(2013) 06 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6444 of 2003

Ranjan Kumar APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2013) 4 AJR 171

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajendra Krishna and Ashok Kr. Sinha, for the Appellant; Rajesh Kumar, Amit Kumar and Manindra Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. By order dated 8th September 2000 (Annexure-13) issued by the Assistant General Manager (IV)-cum-Disciplinary Authority, the petitioner who was the clerk-cum-cashier in the State Bank of India attached at Jhumari Telaiya Branch, has been dismissed from service. His appeal preferred before the respondent No. 2 the Deputy General Manager, State Bank of India, Zonal Office, Ranchi, has also been rejected by the order dated 14th May, 2002. These two orders are under challenge by the petitioner in this writ application. He also seeks reinstatement in service pursuant to the quashing of the impugned orders.

2. The petitioner while he was posted as clerk-cum-cashier at the relevant point of time in the year 1985 in Sainik School Branch of State Bank of India at Telaiya, district-Koderma, was served with a charge sheet vide annexure-2 alleging six different charges.

(1) On 15th October 1985 he altered the State Bank of India withdrawal form for Rs. 100/- pertaining to savings bank A/c No. SC/143 of Smt. Mangala Gouri Limbu to Rs. 2,100/- and payment was fraudulently obtained by him as a recipient of the amount under his signature on the reverse of the instrument.

Mrs. Limbu on being contacted, had made a complain in that respect on 15th October 1985.

(2) On 14th July 1985 while working at the same branch, he withdrew an amount of Rs. 1,000/- on a blank withdrawal form submitted by Mrs. Limbu with a request to fill up the same for withdrawal of Rs. 100/- in a fraudulent manner and deposited an amount of Rs. 100/- only to the recurring deposit account of Mrs. Limbu and also credit entry of Rs. 100/- was made in the recurring deposit account pass-book of Mrs. Limbu.

(3) On 01st October 1985 one Mr. Lakho Gope, a saving bank account holder, handed over a sum of Rs. 500/- to be deposited in his savings bank account No. 595 but the amount was not deposited till 24th October 1985 and instead, it was deposited on 25th October 1985, while entry was made in the passbook of Mr. Gope on 1st October 1985 under his authentication. The said amount was unauthorizedly withheld for 25 days.

(4) On 8th October 1985 an amount of Rs. 2,500/- was handed over to the petitioner by one Shri Banshidhar Singh requesting him to deposit the amount in his savings bank account No. 1192 at the branch which was entered in the passbook of the account holder under his authentication, but was not reflected in the bank''s books.

(5) On 7th August 1985 and 8th September 1985, a sum of Rs. 200/- and Rs. 100/- respectively was shown in the deposit column of recurring deposit accounts passbook in the name of Mrs. M.B. Susheelamma in the same branch under his authentication, but was actually deposited on 28th October 1985 by him.

(6) On 21st August 1985 a sum of Rs. 1,000/- was shown deposited in the R.D. A/c No. 213 of Shri Menon P. Mohan in the same branch under his authentication, but the amount was actually deposited in the account on 31st October 1985 unauthorizedly after 69 days.

The instant charge sheet was issued on 29th July 1986.

3. The petitioner submitted his reply to the charge sheet on 13th September 1996. The inquiry report was submitted on 25th November 1989 holding all the charges established against the petitioner. Thereafter, the order of dismissal was passed on 12th July 1990 by the Disciplinary Authority. On 5th September 1990, he preferred an appeal and the Appellate Authority, by order dated 19th September 1991 (Annexure-4), set aside the order of dismissal and directed holding of a fresh inquiry after adducing the evidence and witnesses. On 21st September 1991, fresh inquiry was initiated but on the same charges. The inquiry proceeded in which the petitioner participated and by Annexure-6 dated 17th October 1997, the Inquiry Officer submitted his inquiry report. The Inquiry Officer exonerated the petitioner of the first four charges out of six charges, as indicated herein above. On 25th November 1997, the petitioner was asked to represent by serving him a copy of the inquiry report. On 09th December 1997

vide Annexure-7 the petitioner represented before the Disciplinary Authority with a request to drop the proceedings against him with a detailed reply. However, vide Annexure-8 dated 22nd October 1999 the Disciplinary Authority passed a speaking order giving reasons for differing with the report of the Inquiry Officer in respect of the first four charges while concurring with the findings of the Inquiry Officer in respect of charge Nos. 5 & 6. The petitioner was asked to be physically present on 28th October 1999 to offer his reply to the said second show-cause.

4. According to the petitioner, the said speaking order passed by the Disciplinary Authority on 22nd October 1999 was actually received on 19th November 1999 by him. Again, he was informed by letter dated 20th January 2000 under registered post which was delivered at Patna according to him, on 31st January 2000 asking him to appear at Jhumari Telaiya on the same day. According to the petitioner, he responded on 22nd February 2000 informing the Disciplinary Authority about his surgery he had undergone and sought more time to appear as per his convenience. Based upon the averments made in the counter affidavit, it is further stated that the respondents thereafter had also issued letters to the doctor who was said to be treating the petitioner and also made paper publication asking the petitioner to appear before the Disciplinary Authority which he failed to do. Ultimately, vide Annexure-13, the impugned order of dismissal from service was passed on 8th September 2000 and his appeal has also been rejected on 15th May 2002 (Annexure-17).

5. The impugned orders are being challenged primarily on two grounds. Firstly, that the reasons for differing with the findings of Inquiry Officer by the Disciplinary Authority in respect of the first four charges, are based upon the conjectures and surmises and are not based upon any material which were adduced during the course of inquiry over which he could offer a proper reply in his defence. Secondly, before passing of the order of dismissal, no proper opportunity of hearing or notice was given to him as would be evident from the chronology of the facts which have been indicated herein above. Learned counsel for the petitioner has taken this Court to the findings of the Inquiry Officer in detail and laboured to impress that the Inquiry Officer had properly considered the materials on record and exonerated the petitioner of all the six charges which is just, proper and based upon the materials on record. It is submitted on behalf of the petitioner that the perusal of the findings of the Inquiry Officer in respect of first four charges would show that the prosecution has not relied upon any witness to support the said charges which were alleged to have been made on the basis of the complaint over which charges were framed. The prosecution has relied upon the opinion of the handwriting expert but he was not produced in course of inquiry. The Inquiry Officer has also found that the complainants had subsequently withdrawn their complaint which were produced on behalf of the defence during the course of inquiry and in the wake of such contradictory documents, findings of guilt of the alleged misconduct could not have been arrived at by the Inquiry Officer. It has further been found by the Inquiry Officer

that the reliance on confessional statement of the petitioner by the prosecution has also been held to be untenable as the officers against whom the petitioner had alleged acts of compulsion and coercion for making such confession were not examined or cross-examined to enable the petitioner to defend himself. The Inquiry Officer has also taken into account certain facts in respect of signing and withdrawal of amounts on the withdrawal forms by the complainant concerned and in respect of which, the requirement of examination of the complainant was necessary but the same has not been done.

6. Learned counsel for the petitioner therefore submits that the Inquiry Officer has taken into account of factors and found that the charges alleged against the petitioner were not established in the eye of law for passing any order of punishment against him for the alleged misconduct. Learned counsel for the petitioner has laboriously drawn the attention of the court to the content of the speaking order dated 20th October 1999 which purportedly, according to him, differs from the findings of the Inquiry Officer in respect of the first four charges. It is submitted that the reasons shown by the Disciplinary Authority are based upon the conjectures and surmises and the petitioner could not have been saddled with the responsibility to answer the conjectures and surmises of the Disciplinary Authority not based upon the materials produced during the course of inquiry. It is further submitted that the petitioner after having submitted his response to the inquiry report, was however precluded from defending himself in a proper manner as no notice or opportunity of hearing was given to him before the order of dismissal has been passed, therefore, the impugned order also suffers from the violation of principles of natural justice.

7. Learned counsel for the respondent Bank, on the other hand, vehemently opposed the contention of the petitioner. It is submitted on his behalf that the acts of the petitioner were in the nature of serious misconduct in a banking transaction where absolute integrity, devotion of duty and strict discipline are expected from the bank employee. It is submitted that in each of the established four charges, the complainant had alleged serious charges such as withdrawal of amounts more than what was requested for and making incorrect entries in the concerned passbook of the account holders in respect of first two charges. In respect of other two charges as well, though the amount was handed over to be deposited at the relevant date but in both cases, they were deposited at much later point of time which is unacceptable specially when the relevant entries have been made on the first day itself in the passbook of the account holder. He further submitted that the heavy reliance by the petitioner upon the second or third letter of the complainant adduced by the petitioner during the course of inquiry, cannot have much sanctity as the same were obtained after almost four years of the incidence i.e. in the year 1989 admittedly from the said Mrs. Limbu or Mr. Gope or Mr. Banshidhar Singh. It is also submitted on behalf of the learned counsel for the respondents that the petitioner has manipulated the complainants'' letter as at the time of incidence, he has not alleged any malice against the complainants relating to the allegation made in their complaint

against the petitioner which forms the basis for charge sheet. It is further submitted on behalf of the respondent that the petitioner himself had given a six page confession letter signed on 25th October 1985 itself accepting his guilt. His allegations of compulsion or coercion later on, is only an after thought as apparently, he did not take any steps thereafter which could be sufficient to show that he had complained or register any complaint or FIR for such acts of coercion by higher officials for recording the confession which is expected from a person who is forced to make a confession in such circumstances. Learned counsel for the respondents submits that after taking note of the petitioner''s representation on the inquiry report and the conduct of the petitioner, the Disciplinary Authority has found that the charges are very serious in nature and related to the banking transactions where absolute integrity is required and in such circumstances, the impugned order of dismissal from service have been passed which is just, proper and proportionate to the established misconduct. It is further submitted that the petitioner deliberately chose to avoid facing the Disciplinary Authority and even after repeated notices under registered cover as also notices to his Doctor and paper publication asking him to appear and face the Disciplinary Authority before the final order could be passed, he did not appear. He has also failed to annex any medical certificate of his alleged illness on account of surgery which has been made a basis for not facing the Disciplinary Authority at the relevant point of time. The Appellate Authority has also considered the entirety of the circumstances and the gravity of the misconduct of the petitioner and accordingly, rejected his appeal refusing to interfere in the order of Disciplinary Authority.

8. I have heard learned counsel for the parties at length and gone through the relevant materials on record laboriously. It was contended on behalf of the petitioner that the Disciplinary Authority while differing with the findings of the Inquiry Officer in respect of the first four charges, had acted only upon conjectures and surmises and not on any material which was adduced during the course of inquiry for giving reasons of his difference.

9. The perusal of the charges which were leveled against the petitioner for which he was proceeded, have been indicated in the earlier part of the judgment. On perusal of the inquiry report specially in respect of the first four charges on which the Disciplinary Authority had differed from the Inquiry Officer, it appears that the Inquiry Officer has taken into account the fact that the complainants in question in respect of whom charges were framed, have not been examined by the prosecution. The opinion of the handwriting expert was also not adduced during the course of inquiry and the complainants have subsequently withdrawn their complaints which were adduced on behalf of the defence. The Inquiry Officer has also considered that the allegations in respect of the first charges could not be held to be substantiated as the withdrawal forms were normally routed through the Branch Manager and the petitioner would not have on his own routed the same without being noticed by the Branch Manager himself for passing the same for withdrawal of a sum of Rs. 2,100/-. In respect of the first

two charges, broadly the same inferences have been drawn by the Inquiry Officer on account of absence of examination of the complainant, withdrawal of the complaint by Mrs. Limbu, the officers of the Bank having not been examined in respect of whom the petitioner had alleged that the they had employed coercion in extracting confession from the petitioner. In respect of the third charge relating to late deposit of the amount requested by one Mr. Gope after 24 days, once again he has taken into account the non-examination of Mr. Gope. The letter produced by the defence apparently contradicts the complainant''s letter and the signature of the depositor on the credit voucher on 25th October 1985 which appears to be in favour of the delinquent. Once again, in respect of the charge No. 4, the delinquent was exonerated of the said charge based upon the same observation that the handwriting expert was not examined and the prosecution case was mainly based upon the letter of one of the complainant Mr. Banshidhar Singh, while the defence had produced a letter from the same complainant that he was forced to write his complaint letter earlier.

10. The Disciplinary Authority, in his speaking order dated 20th October 1999 in respect of each of the charges, has indicated detailed reasons for differing with the findings of the Inquiry Officer in respect of exoneration of the petitioner from the first four charges. The Disciplinary Authority has taken significant notice of the fact that the complainant Mrs. Limbu had alleged on 25th October 1985 that she was aggrieved with the fraudulent withdrawal of Rs. 2,100/- and Rs. 1,000/- by the petitioner while the letter which has been relied upon by the petitioner was signed by Mrs. Limbu after four years on 20th June 1989 in which she has used expression that ''now'' she does not have any grievance against the Bank. This denial of the complainant, according to the Disciplinary Authority, was inconsequential in the wake of overwhelming documentary evidence adduced, during the course of inquiry which have been indicated in the reasons relied by him. In respect of charge No. 2, once again the Disciplinary Authority has found that the Inquiry Officer had overwhelming documentary evidence before him which could have been examined critically by him and which conclusively found the charges to be proved on the preponderance of the probability. The Disciplinary Authority has seriously questioned the allegations of the petitioner about the use of coercion or compulsion in making the confessional statement and his subsequent conduct as has been narrated in the reasons given by the Disciplinary Authority, that do not inspire that he had reacted in the manner of a reasonable person/prudent man after such alleged injustice was meted out to him by extracting his confession. He did not rush to the senior officer to lodge any complaint or went to the regional office on the next day and even in the course of earlier inquiry, his defence counsel did not insist upon such an excuse on his part. The Disciplinary Authority found that the complainant having been manipulated during the course of time, may not be interested in pursuing her complaint and therefore, in a departmental proceeding, she could not be compelled in a manner of a judicial proceeding to appear and depose against the petitioner. Similarly, in respect of charge Nos. 3 and 4, the Disciplinary Authority

has apparently given sufficient reasons to differ with the report of the Inquiry Officer and also taken note of the entries in the passbook of the complainant Mr. Banshidhar Singh in respect of whom the petitioner was proceeded against under charge No. 4. Based upon the adequate and sufficient reasons, the Disciplinary Authority issued the second show-cause notice asking the petitioner to offer his reply. The conduct of the petitioner however does not inspire confidence that he was really interested in responding to the request of the Disciplinary Authority. From perusal of the averments made in the counter affidavit, as also what has been narrated in the earlier part of the judgment, it is apparent that after issuance of registered letters upon the petitioner on more than one occasion, the Disciplinary Authority also communicated the petitioner''s physician under registered post which however returned undelivered and subsequently, publication was made in the newspaper on 16th May 2000 which would be reflected in the Appellate Order passed by the Appellate Authority. The petitioner did not however participate in the proceeding before the Disciplinary Authority to offer his defence, although he was directed to physically appear in view of the fact that the Disciplinary Authority having differed with the findings of the Inquiry Officer, issued second show-cause notice giving adequate reasons, in conformity with the requirement of second show-cause. Taking totality and entirety of the facts and circumstances of the case, the Disciplinary Authority found the conduct of the petitioner wholly unbecoming of an employee of a Bank who are supposed to deal with public money and the charges towards the conduct of the petitioner as was found to be established, was found to be serious enough and reflects embezzlement of accounts of various customers which was sufficient to impose the punishment of dismissal from service. The Appellate Authority also considered the grounds of appeal and by a detailed order dated 14th May 2002, has rejected the appeal of the petitioner giving proper reasons. The gravity of the misconduct against the petitioner warranted punishment of dismissal from service and it does not appear to be either disproportionate or excessive. In this regard, learned counsel for the respondents relied upon the judgment rendered by the Hon''ble Supreme Court in the case of Union Bank of India Vs. Vishwa Mohan, , paragraphs-9 to 12 thereof are of significance. In these facts and circumstances therefore, the petitioner has failed to make out both the grounds on which the impugned orders have been assailed. Accordingly, the writ petition is dismissed.

