
(2023) 03 GAU CK 0050
In the Gauhati High Court
Case No : Writ Appeal No. 77 Of 2023

Satya Nath Das

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 311(2)
State Bank of India Officers Service Rules, 1992 — Rule 67(j)
Payment of Gratuity (Central) Rules, 1972 — Rule 4(6)(a)

Citation : (2023) 03 GAU CK 0050

Hon'ble Judges : Sandeep Mehta, CJ;Kardak Ete, J

Bench : Division Bench

Advocate : Y.S. Mannan, N. Baruah

Final Decision : Dismissed

Judgement

Kardak Ete, J

1. This writ appeal has been preferred by the appellant against the judgment and order dated 19.05.2022, passed by the learned Single Judge, in WP(C)7723/2017.

2. We have heard Mr. Y.S. Mannan, learned counsel for the appellant and Mr. N. Boruah, learned counsel for the respondents.

3. The case of the appellant is that while serving as an Accountant in the State Bank of India, Bilasipara Branch, Dhubri, the respondent No.5 issued the letter dated 19.08.2011, whereby the appellant was suspended from his service for committing certain gross irregularities by making various unauthorized transactions in the customers' account when he was posted at Kamargaon Branch, Barpeta.

4. The appellant contends that on the same set of facts, GR Case No.2271/2011 was also registered against the appellant before the learned Chief Judicial Magistrate, Barpeta on the basis of Sorbhog PS Case No.242/2011.

5. Thereafter disciplinary proceedings were initiated against the appellant, and a Memorandum dated 10.12.2012 along with Articles of charges, statement of imputation of lapses during the period from 11.11.2009 to 21.05.2011, list of documents and list of witnesses was furnished. The appellant submitted his written statement of defense on 15.01.2013 denying the charges and stating that all the transactions were bonafide banking transactions and were done in furtherance of genuine underlying commercial transaction and were thus regular. Thereafter, the Disciplinary Authority, by letter dated 01.03.2013 furnished the appellant an Article of charges, statement of imputation of lapses, list of documents and list of witnesses. The appellant contends that during the hearing neither he was given any opportunity to cross examine the witnesses produced by the Presenting Officer nor was the appellant allowed to examine witness, as such the proceedings were held in gross contravention of principles of natural justice. The Inquiry Authority had closed the proceeding and prepared the inquiry report on 05.06.2013. On 29.06.2013, the respondent authority furnished the Enquiry Report-cum-findings along with the comments of Disciplinary Authority. By order dated 19.11.2013, a penalty of dismissal in terms of Rule 67(j) of State Bank of India Officers Service Rules with an order for forfeiture of gratuity fully in terms of Rule 4(6) (a) of Payment of Gratuity Act, 1972 was imposed. An appeal was preferred on 10.02.2014 and the same was rejected by the appellate authority vide order dated 11.04.2014 confirming the penalty of dismissal from service and forfeiture of gratuity in terms of Rule 4(6) (a) of the Payment of Gratuity Act, 1972. The appellant contends that during the entire departmental proceedings, the respondent authorities have failed to produce any cogent evidence that the customers had filed any complaint before the Bank for the monetary loss. If there was any written complaint the authorities could have produced the same during the inquiry or the same should have been annexed with the list of documents. Moreover, the customers whose name has been stated in the charge-sheet or statement of imputation, the Inquiry Authority ought to have examined them during the departmental proceeding to substantiate the allegations for a logical conclusion. Therefore the inquiry report is based on no evidence and the impugned action taken by the respondent authorities on the basis of Enquiry Report cannot be sustained.

6. The appellant contends that vide judgment dated 07.03.2017 the petitioner has also been acquitted in GR Case No.2271/2011, by the learned Chief Judicial Magistrate, Barpeta, due to lack of evidence.

7. Aggrieved by the imposition of penalty of dismissal from service and forfeiture of gratuity in terms of Payment of Gratuity Act 1972 by vide order dated 19.11.2013, the appellant filed the WP(C)/7723/2017 and the Hon'ble Single Judge by judgment and order dated 19.05.2022 held that acquittal in criminal case is not determinative of the commission of misconduct or otherwise and it is open to the authorities to proceed with disciplinary proceedings, notwithstanding acquittal in a Criminal Case. Bank Officer is required to maintain highest degree of integrity and trustworthiness and therefore did not interfere with the

punishment of dismissal while setting aside the forfeiture of gratuity and directed the respondents to consider and revisit the forfeiture of gratuity.

8. The appellant contends that the Hon'ble Single Judge did not consider the facts and proposition of law that no opportunity was granted to the appellant to examine and cross examine the witness, and the complainants were not brought as witnesses for cross examination. The appellant further contends that on the same set of facts, he was acquitted by the criminal Court. The appellant was also not allowed any assistance in the enquiry proceeding. No evidence from any customers and the bank regarding the allegation was adduced and there is no document or witness to support misappropriation of an amount of Rs.9,66,755/- (Rupees Nine Lakhs Sixty Six Thousand Seven Hundred Fifty Five) only, therefore the respondents could not prove any loss to the bank and as such the punishment of dismissal from service and forfeiture of the entire gratuity is highly disproportionate.

9. The respondents have filed an affidavit-in-opposition refuting the contentions of the appellant and contended that the appellant's acts were in gross violation of the Bank's laid down system and procedure and were committed with an ulterior motive to derive pecuniary gains. The Departmental inquiry against the petitioner was conducted by adhering to principles of natural justice as well as the procedure provided under State Bank of India Officers Service Rules, 1992. The appellant participated in the Enquiry Proceeding without raising any objection, therefore he cannot challenge the Enquiry Report. The appellant failed to present any customer as defense witness therefore he has no right to call into question, the procedure adopted by the department during the course of Enquiry Proceeding. Further the respondent contends, the order of forfeiture of the gratuity was passed as per the provisions of Payment of Gratuity Act, 1972. By indulging in grave acts of misconduct, appellant caused huge loss to the Bank and he failed to perform duties with integrity and honesty. The respondents further submitted that ample opportunity was given to the appellant and his defense representative to cross examine the prosecution witness as well as present his defense documents and witness during the disciplinary proceedings. A proper opportunity of being heard was also provided to the appellant and his defense representative. These facts are writ large from a bare perusal of the daily enquiry proceedings dated 15.03.2013, 21.03.2013, 27.05.2013 and 28.05.2013, duly signed by the appellant and his defense representative.

10. Mr. Y.S.Mannan, learned counsel submits that the charge-sheet against the appellant is not only per se vague but also baseless without there being any material to support the charge and the statement of imputation, is devoid of relevant details in order to prima facie sustain the charges. He submits that the Departmental proceeding was supported by the respondent authority/Enquiry Authority by taking the appellant's statement, on 15.03.2013, to the extent of only asking him the remaining implication of charges and nothing more, no opportunity was given to present his case and as such the manner in which the

Departmental Proceeding was undertaken, is against the principles of fair play and natural justice. He submits that the Inquiry Authority had closed the departmental proceeding and prepared the inquiry report on 05.06.2013, therefore, the entire Departmental Proceeding is vitiated. He submits that the authority did not consider the statement of the appellant that whatsoever transactions were done by him were bonafide banking transactions and the appellant had done the same in good faith and with intention to provide service to the customer as well as to maintain the reputation of the bank.

11. The learned counsel for the appellant submits that on the same set of facts, the appellant has been acquitted in GR Case No.2271/2011, vide judgment and order dated 07.03.2017 by the Chief Judicial Magistrate, Barpeta. Therefore, the respondent authorities ought to have exonerated the appellant as the penalty imposed vide orders dated 19.11.2013 and 11.04.2014 is based on the same set of evidence as was available in criminal proceedings. He submits that the provisions of State Bank of India Officers Service Rules 1992 have not been followed and there is a total violation of Article 311 (2) of the Constitution of India, therefore, the Departmental Inquiry initiated against the appellant on the basis of charge-sheet dated 10.12.2012, an order dated 19.11.2013, order 11.04.2014 and the impugned judgment and order dated 19.05.2022 of the learned Single Judge are not sustainable and be set aside.

12. We have considered the rival submissions of the parties and also carefully perused the records and the judgment and order passed by the learned Single Judge in WP(C)/7723/2017. On consideration of the materials it transpires that there were 12(twelve) articles of charges against the appellant which are related to the allegations of gross irregularities by making various unauthorized transactions in the customers' accounts and as to the failure of the appellant to discharge duties with utmost integrity, honesty, devotion and diligence in which references were made to the various transactions in the customers' account to show that the same had resulted in pecuniary loss to the Bank and also loss of trust of management of bank in the appellant. The learned Single Judge considered all aspects of the allegation and imputation against the appellant petitioner and come to the conclusion that the penalty imposed cannot be said to be disproportionate but set aside the penalty of forfeiture of gratuity and directed to revisit the same.

13. As noticed from the records, adequate opportunity of hearing was provided to the appellant inasmuch as the appellant has filed a written statement of defense at every stage and he was heard in person by the respondent authorities as it is clearly reveals that vide letter dated 13.08.2012, Respondent issued show cause to the appellant. On 15.01.2013, the appellant submitted his written statement of defense stating that transactions were done with genuine underlying commercial transaction which amplifies the admission of fact. Day to day proceedings/hearing was conducted on 15.03.2013, 21.03.2013, 27.05.2013 and 28.05.2013. Enquiry report dated 05.06.2013 was furnished to appellant on

29.06.2013. On receipt of the Enquiry Report, the appellant submitted his representation vide dated 26.07.2013. Finally the appellant was directed to appear before the General Manager/ respondent No.4 on 11.09.2013 at 3:00 pm for personal hearing vide letter dated 03.09.2013.

14. It is well settled law that opportunity of hearing means giving adequate and effective opportunity to the delinquent official to meet out the charges levelled against him. In a departmental proceeding, the scope of Judicial review is very limited. The Court cannot examine the correctness of decision raised by the Department Inquiry and as such the function of the Court is confined to see that the disciplinary authority acts within its bounds. As long as the disciplinary authority provides adequate opportunity to the delinquent employee to defend himself and the rules of procedure are followed and that if the findings of the disciplinary authorities are based on evidence, Court will not interfere. We may gainfully refer to the Supreme Court Judgment in the case of Apparel Export Promotion Council Vs. A.K. Chopra reported in (1999) 1 SCC 759. The relevant extracts of the judgment, at paragraph 17 and 18, are reproduced as under:

"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

18. It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur: (SCC p.623, para 15)

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

15. It is seen from the records that the hearing of the disciplinary proceedings was held on 15.03.2013, 21.03.2013, 27.05.2013 and 28.05.2013. Evidently, opportunity to examine the documents and to cross examine the prosecution witness was provided to the delinquent employee. It is noteworthy that appeal preferred by the appellant against the order of appointing authority has not been filed on the ground that opportunity to examine the documents and opportunity to cross examine the prosecution witness was not provided to him. Therefore, the contention of not providing opportunity of hearing or violation of principles of natural justice fails.

16. The appellant admitted that all the transactions were bonafide transactions.

On consideration of the records, it is seen that the appellant has stated that all the transactions were bonafide and since the Kamargaon Branch of SBI is situated in a difficult location and in a village and with intention to maintain a healthy relation with bank customers, the appellant used to give personal loans to the borrowers from time to time and when the bank formally sanctioned loans from the various borrowers and the advance given by the petitioner was returned. It is seen from the written submission made in the statement of defense, which was submitted by the petitioner on 26.07.2013, the petitioner is found to have accepted the credit of certain sum of money from time to time into the account of his daughter. The entire loan money was not credited to customers' account but some portion of money out of sanctioned account was credited to the accounts of his family members. Therefore, it is a case of admission of facts which amount to admission of guilt. When the factum of irregularities in transactions and depositing of the certain amount of money to the account of his family members is admitted, it is an admission of charges and imputations against the delinquent. Therefore, the technical pleas against irregularity in the procedure of departmental inquiry cannot be available to the appellant.

17. With regard to the contention of the appellant that since he has been acquitted in the criminal case, he ought to have been exonerated in view of the acquittal in the criminal trial, though the law is well settled, we may gainfully refer to the case of Divisional Controller Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao reported in (2012) 1 SCC 442, the relevant part of which is reproduced herein below:

"24.Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony (supra) does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."

18. In view of the above well settled legal position that as the standard of proof in both the proceedings is quite different, a penalty of dismissal is not based on mere conviction of an appellant in a criminal case, the acquittal of the appellant in GR case cannot be the basis of taking away the effect of departmental proceedings. Therefore, we reject this contention of the appellant.

19. There is another aspect of the matter as held in the case of M.G.Vittal Rao (Supra) that principal of loss of confidence where the Hon'ble Supreme Court has held that once the employer has lost the confidence in the employee and the bonafide loss of confidence is affirmed, the order of punishment must be

considered to be immune from challenge for the reason that discharging the office of trust and confidence requires absolute integrity and in the case of loss of confidence reinstatement cannot be directed. In the instant case, serious irregularities in the financial transactions of the bank wherein the appellant himself was a Branch Manager cannot be lightly taken with regard to discharging the office of trust and confidence which requires absolute integrity.

20. We are of the view that the disciplinary authority has conducted the departmental proceeding by following the due procedure as required under the law. The disciplinary authority has discussed the evidence on record in detail and the order of penalty was passed on the basis of the materials available on record and on a tacit admission of the facts forming foundation of charges, and therefore, the penalty imposed is not disproportionate.

21. Resultantly, we are of the view that there is no infirmity either in the departmental proceeding and the penalty imposed by the respondent authority or in the judgment and order of the learned Single Judge dated 19.05.2022, which would warrant interference in this intra-court appeal. Accordingly, the writ appeal fails and is dismissed.

No order as to cost.