(2013) 08 DEL CK 0119

In the Delhi High Court

Case No : Writ Petition (C) No. 3468 of 1997

Shri H.K. Chaudhary APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0119

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : P.R. Chopra, for the Appellant; A.K. Sangal, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, petitioner impugns the orders passed by the Disciplinary Authority whereby petitioner has been visited with the punishment of dismissal from service. I may note that the petitioner never appeared in the enquiry proceedings in spite of notice, did not lead his evidence, did not depose in his favour and hence did not stand the test of cross-examination. The department on the other hand led evidence and proved the charges against the petitioner. The following Article of Charges were issued against the petitioner:-

STAFF: CLERICAL

It has been decided to initiate disciplinary action against you on account of the following acts of omission and commission and irregularities committed by you while working as Teller at our Seemapuri, Delhi Branch during the period 1989 to 1992.

i) You have availed undernoted advance against various securities which have persistently been running irregular:

D.L. Account No. 11/6 against NSCs for Rs. 10,000/- present outstanding Rs. 15,678.08 as on 30.06.1994.

D.L. Account No. 11/7 Clean-Present Outstanding, Since closed on 15.2.1994.

D.L. Account No. 11/8 against NSC face value Rs. 25,000/- Present Outstanding Rs. 35,365.75 as on 30.6.1994.

D.L. Account No. 11/15 against NSC Rs. 30,000/- Present outstanding Rs. 37,480/- as on 30.6.94.

D.L. Account No. 11-C-1 Consumer Loan-present outstanding Rs. 20,362/- as on 1.7.1994 including interest upto 30.6.1994.

Festival Advance-Present Outstanding Rs. 3814/- including interest w.e.f. 1.9.93 to June, 1994

ii) You have opened an account No. P-56 of your wife Smt. Pramila Chaudhary on 18.1.91 which was also introduced by yourself and closed on 29.4.91. Unauthorised overdraft of Rs. 6,000/- was created on account of payment of cheque No. 564030 dated 2.2.91 which was posted and passed by you. Interest amount of Rs. 110/- was debited to the account on 29.4.91 but the same was not written in the day book. Later on after the closure of account it was reopened by yourself on 28.10.91 and a Banker cheque for Rs. 110/- was issued in the name of Smt. Pramila Chaudhary which was posted, passed and encashed by you.

iii) You availed a scooter loan of Rs. 17,000/- but instead of purchasing a scooter, you purchased a car for which you were not entitled. Present outstanding Rs. 23,259/- including interest upto 30.6.1994.

iv) You have afforded undernoted Credits to your own account No. P-24 and Shri Kartar Singh, Account No. P-28 by debit to other accounts of constituents without proper authority/debit confirmation from these constituents.

Date

Amount

Credit Afforded From

Credit To

30.3.90

Rs. 11,000/-

STB 71

P-28

26.4.90

Rs. 11,000/-

STB 145

P-28

29.6.90

Rs. 11,000/-

STB 152

P-28

29.6.90

Rs. 18,000/-

STB 152

P-24

v) You opened an account No. P-24 in your name on 27.10.88 and the same was converted into a joint account with Kartar Singh on the strength of a letter dated 14.3.89 which has been signed by you as constituted Power of Attorney of Shri Kartar Singh; overdraft limit of Rs. 22,000/- was unauthorizedly sanctioned on this account against TDR No. 553100 for Rs. 22,000/-.

vi) You extended undue influence in getting an overdraft sanctioned in account No. P-28 in the name of your father namely Shri Kartar Singh. The present outstanding is Rs. 21,408/-.

The above charges, if established would amount to gross misconduct in terms of Para 521(4)(d) and (j) of Sastry Award.

You are hereby instructed to submit your explanation in writing to the undersigned within 7 days of the receipt of this Memorandum failing which it shall be presumed that you have nothing to say in your defence and further disciplinary action would be initiated as per service rules.

DISCIPLINARY AUTHORITY

ASSISTANT GENERAL MANAGER

REGION. IV

2. Charges (i) and (iii) are not very grave charges because the amounts could have been recovered from the salary and other dues payable to the petitioner. So far as Charge No.(ii) is concerned, the same is also a small charge because the issue was an amount of Rs. 110/- and that too for only a few days. So far as Charge No. (v) is concerned, again the dues of the bank to the petitioner, can cover the claim of the bank. Of course, the aforesaid observations I am making solely qua the chargesheet however it will subsequently transpire that these charges in themselves may not be grave charges, however, petitioner is not guilty of not only not repaying till date various loans taken from the bank but also from a Credit Thrift Society and to which as of today approximately about 7 1/2 lacs of rupees would be due and which would have to be paid by the respondent no. 1.

3. I was after hearing the petitioner, prima facie of the opinion originally on 17.5.2013, that the punishment of dismissal from services may be violative of doctrine of proportionality, and I thus requested the department/bank/ respondent to re-examine the issue. However, the competent authority even on re-examination, in view of the charges of misconduct and fraud against the petitioner, has refused to change the punishment inflicted upon the petitioner.

4. So far as merits is concerned, and as already stated above, report of the Enquiry Officer is final because the department led evidence and proved its case. The petitioner failed to appear in the enquiry proceedings and did not lead any evidence. Once petitioner led no evidence and the department has led evidence there is no reason to disbelieve the findings which are arrived at by the Enquiry Officer.

5. The real issue is the issue as to whether disproportionate punishment has been imposed upon the petitioner. No doubt the doctrine of proportionality is now well entrenched in service jurisprudence, however it has also been held that while deciding whether or not to interfere with the punishment imposed upon by the Departmental Authorities, Courts should not interfere unless the judicial conscience of the Court is shocked. In my opinion, there are three aspects which do not permit me to alter the punishment of dismissal from service which is imposed upon the petitioner and give a lesser punishment including of dismissal from service but with terminal benefits as provided in Rule 6(b).

(i) The first aspect is that even though certain charges were either minor charges including of taking of loans from the respondent-bank by the petitioner, however, the petitioner has been less than fair in his dealings because he never repaid these loans till date. Also, in the additional affidavit filed by the respondent-bank it is shown that an amount of about Rs. 7,79,515/- is due against the petitioner as on 31.7.2012 to the Credit Thrift Society from which the petitioner took a loan but till date petitioner has not repaid the same, and therefore, the respondent-bank would be liable to pay back this amount to the Hissar District Bank Employees Co-operative Urban (S.E.) Thrift and Credit Society Limited, Hissar, Haryana. For the present I am not saying one way or the other on the crystallized liability, but the only object of stating the aforesaid facts as regards the various loans having been taken by the petitioner, and they not being repaid back either to the respondent-bank or to the Credit and Thrift Society, is only to show that the petitioner has no equity in his favour.

(ii) The second ground which persuades me not to alter the punishment imposed upon the petitioner is that Charge No.(iv) against the petitioner was a very serious charge inasmuch as the petitioner wrongly utilized the amount from the customer of a bank by making debit entries in the account of the customer. No doubt, these entries were subsequently squared off, but a banker who holds the position of utmost good faith cannot act in a manner which would clearly be to defraud the customers of the bank. If this is permitted, faith of the common man in the banking services will be hit hard. Bankers deal with public monies and issues with respect to financial irregularity, have to be viewed very seriously even if ultimately bank may not be questioned by the customer and there is no financial liability to the bank.

(iii) The third reason for not reducing the punishment imposed upon the petitioner is that, petitioner never joined the services of the bank after he gave his application dated 27.11.1992 for voluntary retirement. Admittedly, another writ petition was filed by the petitioner to get the voluntary retirement which was denied to him by the Bank but that writ petition was dismissed, and therefore finality has been achieved on the aspect that the petitioner was not entitled to voluntary retirement. If the petitioner was a scrupulous person, then, petitioner should have joined the services of the respondent at least after the writ petition was dismissed. No person decides as per his own convenience when to leave the bank by merely submitting an application for voluntary retirement or to continue. Surely work of the bank would suffer if employees at their own convenience without getting sanction of leave from the bank just fail to report for work. It could not be disputed that there was no leave which was sanctioned in favour of the petitioner, whether on medical grounds or any other ground, at the time of the petitioner giving his application dated 27.11.1992 for voluntary retirement and thereafter not joining work. Really therefore the petitioner contumaciously and obdurately has abandoned his services with the bank.

6. Also I may note that since the charges in the present case are of the period prior to submitting of the application for voluntary retirement on 27.11.1992, really, the application for voluntary retirement was filed to avoid disciplinary proceedings against the petitioner. Disciplinary proceedings were initiated subsequently by the chargesheet dated 31.10.1994, but as already stated above, petitioner till his superannuation age failed to join the services of the bank. I am therefore not inclined in the facts of the present case to interfere with the punishment of dismissal from services imposed upon the petitioner.

7. Finally, I must state that it was argued on behalf of the petitioner that petitioner is justified in not participating in the enquiry proceedings because the respondent-Bank had decided to entrust the duty of the Presenting Officer on a bank Manager who was against the petitioner, and since the petitioner did not have good relations with him, the petitioner was forced not to appear in the disciplinary proceedings. In my opinion, this ground totally lacks substance because a Presenting Officer only represents the bank in the capacity of a Presenting Officer and thus personal relations are immaterial. There in my opinion in such facts does not arise any issue of a charged official not appearing in the enquiry proceedings because of an alleged bias of the Presenting Officer. In law, it is a bias of a Presiding Officer which may affect the disciplinary proceedings but there cannot be an issue of any alleged bias of a Presenting Officer on behalf of a department. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

