

(2007) 02 PAT CK 0118
In the Patna High Court

Ravindra Kumar Verma

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Citation : (2007) 02 PAT CK 0118

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Heard learned Counsel for the parties.

The petitioner is aggrieved because of the punishment which has been imposed upon him by the respondents-Bank authorities which are by way of penalty of reduction in basic pay by three stages for three years. He will not earn increments during the period and the penalty will have the effect of postponing three increments under Rule 67(f) of the State Bank of India Officers Service Rule and, further, the period of suspension shall not be treated as on duty and therefore he will not be entitled for any salary, allowances or other benefits for the period except the subsistence allowance.

2. The contention of the petitioner is that the punishments which have been imposed upon him by the disciplinary authority and also affirmed by other superior authorities are based on non est grounds and even if what is prima facie accepted to be true for the sake of argument the disciplinary authority have failed in their efforts to bring home the charges.

3. There is no culpable finding of guilt recorded against the petitioner. They are at best, conjecture and surmises. More so the omission for which he has been charged with, may not amount to a perfect conduct by the rule book in discharge of responsibility but in absence of any mala fide act or conduct the petitioner cannot be held to have caused any serious loss of business or reputation of the bank. The petitioner was served with charge-sheet which is contained in Annexure-1 and the same has been broken up into six parts. It may be recorded that out of the six charges which were brought against the petitioner Charge

Nos. 4, 5 and 6 were not proved. Charge No. 1 was partially proved. Charge Nos. 2 and 3 stands proved. It is therefore important to take note of charges specially the ones which are partially proved or fully proved.

4. Charge No. 1: You passed for payment two forged withdrawals on 30.5.1996 and 5.6.1996 for Rs. 50,000/- each drawn on SB A/c No. 16875 of Shri H.G. Nonia and Ganesh Nonia and got these passed withdrawals entered in each cash scroll of other officers. These paid instruments/withdrawals were removed thereafter from the Branch. You deliberately used to get the instruments passed for cash payment by you entered in the cash scrolls of other officers. 15 such instances relating to the period 17.6.1996 to 29.6.1996 are given in the Annexure-"A".

5. Charge No. 2: You prepared duplicate ledger sheet of SB A/c No. 16875 of Shri H.G. Nonia & Ganesh Nonia on 22.6.1996 and authenticated the balance of Rs. 50,000/- on that date after deposit of Rs. 49,000/- by transfer without accounting for the withdrawals of Rs. 50,000/- each made on 30.5.1996 and 5.6.1996. The account was opened on 24.4.1996. Had you gone through the Day-Book from 24th April to 22nd June you could have detected 2 fraudulent withdrawal of Rs. 50,000/- each had been made from the account on 30.5.1996 and 5.6.1996 respectively against the credit balance of Rs. 1,000/- as on 13.5.1996. Your action thus helped to conceal the fraud of Rs. 1.00 lac.

6. Charge No. 3: You as Accountant were the custodian of Record & Stationary. You failed to exercise effective control in safe keeping of records. The documents, details of which are given in the Annexure-B which constitute vital evidence of fraud at the Branch are missing.

7. A detailed enquiry was conducted against the petitioner and findings under all heads of charges have been recorded by the enquiry officer, Charge No, 1 as already noticed above, relates to two forged withdrawals which were passed on 30.5.1996 and 5.6.1996 of Rs. 50,000/- each from one Saving Bank A/c No. 16875, of Shri H.G. Nonia and Ganesh Nonia. These fraudulent withdrawals had taken place much before the time of petitioner joining as Manager (Personal Banking). There is no dispute that he joined the post only on 17.6.1996. In Charge No. 1 itself, it is stated that in his capacity as Manager (PB) has got two instruments passed for cash payment by entering the same in cash scroll of other officers.

8. The enquiry officer after discussing the evidence with regard to Charge No. 1 came to hold that in so far as fraudulent withdrawals is concerned, the petitioner has nothing to do with the same and he cannot be held guilty. Therefore part of that charge is not correct.

9. So far as using the bank scroll of other officers for making entry for cash payment is concerned, the enquiry officer says that it is not a done thing but then there is no evidence or findings recorded that what the petitioner was doing was a trend started by him, the enquiry officer does record that said practice was

continuing in the bank, though it was against the laid down instructions of the bank. Therefore he found the second part of charge No. 1 to be true. The implication of finding the petitioner guilty to this extent using other officers' scroll book has not been discussed or indicated in the orders of the disciplinary authority, appellate authority or the revisional authority. There is some hint that if the petitioner was careful or vigilant enough then earlier fraudulent withdrawals could have been detected much earlier and the bank could have taken remedial steps for putting the house in order. There is no finding, however, in the enquiry that the total responsibility lay on the shoulder of the petitioner with regard to running of the bank in question. By looking at the findings of the enquiry officer, the best it can be said about Charge No. 1 is that the action of the petitioner for using scroll book of other officers was an irregularity but not an illegality of the level of which he only could be made culpable in the domestic enquiry.

10. The second charge relates to petitioner having authenticated the balance of the saving account in question on a duplicate ledger-sheet. It is not the case of the respondents that the duplicate ledger-sheet was prepared by him but the same was only placed before him for authentication and he put his signature. This was done in due faith, based on the records which was made available to him. The petitioner, however raises a fair objection with regard to non-production of the so-called duplicate ledger-sheet which he had supposedly authenticated. The ledger-sheet was never produced as evidence and could not be proved since only a xerox copy of the same was used and shown to him. The findings of the enquiry officer with regard to second charge is that the duplicate sheet was prepared by one of the clerks of the bank named Sri Arjun Prasad. But since authentication in the different column of the sheet bears signature of the charged officer it is a confirmation that the charged officer had satisfied himself with the transaction incorporated in the duplicate sheet on the basis of the pass book retained by the account holder. This action of the petitioner was considered to be a serious lapse because if he had verified the original account before authenticating the transaction in the account from which the fraudulent withdrawal was made the true facts would have emerged. The enquiry officer found him guilty of this charge.

11. The third charge relates to effective exercise of control in safe keeping of records of the Branch. This issue was also gone into by the enquiry officer and the enquiry officer records as under: "in view of the foregoing, it is found that no body has cared to save the interest of the Bank in respect of safe keeping of records and Branch document, as if the branch is running on the grace of GOD". However, despite the above observation, the enquiry officer held the petitioner guilty of the charge of not exercising effective control in safe keeping of the records.

12. What is significant, however, is the opinion recorded by the enquiry officer in his concluding paragraph of the report. The enquiry officer records as under:

In view of the foregoing facts, we come to the conclusion that Sri Verma failed to serve the Bank with utmost devotion and diligence, however, his integrity and honesty are found not doubtful as most of the lapses committed by the charged officer are observed in the system and procedure of the Bank. Although, some allegations are substantiated but no bad a mala fide intension have been observed in discharging his duties in different capacities in the Branch, so fax the allegation No. 1 and partially proved, allegation Nos. 2 and 3 proved and allegation Nos. 4, 5 and 6 have been not proved.

13. Based on the findings recorded by enquiry officer the petitioner was issued a show cause with regard to imposition of punishment. The disciplinary authority thereafter recorded its opinion on the issue and partially disagreed with the findings recorded by the enquiry officer with regard to charge Nos. 4 and 6. But those charges have no significance as such because those were no charges on which the finding of guilt was recorded by the enquiry officer.

14. The petitioner had served the branch in his capacity as Manager (PB) for about two months and thereafter was transferred to Sasaram. While the petitioner was posted at Sasaram the respondents authority discovered various anamolies in working of the branch and in this background order of suspension was passed against him on 22.4,1997. He remained in suspension for almost a year and the charges came to be served on him only on 5th July, 1999. In other words he was asked to answer for the conduct which had taken place almost three years ago in another branch. That has no major significance as such except for the fact that wrong doing of the petitioner or the way the branch was being run was not glaring as it came to be discovered many years later. Obviously the conduct or action of the petitioner was not of the kind to generate alarm with regard to the state of affairs of the bank. What came to be considered as a serious ground of misconduct on the part of the petitioner by disciplinary authority and appellate authority through use of expressions which sound, serious and grave but they do not seem so. Examined from the point of view of what the enquiry officer had recorded about the conduct of the petitioner the allegations are not of the kind which could be called serious lapses, omission or misconduct. The findings recorded by the enquiry officer that though Sri Verma failed to serve the bank with utmost devotion and diligence, however, his integrity and honesty are found not doubtful as most of the lapses committed by the charged officer are observed in the system and procedure of the bank.

15. Although, there are some lapses but no bias or mala fide intention has been observed in discharge of duties by the petitioner in different capacities in the branch. In other words, even though the charges brought may be high sounding but they were not held to be so serious as was being made out to be by the superior authorities. Since no motive or intention could be attributed to the petitioner and nothing has been recorded which throws on the integrity and honesty of the officer the matter has to be remained whether the conduct of the petitioner required such punishments.

16. The petitioner may not be an efficient or model employee but then his inability to work at a level expected by high ups may not amount to misconduct unless some kind of motive or mala fide intention in the said act can be established. Not every action of a civil servant or an employee can be raised to the level of a misconduct by the disciplinary authority merely because the higher officials feel that the concerned employee ought to manage the branch which according to their understanding should be the accepted norms.

17. Hon'ble Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, considered the expression of misconduct and discuss as to what could constitute misconduct. The Apex Court in the matter observed as under:

Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

18. Stroud's Judicial Dictionary has defined misconduct as under:

Misconduct means, misconduct arising from ill motive: acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

19. Keeping the parameters of law which has been set by the Hon'ble Supreme Court above, the question is whether the charges which were found to be true against the petitioner does amount to a misconduct? If the opinion of the enquiry officer in the matter is taken note of and which this Court has already quoted above the answer is a decisive no.

20. The next question which arises as; to what should be the punishment which should have been imposed upon the petitioner by disciplinary authority. It is settled law that the standards of evidence of a criminal Court may not be applicable in matters of a disciplinary proceeding, but then the Courts have never held that there has to be complete absence of appreciation of evidence and materials, or that the charges prima facie have not to be brought home so that a prudent man can come to a considered opinion of guilt. If the findings of the enquiry officer after detailed discussion does not; bring home the charges which are supposedly grave or serious than a question arises whether the petitioner could be punished and imposed punishment for serious misconduct. If the parameter laid down by the Hon'ble Supreme Court above is applied then the petitioner cannot be made to suffer multiple punishments.

21. This Court however, does observe that there is an issue for which the petitioner is liable. In so far as charge No. 2 is concerned, the same has come to be proved against him. Other charges even if established are not serious in

nature for which multiple punishments have been imposed on the petitioner.

22. It is well settled and accepted law that any punishment which is imposed upon an employee must commensurate with the gravity of the charges. It is the doctrine of proportionality and the same has been accepted as a valid doctrine in India which the Court has to consider while evaluating the punishment imposed upon a delinquent. Looking at the charges if the Court feels that the punishment is too harsh or excessive then it amounts to violation of Article 14 of the Constitution of India. Such a decision can be termed as arbitrary.

23. This Court accordingly comes to an opinion that the respondents have been excessively harsh in imposing the punishment upon the petitioner, specially in the background that charges which were brought against him may not match the level of due diligence for the superior authorities but the same cannot be said to be so serious in nature that he should be visited with various punishments which have already been noted in the opening paragraph of this order.

24. In the totality of the facts and law laid down by the Supreme Court this Court has no option but to quash the order of punishment contained in Annexures 4, 6 and 8. However, the respondents are given liberty to consider imposing any other punishment which in their own wisdom be commensurate with the charge and the evidence which had come on record.

25. This writ application is accordingly allowed to the extent indicated above.