(2005) 05 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petition No. 19540 (W) of 1999

Raya Bhattacharjee APPELLANT

Vs

The Punjab National Bank and Others RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Citation : (2005) 3 CALLT 288 : (2006) 108 FLR 820 : (2006) 2 LLJ 205

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Arunava Ghosh and Dwaipayan Sengupta, for the Appellant;Dipankar Dutta, Sudhanshu Sil and Raj Kumar Basu, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The writ petitioner is aggrieved by the order of the appellate authority dated August 17, 1998 rejecting her appeal, preferred against the order of the disciplinary authority dated December 27, 1997, imposing the major penalty of reduction to a lower stage in the time scale of pay by one increment for one year, and directing that she would earn increment of pay during the period of one year, though on expiry of one year the reduction would not have the effect of postponing the future increment of her pay in terms of the relevant rules.

2. At. the relevant point of time she was working as an officer in New Bank of India that subsequently merged with the respondent bank (the Punjab National Bank). The proceeding was intiated by charge-sheet dated August 16, 1994 on the following sole article of charge.

"On account of laxity on the part of Miss Bhattacharjee in exercising control required on the functioning of the Day Book Department at Bo. Ezra Street. Cal. fraudulent transactions were made by Shree Dhaneswar Rai, Officer (under section). She failed to maintain books properly as per guidelines. As a result, the fraud could not come to light earlier and Bank''s fund to the tune of Rs. 45.00 lacs approx. is in jeopardy."

3. The enquiry officer submitted an undated report recording his findings, which are:

"1 find that the above charges have not been proved due to the following reasons :

1) It could not be proved that the concerned Long Book was in the custody of the CO and it was destroyed/tampered by her or at her instances.

2) It could also not be proved by the PO that the maintenance of the Transfer Journal was the responsibility of the CO.

I summarise my findings on charges against Ms. Raya Bhattacharjee as under :

- Charge I (A) (i) Article - I : partly proved.

- Charge I (A) (ii) Article - I : not proved.

- Charge I (B) (i & ii) Article - I : not proved.

4. I agree with counsel for the petitioner that the enquiry officer misdirected himself by dividing one complete whole charge into several charges, when a mere reading of the sole article of charge would show that it did not admit of segregation. Charge 1(A) (i) of the sole article of charge as compartmentalized by the enquiry officer reads as follows :-

"i) Ms. Bhattacharjee failed to ensure that in most of the days the number of vouchers were not mentioned against some ledgers and number of voucher for a large number of days has not been mentioned at all. Total of vouchers was not checked/tallied with other Books of Records e.g. Cash Book. Transfer Analysis. Clearing Long Book etc."

5. From the findings of the enquiry officer it will appear that according to him only this charge 1A (i) was partly proved and the other charges as classified by him were not proved at all. At this stage I think it will be useful to mention that the guidelines which were referred to in the article of charge are as follows :-

"The Day Book is the permanent record of each day''s transactions under the general ledger heading. It should be compiled from the vouchers themselves except where the totals of Long Book are transferred to it under the respective headings (sic) the Day Book writer must see before entering them that all vouchers are in order, that the signatures on all the drafts etc. have been cancelled and that all the debit vouchers have been branded with a cash or transfer date stamp bearing the current day stamp.

The Day Book will be checked daily from the vouchers and Subsidiary Register by an authorised official."

6. It is important to note that the petitioner all along contended that the guidelines were not being followed by any branch of the bank, and ,hence even assuming that while dealing with the particular books of account she had not ensured strict compliance with them, there was no scope to regard her such act of non-compliance as a misconduct. As to this the enquiry officer said:

"It is true that specimen of Day Book of another branch of ENBI (DE 60,61, 62, 63) as produced by the CO indicates that there was no system of recording the number of vouchers in the Day Book but this should be treated as a deviation from the prescribed procedure."

7. In my view counsel for the petitioner is absolutely right in saying that though non-compliance with the guidelines was the foundational fact for levelling the charge, bereft of evidence showing nexus between the act of non-compliance and the alleged fraud committed by Dhaneswar Rail,. there was no scope to view the mere act of non-compliance as a misconduct.

8. Not only I acknowledge the force of the submission, but I must also record that counsel for the respondent bank finds little to resist its force. He could not show me any evidence or material to substantiate that the petitisoner''s non-compliance with the guidelines had any nexus with the alleged fraud committed by Dhaneswar. Hence, I agree with counsel for the petitioner that the findings of the enquiry officer as to the partly proved aspect are perverse.

9. Counsel for the petitioner refers me to the decision of the disciplinary authority, holding as follows:-

"Had she been following strictly the rules of the Bank pertaining to Day Book Section, the fraud perpetrated by Shri D. Rai to the tune of Rs. 32.00 lacs might have been averted which has become difficult of recovery."

10. Counsel comments that the conclusion reached by the disciplinary authority is once again not only based on no evidence, but is also an improvement in findings of the enquiry officer, who had not found any link between the alleged lapse on the part of the petitioner and the commission of alleged fraud by Dhaneswar. In my view, he is right in saying that the improved situation visualized by the disciplinary authority was founded entirely on his surmises and conjectures.

11. Counsel then refers me to the decision of the appellate authority, holding as follows:

"I have examined the various points raised by Smt. Bhattacharya in her appeal along with the records of the case. The records reveal that at the material time Smt. Bhattacharya was posted in the said branch and working in Day Book Section. Charge - 1 (A) has been held'' as ''Partly Proved'' in the enquiry on the basis of evidences adduced therein. Non adherence to the guidelines by the Appellant regarding filling up of vouchers column in the Day Book is a serious lapse and taking advantage of the same Shri D. Rai. Officer succeeded in committing frauds.

12. I think his criticism of the manner in which the appellate authority made further improvement in the situation emerging out of the enquiry, can be viewed as one of a person of reasonable prudence. When admittedly there was no evidence on record showing that the alleged lapse on the part of the petitioner had facilitated commission of the alleged fraud by Dhaneswar. I must say, the conclusion reached by the appellate authority has to be described as a perverse conclusion, based only on surmises and conjectures.

13. Counsel for the respondent bank has left no stone unturned to persuade me into holding that the charge levelled against the petitioner was severable, and hence by applying the doctrine of severability. I should sustain the decisions of the disciplinary and appellate authorities. I regret that I am unable to agree with him.

14. The statement in the charge-sheet regarding alleged non-compliance with the guidelines by the petitioner was nothing more than a statement of imputation in support of the charge. I agree that it was the most important linking fact in the chain of events narrated in support of the charge. But if the fraud factor is erased off the charge-sheet, it seems to me, the chain loses its identity beyond recognition. I am, therefore, of the view that the doctrine of severability would have no manner of application to the case.

15. For these reasons I am of the view that the decisions of the authorities must be set aside. Accordingly, I allow the writ petition and set aside the orders of the appellate and the disciplinary authorities. I order the respondents to give the petitioner all consequential financial and other benefits, to which she would have been entitled if the punishments were not imposed, within four weeks from the date of receipt of a copy of this order by them.

16. In the facts and circumstances of the case, I am not inclined to make any order for costs in the writ petition. Hence there will be no order for costs in it.

Xerox copy of the Judgment and order duly countersigned by the Assistant Registrar (Court)/Assistant Court Officer of this Court shall be given to the parties, on usual undertakings.

Urgent certified xerox copy of the Judgment and order shall also be supplied to the parties, if applied for.

