B'' explains how the letter was produced from his custody, the onus on ''A'' stands discharged pertaining to the claim that ''A'' wrote the letter to ''B''.

14. Thus, the appeal fails insofar it challenges the view taken by the learned Single Judge that qua the charge No.1 partly proved, it is a case of perverse findings.

15. The respondent has to be reinstated in service. We uphold the impugned order to said extent.

16. What should be the consequential reliefs?

17. Undisputably the respondent was facing another disciplinary action when his services were terminated. The said action was dropped for the reason the applicable service rules do not contemplate a disciplinary enquiry against an employee who has been dismissed from service. Since the order levying penalty of dismissal has been set aside by the learned Single Judge, which order to said extent has been upheld by us, the appellant would be entitled to revive the second disciplinary proceedings and proceed to its logical conclusion. Promotions in the appellant bank are not on a time scale but have to be earned by dint of hard work and achieving not only the benchmarks but even clearing the departmental exams. Further, the service rules empower the bank to withhold promotion of officers under a cloud and who are facing disciplinary action till they are cleared. Thus, the directions issued by the learned Single Judge to grant consequential benefits of promotion and seniority as also increment in the promotional posts have to be set aside and are hereby set aside.

18. As regards wages, i.e. back-wages, it is always a vexed issue and for which neither party is responsible. Even the Court is not responsible. Docket explosion in Courts is resulting in matters being decided with considerable delay. As in the instant case, writ petition filed in the year 1997 came to be decided on 25.8.2011 i.e. after 14 years, this is the fate of most of the cases. Whereas the employer would be justifiably aggrieved if the entire burden to pay back-wages is cast on his shoulders, for no fault of his as regards the time spent on litigation, the employee would be justifiably aggrieved if nothing is paid to him. But it has to be remembered that in this case there is supine indifference on the part of the disciplinary authority and the appellate authority in not even considering a well-merited submission of the respondent and thus the appellant must bear the greater burden of the no fault liability of either party i.e. the delay occasioned in adjudication in Courts.

19. Noting as aforesaid, a just and an equitable direction would be that upon reinstatement, the respondent would be placed in the same grade (with benefit of replacement grades applicable) in which he was when he was dismissed from service and benefit of annual increments be granted to him and only 60% of said back-wages be directed to be paid by the appellant to the respondent.

20. As regards future promotions or even back-dated promotions, we clarify that if the respondent is absolved in the second enquiry, the competent authority would then consider the entitlement of the respondent to be promoted from the dates person junior to the respondent were promoted and to conduct ex-post facto merit evaluation as also subject respondent to the departmental exams required to be cleared and upon clearance retrospective date benefit to be granted. In said eventuality we direct that the second enquiry be completed expeditiously and under no circumstances beyond one year.

21. The appeal stands disposed of upholding first direction issued by the learned Single Judge as noted in sub-para (a) of para 1 above. Direction issued and as noted in sub-para (d) of para 1 above is set aside. Direction issued and as noted in sub-paras (b) and (c) of para 1 above are modified as per paras 19 and 20 above. Maintaining the cost awarded by the learned Single Judge as noted in sub-para (e) of para 1 above, we refrain from imposing any costs in the instant appeal.

