(1992) 02 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10106 of 1989

Samarendra Nath Bhattacharya APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 24-02-1992

Acts Referred:

Citation : (1993) 1 PLJR 579

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; Ajay Kumar Sinha and Miss Sangita Laha, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The petitioner in this application has sought for quashing of the orders passed by respondent nos. 2 and 3, namely, Zonal Manager, Central Bank of India (hereinafter referred to as the Bank''), Zonal Office, Exhibition Road. Patna and the Regional Manager, the Bank, East Bisar Tank near Power House, Gaya, respective, discharging the petitioner from the Bank''s service as contained in Annexures 8 and 9 to the writ application, and further for a direction to the respondent no. 1 to dispose of the mercy appeal pending since 1987. The short facts of the case, as stated by the petitioner in the writ application are that on 2.3.1972 he joined the respondent Bank after selection through a competitive examination in the clerical grade. In the year 1975 the petitioner was transferred on request to the Gaya Branch of the Bank. It has also been stated that the petitioner made complaint against the lawlessness prevailing in the Branch the Chief Manager on 5.2.1981 due to which the staff of the Bank, who were adversely affected by the same, became inimical to the petitioner and started creating trouble against him in the year 1984 there was a defalcation of Rs. 5,000/- (five thousand) in the said Branch by way of fake withdrawal from Account No. 9128 standing in the name of the Shri A.K. Roy and Rs. 1000/- (one thousand) from Account No. 10030 which was detected and according to the petitioner, he was compelled to write a confessional letter on 28.7.1984 to the Branch Manager as he was threatened with filing of the police case against him. It is further alleged that the petitioner was compelled to write similar letter to the Chief Manager on 31.7.1984 whereafter the petitioner was suspended by the Chief Manager on 17.9.1984, The petitioner was served with a memo on 30.5.1985, a true copy whereof has been annexed as Annexure 4 to the writ application, in reply to which the petitioner was again compelled to write a mercy petition, a true copy whereof has been annexed as Annexure 5 to the writ application. On 18.10.1985 a charge sheet was given to the petitioner and enquiry was started against him. On 2.6.1986 the disciplinary authority passed an order of dismissal from service on the basis of the report of the enquiry. A true copy of the said order has been annexed as Annexure 7 to the writ application. It has been further alleged that on 25.6.1986 a final order of dismissal from service was passed, ft true copy whereof has been annexed as Annexure 8 to the writ application. Against the aforesaid order the petitioner preferred an appeal before respondent no. 2, who, on 28.11.1986, modified the order of dismissal of the petitioner into discharge from Bank service, taking into consideration the lenient view as the Bank had not suffered any monetary loss. A true copy of the said order has been annexed as Annexure 9 to the writ application. Soon after the petitioner received the aforesaid order dated 22.12.1986. He made an S.O.S. mercy appeal before the Chairman and the Managing Director on 31.8.1987.

2. Mr. Ashok Priyadarshi, Learned Counsel appearing for the petitioner, has submitted that the award of discharge from service is a harsh punishment imposed upon the petitioner inasmuch as the Bank had suffered no loss as the alleged defalcated amounts have already been deposited. Further, the Learned Counsel has referred to paragraph 9 of the writ application and submitted that the petitioner had agreed to the suggestion to deposit the alleged defalcated amount because the cash was encased due to his negligence and he has borne the punishment by depositing the said amount. The petitioner in paragraph 12 of the writ application has raised grievance that the respondents authorities have not considered his past clean service record nor they have considered the fact that he might have been made a scapegoat by the staff against whom he had made complaints.

3. A counter affidavit has been filed on behalf of the respondent Bank. This fact has not been denied that the petitioner had clean service record before the imposition of the impugned punishment.

4. Mr. Ajay Kumar Sinha, Learned Counsel appearing for the Bank, has submitted that though the Bank has not suffered monetarily but still the conduct of the petitioner, in the instant case, does not warrant consideration of his past service record as he totally lost his integrity, honesty, fidelity and faithfulness.

5. No doubt, in the financial institution like Bank, the integrity, honesty, fidelity and faithfulness of the employee is the main consideration for his retention in the

service of the Bank and the question of loss is not of much importance, still, in the facts and circumstances of the present case, where the petitioner has admitted his negligence and for which he has borne the punishment as well as deposited the amount even before he was placed under suspension and proceeding was initiated against him, I am of the opinion that the punishment of discharge was rather heavy and was not called for, more so when there was nothing against him in the past in the Bank''s service.

6. It appears that the petitioner is a young man and has crossed the age for any service. In the background of the aforesaid facts and circumstances, at one point, I felt inclined to direct the Chairman and the Managing Director of the respondent Bank to dispose of the mercy appeal but the Learned Counsel appearing for the Bank has referred to the statement made in paragraph 28 of the counter affidavit that the mercy appeal of the petitioner had already been rejected long back. The Learned Counsel appearing for the petitioner, however, has also submitted that the petitioner will not claim any back wages even if the order of his discharge from service is set aside.

7. Accordingly, I direct that the petitioner should be reinstated in service of the Bank forthwith. However, in the facts and circumstances as aforesaid he will not be entitled to back wages but to keep the employee within the bounds of well disciplined conduct and more cautious in dealing with the transactions, and a farther punishment is required to be imposed so that the humanistic approach may not induce him to repeat his negligence in performing his duties. In this background, I further direct that the respondents may impose any punishment as he considered fit and proper other than his removal from service. In the result, the application is allowed to the extent indicated above but, in the facts and circumstances of the case, there will be no order as to costs.

