(2015) 02 PAT CK 0119

In the Patna High Court

Case No : CWJC No. 2573 of 2015

Shibatosh Dutta APPELLANT

Vs

The Uttar Bihar Gramin Bank and Others RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Citation : (2015) 3 PLJR 896

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : L.N. Das, for the Appellant; Prabhakar Jha, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. Assailing the impugned order of punishment dated 15.5.2014 of removal of petitioner from service of Uttar Bihar Gramin Bank (hereinafter referred to as the Bank) passed by the disciplinary authority and its affirmance by the appellate order in his order dated 1.10.2014 Mr. L.N. Das, learned counsel for the petitioner has basically sought to assail them on three grounds, namely,

(i) When the petitioner had himself admitted the charge and the regulation of the Bank had provided that in such case the departmental enquiry was not required to be held, the resultant enquiry held in the case of the petitioner would vitiate the order of punishment.

(ii) In such enquiry the documents having been not supplied to the petitioner, he was not afforded a reasonable opportunity to defend himself in course of enquiry.

(iii) The petitioner being prepared to compensate the loss of the Bank and therefore, the order of punishment of dismissal from service is excessive.

2. Learned counsel for the Bank, on the other hand, has submitted that neither the petitioner has suffered any prejudice on account of holding of enquiry nor the petitioner had at any point of time before enquiry officer made such grievance

relating to such supply of documents and in any event the Bank having found the charge of financial embezzlement and loss to be very serious it could not have taken any lenient view by allowing the petitioner to continue in service especially when he himself had admitted the charge.

3. In the considered opinion of this Court the first issue raised by the learned counsel for the petitioner has to be noted for its being rejected. The petitioner was subjected to a departmental proceeding in relation to the following charges:--

CHARGE-SHEET

Article of Charges against Sri Shivtosh Dutta, Officer Scale-I, Chhitrawalia Branch, Regional Office, Chapra, Distt.-Saran

While discharging duties as Branch Manager of Branch-Ramdauli, Distt.-Vaishali, under Regional Office, Hajipur and Branch-Chhitrawalia, R.O. Chapra, Sri Shivtosh Dutta, was issued show cause notice (Memo) No. HO/DAD/06/13-14/204 dt. 26.6.2013 and HO/HRD/06/2013-14/579 dt. 5.7.2013 for the acts of Omission and Commission, as enumerated therein. Sri Dutta submitted his reply vide letter dated 4.7.2013 and 10.7.2013 respectively which was found to be not satisfactory.

Consequent upon unsatisfactory submission of reply to show cause notice (Memo) Sri Dutta is being charged with following acts of Omission and Commission:--

(1) Smt. Meena Devi wife of Sri Satendra Kumar Singh resident of Ramdauli village complained that a credit limit under KCC bearing a/c No. 593 for Rs. 49,400/- (Forty nine thousand four hundred) with Ramdauli Branch was purported to have been disbursed in her name whereas she denied having taken loan from the Branch. Hence Sri Shivtosh Dutta who happened to be the Branch Manager of Ramdauli Branch, fraudulently had shown the said KCC limit as sanctioned for Rs. 50,000/- and disbursed Rs. 49,400/- and embezzled the loan amount i.e. Rs. 49,400/- for his personal gain.

(2) Sri Dutta with mala fide intention generated loan proposal in the name of Smt. Meena Devi wife of Sri Satyendra Singh under KCC and fraudulently sanctioned and disbursed credit limit under KCC bearing a/c No. 593 for Rs. 49,400/- on the strength of LPC and other receipts related to land which were found not issued from concerned Block. Photograph and thumb impression purported to be of Smt. Meena Devi found with the loan documents of the said KCC a/c differ with that of Smt. Meena Devi, wife of Sri Satyendra Singh of Village-Ramdauli. Sri Dutta by himself showed KCC as disbursed fraudulently in two installments viz. Rs. 10,000/- and Rs. 39,400/- on 13.9.2010 and 24.9.2010 respectively with the help of two forged withdrawals (vouchers) of even dates when Office Assistant of the Branch was on leave, as shown in the attendance register of the Branch.

(3) Sri Dutta proceeded on LFC and took encashment of leave, of his own, without getting the same sanctioned by the Regional Manager, Chapra. He exhibiting gross insubordination by disobeying instructions of the Regional Manager, Chapra, issued to him vide letter No. 653 dt. 21.6.2013, in respect of his LFC not being allowed and not to proceed on LFC, unauthorisedly encashed the leave and proceeded on LFC.

The aforesaid acts of Omission and Commission committed by Sri Dutta are unbecoming in a Bank Officer and detrimental to the interest of the Bank which constitute misconduct under Regulations 18 and 20 of Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 attracting penalty under Regulation 39."

(Underlining for emphasis)

4. It is not in doubt that the petitioner had admitted the charge in his written statement of defence. Thus, as a matter of fact the Bank was not required to hold departmental proceeding because law in this regard stands settled that if the delinquent admits the charge the disciplinary authority can straightway proceed to make assessment of misconduct and pass appropriate order of punishment. In this case, however, when the Bank had proceeded to hold enquiry probably it wanted to be more fair to the petitioner by giving him additional opportunity and at the same time ensure that there were sufficient materials in support of the charge. The Enquiry Officer thereafter had afforded opportunity of hearing to the petitioner and the petitioner had participated in the departmental enquiry. The Enquiry Officer after discussing the evidence brought on record by the management of the Bank had only thereafter held the petitioner guilty in respect of all the three charges.

5. This Court fails to understand what prejudice was suffered by the petitioner if such an enquiry was held? In fact the petitioner on the basis of such enquiry could continue in service for a bit longer period which otherwise was not possible if the same order of punishment had been passed removing him from service even before initiating enquiry.

6. As with regard to violation of the Bank regulations in the matter of holding enquiry it must be held that not every infraction of a provision of enquiry will vitiate the order of punishment. Way back in the case of State Bank of Patiala and others Vs. S.K. Sharma, , the Apex Court had held that it is only where delinquent gets prejudiced on account of certain infraction of the Rules that the order of punishment in a departmental enquiry can be interfered by the Court in exercise of power of judicial review.

7. The second issue again as with regard to the petitioner not being extended reasonable opportunity in course of enquiry on account of supply of relevant documents also has to be only noted for its being rejected. The issue of non-supply of documents in the case of the petitioner probably will also have no adverse effect because once the petitioner had himself admitted the charge,

there was no question of his being prejudiced on account of non-supply of documents. As a matter of fact the petitioner has also not brought anything on record to show that at the stage of enquiry he had even demanded certain documents and that was not made available. The detailed discussion made in the enquiry report will itself go to show that whatever documents were referred to in memo of charge, there they were produced before the Enquiry Officer and also marked exhibit in presence of the petitioner. In that view of the matter, the plea of non-supply of documents also will be of no avail to the petitioner as was also held by the Apex Court in the case of Suresh Pathrella Vs. Oriental Bank of Commerce, as also in the case of Bank of India and Others Vs. T. Jogram, .

8. Finally, as with regard to quantum of punishment this Court must note that the petitioner a Branch Manager of Bank was facing some very grave charges relating to causing financial loss and embezzlement of the fund to the Bank. Way back the Apex Court had clarified that in the case of Bank employee the defalcation or embezzlement of public money should not be treated lightly and leniently either by the authorities of the Bank or by the Courts while exercising power of judicial review against the order of punishment. Reference in this connection may usefully be made of the judgment of the Apex Court in the case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , wherein the Apex Court following its earlier judgment in the case of Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , had held as follows:--

"14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , it is no defence available to say that there was no loss or profit resulted in case, when the officer/ employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

9. The aforesaid view of the Apex Court has been followed without exception laying down a clear law that in case of misconduct against a Bank Officer involving his integrity the matter should not be treated lightly and/or leniently by the courts. In the case of Ganesh Santa Ram Sirur Vs. State Bank of India and Another, , it was held as follows:--

"34. The Bank Manager/Officer and employees of any Bank, nationalised/or nonnationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one''s authority is by itself a breach of discipline and trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, . Wherein this Court has held as under (SCC p. 614, Para 10):--

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

10. Yet again in the case of Canara Bank Vs. V.K. Awasthy, , the same view was reiterated and so was done also by the Apex Court in the case of State Bank of India and Another Vs. Bela Bagchi and Others, , wherein the law in this regard was laid down in the following words:--

"15. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , it is no defence available to say that there was no loss or profit resulted in case, when the officer/ employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

11. In the case of Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, , while dealing with the case of disciplinary proceedings and punishment against a Bank Officer the Apex Court had again followed the same principle.

12. There would be infact no need to multiply the authorities on the subject, inasmuch as the same principle was consistently followed again by the Apex Court in the case of State Bank of India and Others Vs. Ramesh Dinkar Punde, and also in the case of State Bank of India and Others Vs. S.N. Goyal, , wherein while rejecting the plea of a lesser punishment in relation to similar misconduct of a Bank Officer involving misappropriation/embezzlement of fund it was held as follows:--

"41. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank, survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/ borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower''s account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."

13. In the case of The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh, , the role of Bank Manager in exercise of his official function and exercising his power with honesty and integrity was summed up in the following terms:--

"26. In a number of cases including State Bank of India and Another Vs. Bela Bagchi and Others, , this Court has held that a bank employee has to exercise a higher degree of honesty and integrity. He is concerned with the deposits of the customers of the Bank and he cannot permit the deposits to be tinkered with in any manner.

27. In Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, , the Manager of a Bank who had indulged in unauthorized withdrawals, subsequently returned the amount with interest. Yet this Court has held that this conduct of unauthorized withdrawals amounted to a serious misconduct. Same is the case in the present matter. There was a clear documentary evidence on record in the handwriting of the respondent which established his role in the withdrawal of huge amounts for fictitious persons. The ledger entries clearly showed that whereas the FDRs were in one name, the withdrawals were shown

in the name of altogether different persons and they were far in excess over the amounts of FDRs. The respondent had no explanation and, therefore, it had to be held that the respondent had misappropriated the amount. In spite of a well reasoned order by the Inquiry Officer, the High Court has interfered therein by calling the same as sketchy. The High Court has completely overlooked the role of the bank manager as expected by this Court in the aforesaid judgments."

14. In view of the aforesaid view/settled authorities of the Apex Court the plea of the petitioner that he is ready to refund the embezzlement amount for recalling/ reviewing the order of punishment of his dismissal from service must be and is hereby rejected. As a matter of fact a similar plea of bestowing sympathy and generosity in the matter of misappropriation/embezzlement of the Government Fund was rejected by the Apex Court in the case of Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, , wherein it was held as follows:--

"29. Mr. Francis also submitted that a sum of Rs. 34,436,85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably molded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, respondent employee is found guilty of misappropriating the Corporation Funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and Appellate Authority."

15. Thus, when the petitioner being an officer of the Bank himself had admitted the charge of disbursing Rs. 49,400/- and actually had been found to have embezzled the loan amount in the name of loanee, namely, Smt. Meena Devi by making two forged withdrawals of Rs. 10,000/- and Rs. 39,400/- on 13.9.2010 and 24.9.2010 respectively, when the Office Assistant of the Branch was on leave as duly established from the Attendance Register of the Branch, there can be no escape from inevitable conclusion that the award of punishment of removal from service for the proven misconduct of misappropriation and embezzlement of fund of the Bank is absolutely in keeping with the gravity of misconduct. The petitioner, Branch Manager of the Bank, having failed to maintain discipline and integrity could not have been awarded any lesser punishment other than his removal from service of the Bank and if that has been done by the disciplinary authority and also affirmed by the appellate authority this Court in exercise of his power of judicial review will refuse to interfere with the same. In the result, this

application fails and is, accordingly, dismissed.