
(2009) 01 DEL CK 0256
In the Delhi High Court
Case No : LPA 439 of 2008

Ramesh Kumar

APPELLANT

Vs

Regional Manager P.N.B.

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0256

Hon'ble Judges : A.P. Shah, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Romy Chacko, Amicus Curia, for the Appellant; Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant, Mr. Ramesh Kumar, was dismissed from service after holding an enquiry by the employer, Punjab National Bank. The dismissal was challenged before the Industrial Tribunal by the appellant but without success. It was then made subject matter of challenge in Writ Petition (Civil) No. 9379/2006 but again without success as the writ petition was dismissed by the impugned order dated 16th April, 2007.

2. In the present appeal it was contended that the report of the Enquiry Officer is vitiated on the ground of no evidence and the punishment of dismissal could not have been imposed under the Service Rules.

3. An enquiry report, which is based upon no evidence and is perverse can certainly be set aside but the question is whether the present case is one of no evidence. The allegation against the appellant was that an account holder, Mr. Hitesh Bhatnagar had deposited two bearers cheques for Rs. 3,000/- each to be credited to the savings account of Mr. Hitesh Bhatnagar and his wife. The cheques were drawn on Bank of India, Defence Colony, New Delhi in the name of wife of Mr. Hitesh Bhatnagar. The cheques were encashed but credit was not given in the account of Mr. Hitesh Bhatnagar and his wife. Mr. Hitesh Bhatnagar

made a complaint, which was found to be correct and Punjab National Bank was forced to give credit of Rs. 6,000/- to Mr. Hitesh Bhatnagar.

4. The Enquiry Officer has held that the appellant, Mr. Ramesh Kumar was the person, who had received the said two cheques from Mr. Hitesh Bhatnagar. The Enquiry Officer came to the conclusion that Mr. Ramesh Kumar did not make entry of these instruments in onward clearing register. The Enquiry Officer also held that the appellant had deliberately/wrongly affixed the stamp on the counterfoil, which as per the Rules, should be affixed in a manner that it should overlap between the counterfoil retained by the bank and the portion of the counterfoil given to the customer. The Enquiry Officer has referred to the letter written by Mr. Hitesh Bhatnagar that Mr. Ramesh Kumar had visited his residence number of times along with wife and daughter and had offered to pay him Rs. 6,000/- to make good the loss but this was not accepted by him as he wanted due credit in his account. It is, therefore, not possible to accept the contention of the appellant that it is a case of no evidence or the finding of the Enquiry Officer is perverse.

5. We do not agree that it was necessary that oral testimony of Mr. Hitesh Bhatnagar should have been recorded before the Enquiry Officer. Mr. Hitesh Bhatnagar was a customer of the bank and has written two letters. He had no reason to make false allegations against the appellant or wrongly implicate him. Moreover, witnesses, who had appeared before the Enquiry Officer, had confirmed the facts stated by Mr. Hitesh Bhatnagar in the said letters and personally had gone and spoken to him. It may be also noticed that the appellant had avoided participation in the enquiry proceedings and was proceeded ex parte.

6. Learned Single Judge in the impugned order dated 16th April, 2007 has drawn distinction between criminal proceedings and departmental proceedings. Learned Single Judge has also observed that the Metropolitan Magistrate was pleased to discharge the appellant and there was no order on merits acquitting the appellant in the criminal case. Decision in the criminal proceedings depends upon evidence led in the said proceedings and the accused is entitled to benefit of doubt, while in disciplinary proceedings the question relates to conduct of the officer and whether any action should be taken against him under the Service Rules. Standard and mode of proof in the two proceedings are entirely different.

7. We also do not agree that only minor punishment could have been awarded to the appellant under Clause 19.7 (c) of the Bipartite Settlement. The said Clause relates to neglect of work and negligence in performing duties. The allegation against the appellant in the present case was that he had encashed two cheques of Rs. 3,000/- each, which had been deposited by the customer to be credited to their account. Disciplinary proceedings were not in respect of neglect of work or negligence in performance of duties. Disciplinary proceedings were initiated against the appellant under Clause 19.5(j) of the Bipartite Settlement which reads as under:-

Doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

8. We do not, therefore, find any merit in the last submission also.

9. The appeal is dismissed.