(2013) 10 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 5564 of 1995

Ramanath Nayak APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 OHC CK 0013

Hon'ble Judges : M.M. Das, J;A.K. Rath, J

Bench : Division Bench

Advocate : R.K. Rath and Mr. Debasis Tripathy, for the Appellant; P.V. Ramdas and P.V. Balkrishnan, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rath, J.—In this writ application under Article 226 of the Constitution of India, the petitioner has prayed, inter alia, to quash the order dated 14.02.1990, passed by the Disciplinary Authority vide Annexures-9 and order dated 3.10.1991, passed by the Appellate Authority of the State Bank of India vide Annexure-11 imposing punishment of reduction of the basic pay of the petitioner to five stages. Sans unnecessary details, the case of the petitioner is that pursuant to an interview, he was appointed as Officer, Grade-I in the State Bank of India in the year 1975. Thereafter, he was promoted to the rank of O.M.M. Grade-II with effect from 1.08.1984. While working in Grade-II in Zonal office, Bhubaneswar, he was placed under suspension. A disciplinary proceeding was initiated against him on 7.09.1987. The charges were framed. The first charge was in respect of the fraudulent utilization of $ 500(U.S. Dollars) for booking a Scooter given by one Shri T.K. Swain, borrower for depositing in his old loan account. He submitted a written statement of defence denying the allegation. An Enquiry Officer was appointed to enquire into the allegation. After conducting enquiry the Enquiry Officer submitted a report on 28.06.1988 vide Annexure-4 holding that the charge was proved. While the matter stood thus, another proceeding was initiated against him for lapses while he was working as Branch

Manager at G. Udayagiri A.D.B. Branch from 1981-84. As would be evident from the articles of charges vide Annexure-5, he was negligent in sanctioning loans under different Government sponsored schemes, failed to ensure proper documentation, disbursed lesser amounts than the sanctioned limits to the beneficiaries and utilised the balance amounts unauthorizedly for himself. The second charge was, he had acquired immovable properties without prior permission or subsequent intimation to the competent authority. The detailed statement of imputations of misconduct in support of articles of charge framed against the petitioner were issued along with the memorandum dated 27.07.1988 vide Annexure-5. He submitted a written statement of defence controverting the allegations. The same Enquiry Officer, who was appointed earlier to conduct the enquiry in respect of the first disciplinary proceeding, was also appointed as Enquiry Officer in the subsequent disciplinary proceeding. After completion of enquiry, he submitted the report on 21.08.1989 holding that the imputation Nos. (i), (iii) and (v) had been proved and imputation Nos. (ii), (iv) and (vi) had not been proved. But then, the disciplinary authority passed a composite order in respect of both the charges accepting the findings of the Enquiry Officer and imposed the penalty of "reduction of Basic Pay by five stages" on 14.02.1990 vide Annexure-9. Thereafter, he filed an appeal before the Deputy Managing Director and Appellate Authority, but then, the same was dismissed by the Appellate Authority on 3.10.1991 vide Annexure-11.

2. Pursuant to issuance of notice, a detailed counter affidavit has been filed by the opposite parties. The case of the opposite parties is that the petitioner during the recovery drive met Shri T.K. Swain, a borrower of Old Town Branch, who had availed a loan to purchase tractor and suggested Shri Swain to get the Travellers Cheques for $500 in his name from Shri S.B. Nayak in U.S.A. Shri S.B. Nayak (NRI) had to pay to Shri T.K. Swain for using his Tractor. Five Travellers Cheques for $ 100 each in the name of the petitioner were delivered to Shri Nayak, who had credited the proceeds in his S.B. A/C No. P107/21352 on 18.07.1986 at Bhubaneswar Main Branch, non-convertible scooter A/C for priority allotment of scooter against foreign exchange for himself. The petitioner failed to credit rupee equivalent of $ travellers cheques in the loan account of Shri T.K. Swain, although he was reminded by registered letters by the borrower, which were acknowledged by him. Due to pressure and complaint from the borrower the petitioner arranged to deposit Rs. 5,800/- through Shri Bibekananda Mohanty and Rs. 600/- through Shri Hari Swain on 10.10.1986. On a reference to Shri S.B. Nayak (NRI), who was residing in U.S.A., he had stated that at the request of T.K. Swain, the borrower of the Bank, he had inserted the name of Shri Ramanath Nayak in the travellers cheques aggregating $500. It is revealed from the findings of the Enquiry Officer that the petitioner had fraudulently utilized the proceeds of the said $ travellers cheques for his personal gain and did not deposit the rupee equivalent in the loan account of the borrower despite request. The Enquiry Officer, in his report vide Annexure-4, after careful analysis of the facts had concluded that the complaint lodged by Shri Swain was established.

There is no bar in admitting recorded statements as exhibits in the enquiry proceedings. The Enquiry Officer had observed necessary procedure of departmental proceedings in the instant case. The Enquiry Officer after taking into account the contention of the petitioner and examining the evidence on record had considered the charges as proved to the extent that the petitioner is responsible for disbursement of the lesser amount to the beneficiaries of the loan.

3. The further case of the opposite parties is that the petitioner was the member of the purchase committee and had failed to account for the balance amount of cost of Rs. 375/- which was neither credited to the borrower''s loan account nor in his SB A/C. The Enquiry Officer had considered the charge that the petitioner had misutilised a sum of Rs. 375/-. Further the Disciplinary Authority after careful analysis of the evidence on record and findings of the Enquiry Officer had passed the said order of penalty. The Appellate Authority was not inclined to interfere with the order of punishment as none of the contentions raised by the petitioner were found valid and acceptable.

4. Mr. R.K. Rath, learned Senior Advocate for the petitioner submitted that the disciplinary authority committed a manifest illegality and impropriety in clubbing two disciplinary proceedings and passing the order of punishment. He further submitted that though the charges levelled against the petitioner had not been proved beyond preponderance of probability, but then, the Enquiry Officer submitted a report holding that the imputations made in (i), (iii) and (v) are proved. According to Mr. Rath, the findings of the Enquiry Officer in respect of imputation Nos. in (i), (iii) and (v) are based on surmise and conjecture and the order of punishment passed by the disciplinary authority is bad in law. He further submitted that the order of punishment passed by the disciplinary authority, which was upheld by the Appellate Authority, is not based on the matter available on record and, as such, the same is liable to be quashed.

5. Per contra, Mr. P.V. Balakrishnan, learned counsel for the opposite parties submitted that the Enquiry Officer after affording reasonable opportunity to the petitioner conducted the enquiry. After thread bare analysis of the evidence on record, he came to hold that imputation Nos. (i), (iii) and (v) had been proved. The disciplinary authority on taking a holistic view of the matter, imposed "reduction of basis pay by five stages", which was affirmed by the Appellate Authority. The order of punishment passed by the disciplinary authority and confirmed by the Appellate Authority, is perfectly legal, valid and justified and requires no interference.

6. So far as allegation of fraudulent utilization of U.S. Dollar Travellers Cheque of $ 500 given by one Shri T.K. Swain, borrower, for booking a scooter by the petitioner is concerned, the Enquiry Officer in his report dated 28.06.1988 vide Annexure-4 came to hold that the charge is proved. As would be evident from the said report, the Enquiry Officer came to hold that Shri T.K. Swain, the complainant, who was the principal witness, did not turn up in the enquiry. He had sworn an affidavit on 26.04.1988 in the court of Executive Magistrate,

Kakatpur (DEX 3) that the complaint filed against the petitioner is baseless and lacks any substance. However, the Enquiry Officer came to hold that as the action of Shri Swain is contradictory; swearing of affidavit by him is an afterthought. The original complaint was made by Shri Swain with a clear mind and basing on certain facts. He further held that it seems unnatural that Shri Swain would unnecessarily lodge a complaint against the petitioner and file an affidavit. We fail to understand, when the complainant did not turn up in the enquiry and sent an affidavit sworn to by him that the complaint is baseless and lacks any substance, how could, the Enquiry Officer submit a report holding, inter alia, that the charge is proved? We are conscious that scanning of evidence is beyond the purview of the writ Court, but on bare perusal of the enquiry report, it is evident that finding of the Enquiry Officer is perverse in as much as the report is a perfunctory one.

7. The imputations of misconduct in support of articles of charge framed against the petitioner in respect of imputation Nos. (i), (iii) and (v) are quoted hereunder:--

(i)(a) Loan A/c. No. DIR/ATL-3/19/93 dt. 28.01.84 in the "name of Sri Surya Digal.

Sri R.N. Nayak sanctioned" an amount of Rs. 5,000/- to the above borrower, for purchase of 2 milch cows. Cows were purchased at a cost of Rs. 3,500/- and an amount of Rs. 500/- was deposited in the Savings Bank Account opened in the name of the borrower. Sri Nayak misutilised the balance amount of Rs. 1,000/-.

(b) Loan A/c. No. ATL-3/19/94 dt. 28.04.85 in the "name of Sri Danial Digal.

Sri Nayak sanctioned an" amount of Rs. 5,000/- to Sri Daniel Digal out of which two milch cows were purchased at a cost of Rs. 3,500/-. An amount of Rs. 500/- was deposited in the S.B. account opened in the name of the borrower. Sri Nayak misutilised the balance amount of Rs. 1,000/- for himself.

(c) Loan A/c. No. ATL-3/19/95 dt. 28.01.84 in the name of Sri Brundavan Digal.

An amount of Rs. 5,000/- was sanctioned by Sri Nayak to the above loanee, for purchasing milch cows. Cows were purchased at a cost of Rs. 3,460/- and an amount of Rs. 550/- was deposited in the Savings Bank account opened in the name of the loanee. Sri Nayak misutilised the amount of Rs. 990/- in this case.

(d) Loan A/c. No. ATL-3/6/86 dt. 28.01.84 in the name of Sri Balaswar Mallick.

Sri Nayak sanctioned an amount of Rs. 5,000/- to the above borrower for purchase of two milch cows. Out of the sanctioned amount, an amount of Rs. 3,450/- was utilised for purchasing cows and Rs. 540/- for opening Savings Bank account in the name of the borrower. In this case, the balance amount of Rs. 1,010/- was misutilised by Sri Nayak.

(iii)(a) Loan A/c. DIR/ATL-4/15 - Sri Madhav Nayak

(b) Loan A/c. DIR/ATL-4/16 - Sri Sahadev Nayak

(c) Loan A/c. DIR/ATL-4/17 - Sri Depa Pradhan

Above loanees were sanctioned Rs. 5,000/- each for purchase of bullocks and carts on 30.03.82. A sum of Rs. 1,250/- each has been shown to have been paid to the supplier of the bullock carts. Further, Rs. 3,750/- each was withdrawn on 26.07.82 on the strength of withdrawal slips signed by the borrowers and passed by Sri G.C. Samal, R.D.O. In this case, Sri Nayak, as Branch Manager, failed to ensure obtention of purchase documents.

(v) Loan A/c. No. DIR/ATL-3/6/51 in the name of Sri Bhagaban Sahu.

Sri Nayak sanctioned a loan of Rs. 5,000/- on 20.7.82 to Sri Bhagaban Sahu for purchase of bullocks and cart. An amount of Rs. 2,000/- was shown to have been paid to the supplier of the cart, whereas the bullock cart was purchased at a cost of Rs. 1,250/-. Bullocks were purchased at a cost of Rs. 1,500/-, but receipt was obtained for Rs. 2,000/-. Further, Sri Nayak issued utilization certificate for Rs. 5,000/-. He has misappropriated the balance amounts in this deal.

8. So far as imputation No. i(a) is concerned, it is evident that an amount of Rs. 5000/- was sanctioned in favour of the borrower for purchase of two milch cows. Cows were purchased at a cost of Rs. 3,500/-. An amount of Rs. 500/- was deposited in the Savings Bank Account of the borrower. The rest amount of Rs. 1000/- was misutilised by the petitioner. Similar is the allegation in respect of imputation Nos. - i(b), i(c) and i(d). The Presenting Officer of the Bank submitted before the Enquiry Officer that out of four persons, two are dead. One Shri Brundavan Digal did not attend the enquiry. Another loanee, Shri Balaswar Mallik stated that he did not know about the quantum of loan sanctioned to him, but he had received Rs. 150/- for construction of cowshed and a pair of cows. In his defence, the petitioner submitted that the original documents were mischievously replaced by Shri G.C. Samal and Shri S. Subudhi after his transfer from the branch in order to settle their personal scores and the animals were purchased in presence of Shri Samal. Moreover, disbursements were allowed by Shri Samal and utilization certificate was also given by Shri Samal, and as, such he had nothing to do with the matter. The Enquiry Officer came to hold that the actual purchase receipt does not bear the original on the top and those receipts were not original. The Enquiry Officer further came to hold that the petitioner could not shift his responsibility through Shri G.C. Samal, R.D.O., who was directly responsible for ensuring purchase documents. Having held thus, he came to hold that the said charge is proved. When the specific finding of the Enquiry Officer is that Shri G.C. Samal, R.D.O. was directly responsible for obtaining purchase documents and that the two loanees were dead and one did not attend the enquiry, he could have exonerated the petitioner from the said charges.

9. So far as imputation Nos. iii(a) to iii(c) are concerned, the charges are that the petitioner had failed to obtain purchase documents. Though loanees were sanctioned, Rs. 5000/- each for purchase of bullocks and bullock carts on

30.03.1982, a sum of Rs. 1250/- each has been shown to have been paid to the supplier of the bullock carts. Further a sum of Rs. 3750/- each was withdrawn on 26.07.1982 on the strength of withdrawal slips by the borrowers and passed by Shri G.C. Samal, R.D.O. The defence plea of the petitioner is that Shri G.C. Samal had passed the withdrawals and allowed the disbursements and he should have obtained the documents and that he was not responsible for the same, had been negatived and the Enquiry Officer came to hold that the petitioner had failed to obtain purchase documents. There is no denial to the fact that withdrawal slips were singed by respective borrowers and passed by Shri G.C. Samal, R.D.O. There is also no denial to the fact that the amount had been withdrawn on the strength of the withdrawal slips. The Enquiry Officer held that the doubt arises whether the bullocks or carts were purchased or not. The same could have been ascertained by examining the loanees, but the same has not been done. In view of the same, the finding in respect of imputation No. (i) is equally perverse. So far as imputation No. (v) is concerned, the same pertains to purchase of bullocks and cart of one Bhagaban Sahoo. As would be evident from the said charge, an amount of Rs. 5000/- was sanctioned to the loanee for purchase of bullocks and cart. Rs. 2000/- was shown to have been paid to the supplier of the cart, whereas cart was purchased at a cost of Rs. 1250/-. Bullocks were purchased at a cost of Rs. 1500/-, but receipt was obtained for Rs. 2000/-. The petitioner had issued utilization certificate for Rs. 5000/- and misappropriated the balance amount. The Enquiry Officer on an analysis of the evidence on record came to hold that the petitioner had misappropriated an amount of Rs. 375/- and thus, the charge is proved. It is difficult on our part to comprehend that a Branch Manager would misappropriate an amount of Rs. 375/-, more so, when there is no clinching evidence on record to that effect. However, the disciplinary authority had gone through both the cases and passed the order imposing penalty. Hence, we hold that none of the charges levelled against the petitioner have been proved. The order of punishment passed by the disciplinary authority is bad in law. Though the petitioner had preferred an appeal before the Deputy Managing Director-cum-Appellate Authority, but the same was rejected on 3.10.91 and thereby the order of the disciplinary authority was confirmed. We have also gone through the order passed by the appellate authority and we hold that the order is based on untenable and unsupported grounds.

10. In view of the discussions made in the preceding paragraphs, the conclusion is irresistible that the charges levelled against the petitioner have not been proved and, as such, the orders of punishment passed by the disciplinary authority and appellate authority are not sustainable in the eye of law and are liable to be quashed. Accordingly, the order of punishment dated 14.02.1990 vide Annexure-9 passed by the disciplinary authority and the order dated 3.10.1991 vide Annexure-11 passed by the Appellate Authority are quashed.

11. We direct the opposite parties to fix the scale of pay of the petitioner accordingly and pay the arrear salary to him. We further direct to calculate the

retrial benefits after fixation of scale of pay of the petitioner. The aforesaid exercise shall be completed within a period of two months from today. The writ petition is accordingly allowed. There shall be no order as to costs.

