
(2014) 11 CAL CK 0005
In the Calcutta High Court
Case No : M.A.T. No. 541 of 2014

Shyamal Kumar Das Gupta

APPELLANT

Vs

Bangiya Gramin Vikash Bank

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2015) 2 CHN 536 : (2015) 4 WBLR 1095

Hon'ble Judges : Ashim Kumar Banerjee, J; Ashis Kumar Chakraborty, J

Bench : Division Bench

Advocate : Debabrata Saha Roy and Indranath Mitra, Advocate for the Appellant; Mokaram Hossain, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Ashis Kumar Chakraborty, J.

1. The instant appeal is at the instance of the writ petitioner, against the order passed by a learned Single Judge refusing to set aside the punishment imposed upon him by the respondent No. 1 bank (hereinafter described as "the bank"). At the relevant point of time the appellant was an officer of the Fatepur Branch(hereinafter referred to as "the said branch") of the bank. The charges levelled against the appellant were that in spite of being cautioned, by various circulars and guidelines, about fraud committed by an organised gang using fake C.A. Advices of the bank, the appellant; acted negligently, in violation of the circulars and guidelines of the bank and responded fake C.A. Advices of a constituent resulting in the bank suffering financial loss for a substantial amount. In the investigation report and charge-sheet reference was made to the specific circulars and guidelines issued by the Head Office of the bank, particularly one dated March 25, 2011 about the duties of the officers of bank to ensure that no payment was made to any constituent on the basis of such fake C.A. Advices.

2. After receipt the charge-sheet dated November 13, 2011, the appellant replied to the same on December 10, 2011. Thereafter, on January 17, 2012 the enquiry

officer appointed by the bank held the first sitting of the enquiry proceeding when copies of the various documents namely, investigation report dated 09.07.2011, the relevant vouchers dated 08.06.2011, 11.06.2011, 16.06.2011 and 23.06.2011, the fake CA advices responded by the appellant with his signatures, all the circulars including the one dated March 25, 2011 and other documents which were disclosed and exhibited by the bank (in support of the charges against the appellant) were made over to the appellant and his Defence Representative (hereinafter referred to as "D.R.") The name of the two witnesses who might be called, were also disclosed to the appellant. After receipt of the said documents the appellant prayed for adjournment of the enquiry proceeding and the same was allowed. The next enquiry proceeding was held on November 13, 2011 and from the minutes of the said proceeding it is evident that the appellant admitted to have received and gone through the contents all the aforesaid documents made over to him on January 17, 2012. The appellant never disputed the existence or contents of any of the documents produced by the bank. The appellant and his D.R. said that they had no document to produce before the enquiry officer and they did not want to examine/cross-examine any witness. In such situation, the enquiry officer concluded the hearing on that date and on the prayer of the appellant directed the presenting officer of the bank to submit his summary argument. The enquiry officer also gave opportunity to the appellant to file his written summary argument dealing with the summary argument of the bank. The presenting officer of the bank filed the summary argument before the enquiry officer. On May 13, 2012, the appellant filed his written summary argument dealing with the contents of the summary argument of the bank. From the said written summary argument of the appellant, as disclosed in the writ petition, it is evident that the appellant did not dispute the existence or contents of any of the aforesaid documents disclosed and relied by the bank before the enquiry officer or his signature appearing on the relevant C.A. Advices and other documents. Even in the said summary argument of the appellant, there was no defence that the said branch did not receive the said circular dated March 25, 2011. The appellant's only defence was that he had put his signature on the said advices after the same was signed by the Branch Manager of the said branch. After considering the summary arguments submitted by both the presenting officer of the bank and the appellant, being charge-sheeted officer, the enquiry officer filed his report recording, Inter alia, that the presenting officer had never been required to produce the management witness for getting the relevant documents corroborated, since it was not demanded by the appellant or his DR. The enquiry officer observed, although the appellant denied the charges levelled against him, but he failed to justify his stand by negating the basic allegations through any valid documentary evidence. The enquiry officer held, the charges levelled against the appellant stood evidently proved. The said report of the enquiry officer was forwarded to the disciplinary authority and the Chairman of the bank. The disciplinary authority forwarded a copy of the said report of the enquiry officer to the appellant and granted him an opportunity to submit his representation on the findings of the enquiry officer. On

July 14, 2012, the appellant filed his representation, against the said enquiry report before the disciplinary authority.

3. After considering the said enquiry report and the written submission of the appellant against such enquiry report, the disciplinary authority and the Chairman of the bank concurred with the finding of the enquiry officer that the charges framed against the appellant as stated in the said charge-sheet had been proved beyond any reasonable doubt and the punishment was imposed upon the appellant to the effect of "Reduction of Basic Pay to the initial stage in the time scale of pay which he belong to (Officer Scale -1), with retention of FPP and Stagnation increment, if any, with cumulative effect."

4. Against the aforesaid decision of the disciplinary authority, the appellant filed an appeal before the appellate authority. Before the appellate authority, the appellant for the first time alleged that the said branch did not receive the said circular dated March 25, 2011. After considering all the records, including the minutes of the enquiry proceedings held by the enquiry officer and all the documents and exhibits, the written submissions submitted by the appellant and the bank, the appellate authority rejected the appeal filed by the appellant and upheld the punishment imposed by the disciplinary authority of the bank. In paragraph 3 of the decision dated June 11, 2013 the appellate authority held as follows:

"It is observed that hearings were held on 17.01.2012 & 20.02.2012, which the CSO and/or his DR had actively participated. On the first day of hearing i.e. 17.01.2012, 17 (seventeen) item of documents, which were relied upon by the Disciplinary Authority while framing the aforesaid charge sheet against the CSO, were delivered to the CSO for his perusal, which he accepted without raising any question on it. During the 2nd day of hearing (20.02.2012), when the CSO and his DR were given the opportunity by the EO to defend the charges as placed by the PO through documentary evidences, the DR to the CSO, simply stated that neither they do want any further documents, nor any one to examine/cross-examine at that point of time, in this matter. They have also informed the EO of the case during the enquiry that they would submit their written submission on the matter on receipt of the summary arguments of the PO. It is further observed that the CSO admitted in writing that he had put his signature on the questioned fake CA Advices/Demand Draft/withdrawal slips as counter-signatory. The so-called issuing branch has informed in writing that they had not issued the questioned CA Advices, at all. Then, it is apparent that Bank had, no doubt, sustained loss to the extent of Rs. 19,10,446/- (Rupees nineteen lakh ten thousand four hundred forty six only) only since being withdrawn from the account, in which the proceeds of fake CA Advices were effected by the CSO along with the co-signatory of the Branch. The plea as has been pointed out by the CSO with regard to the allegation of allowing the concerned account holder to withdraw money from the account having the cheque facility through withdrawal slips and failing of the detection of elemental differences between the original

and fake CA Advices is not acceptable at all.

Considering all aspects of matter mentioned here-in-above, Appellate Authority of the Bank finds the reasons and arguments placed in his appeal petition do not have any conviction and merit which calls for any modification in the punishment imposed by the Disciplinary Authority & Chairman of the bank, and accordingly, Appellate Authority uphold the order as follows:

"Reduction of Basic Pay to the initial stage in the time scale of pay which he belongs to (Officer Scale-I), with retention of FPP and Stagnation increment, if any, with cumulative effect."

5. As stated above, before the learned Single Judge, the appellant challenged the aforesaid punishment imposed upon him on the grounds that the presenting officer had not proved the charges levelled against him, the said branch did not receive the said circular dated March 25, 2011 and that the order passed by the disciplinary authority was without reasons.

6. By the judgment, under appeal, the learned Single Judge rejected the contentions of the writ petitioner-appellant. The learned Single Judge held that it would not appear from the tenor of the petitioner's defence, or from anything recorded by the enquiry officer that the petitioner attempted to deny the fact that he had approved the payment or that his signature evidencing approval was not genuine. The learned Single Judge further held that once the petitioner's involvement in approving the pay out on behalf of the bank stood admitted and if the petitioner's defence as to the petitioner having acted diligently in approving the release of the payment was to be given credence, the petitioner ought to have demonstrated that he did not act in derogation of the circulars or guidelines of the bank which the petitioner utterly failed to demonstrate. The learned Single Judge found that it was never the defence of the petitioner either before the enquiry officer or before the disciplinary authority that the said Fatepur branch of the petitioner did not receive the circular dated March 25, 2011. In the premises, the learned Single Judge did not accept the contentions of the appellant writ petitioner that the charges levelled against him were not established in the course of enquiry officer's report or that the said circular dated March 25, 2011 was not received by the said branch. With regard to the contention of the writ petitioner/appellant that the order passed by the disciplinary authority was without reason, the learned Single Judge held that the only issue raised by the petitioner, before the disciplinary authority was that he was falsely implicated and as such it was open to the disciplinary authority to accept the enquiry officer's report as the same already considered the said defence of the petitioner. Thus, on March 19, 2014, the learned Single Judge rejected the writ petition with costs assessed at 300 GM.

7. While assailing the aforesaid decision of the learned Single Judge, Mr. Debabrata Saha Roy, learned counsel appearing for the appellant-writ petitioner submitted, before us that in the instant case, the entire proceeding against the

appellant till the appellate authority were liable to be quashed because the investigation report of the investigating officer was not served upon the appellant before issuance of the charge-sheet and the investigation report was made over to the appellant only after he filed his reply to the charge-sheet.

8. According to Mr. Saha Roy, in the enquiry proceeding no original document was proved by the presenting officer of the bank through any witness to substantiate the charges levelled against the appellant and as such the enquiry report of the enquiry officer and the subsequent decisions of the disciplinary authority and the appellate authority imposing penalty upon the appellant are all liable to be set aside. In support of such contention, Mr. Saha Roy relied on a decision of the Division Bench of this Hon'ble Court in the case of Bharat Coking Coal Ltd. and Another Vs. Surendra Pratap Narayan Singh and Others, as also the decisions of the Supreme Court in the cases of State of U.P. and Others Vs. Saroj Kumar Sinha, , Hardwari Lal Vs. State of U.P. and Others, , Sher Bahadur Vs. Union of India (UOI) and Others, , M.V. Bijlani Vs. Union of India (UOI) and Others, .

9. Finally, Mr. Saha Roy contended that the order of the disciplinary authority dated and the order of the appellant authority did not disclose reason and as such the learned Single Judge erred in rejecting the writ petition. In support of such contention, Mr. Saha Roy relied the decisions of the Supreme Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, and Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, .

10. Mr. Hossain, the learned counsel appearing for the bank, however, submitted that there was no infirmity in the decision of the learned Single Judge. According to Mr. Hossain all charges levelled against the appellant were proved before the enquiry officer and there was no illegality in the decisions of the disciplinary authority and the appellate authority imposing penalty upon the appellant.

11. We have considered the rival contentions of the parties, as also the records disclosed by them. So far as the contention of Mr. Saha Roy about non-service of the investigation report upon the appellant before issuance of the charge-sheet, we find that the appellant filed a reply to the said charge-sheet leveling the charges against him and in such reply he did not raise any objection about non-receipt of the investigation report. In any event, in the first sitting of the enquiry proceeding held on January 17, 2012 along with all relevant documents relied upon by the bank against the appellant, a copy of the said investigation report dated July 9, 2011 was also made over to the appellant. During the proceeding before the enquiry officer, the appellant raised no objection with regard to the non-service of the said investigation report upon him before service of the charge-sheet. The appellant all along attended the proceeding held by the enquiry officer and he had all the opportunity to deal with the contents of said investigation report of the investigating officer. Thus, in the instant case, the appellant cannot complain that he had no opportunity to deal with the contents

of the said investigation report of the investigating Officer. Even in his summary arguments submitted before the enquiry officer or in his submission against the enquiry report before the disciplinary authority or in his appeal before the appellate authority, the appellant did not complain about sufferance of any prejudice due to the receipt of the investigation report during the enquiry proceeding only. Thus, in consonance with the settled principle of law, when the appellant had all opportunity to deal with the contents of the said investigation report and suffered no prejudice due to the non-service of the investigation report before issuance of the charge-sheet, we are unable to accept the first contention of Mr. Saha Roy.

12. So far as the second contention of Mr. Saha Roy, that the bank did not produce any witness to prove any of the seventeen documents produced before the enquiry officer, and the charges framed against the appellant could not have been held to be proved, it is evident from the minutes of the proceeding held by the enquiry officer that the appellant did not dispute the genuineness or the contents of any of the said documents including the said circular dated March 25, 2011. The appellant and his DR expressly stated before the enquiry officer that they had no document to disclose nor did they want to examine/cross-examine any witness. The appellant could not dispute either his signature on the relevant documents or that the relevant C.A. Advices were fake. Thus, once it was evident that the appellant was involved in the payment being made by the bank against the fake documents the only investigation had to be as to whether the appellant had observed the guidelines and directions of the bank contained in various circulars. Thus, at this stage, onus lied on the appellant to demonstrate that he did not act in derogation of the circulars and guidelines of the bank particularly the circular dated March 25, 2011 which, the appellant failed to discharge. Further, before the enquiry officer and the disciplinary authority the appellant did not allege that his said branch did not receive the said circular dated March 25, 2011.

13. Even in the written arguments submitted before the enquiry officer or in his submission against the enquiry report filed before the disciplinary authority or in the appeal before the appellate authority, it was not the case of the appellant that the charges levelled against him were not proved on the ground that the bank did not bring any witness to prove the said documents before the enquiry officer.

14. From a fair reading of the decisions of the Division Bench of this Court in the case of Bharat Coking Coal Ltd. & Anr. (Supra) and the decisions of the Supreme Court in the cases of State of U.P. and Others Vs. Saroj Kumar Sinha, , Hardwari Lal Vs. State of U.P. and Others, , Sher Bahadur Vs. Union of India (UOI) and Others, , M.V. Bijlani Vs. Union of India (UOI) and Others, , there is no doubt that the facts of all those cases were entirely different. In those cases, in the absence of the relevant witnesses and without the relevant documents being proved through proper witness, either the charges levelled against the charge-

sheeted officer were not proved or the charge sheeted employee was denied reasonable opportunity to defend himself in the enquiry proceeding. In the instant case, the appellant was given all the opportunity to defend himself in the enquiry proceeding and by no means it can be held that the documents in support of the charges levelled against the appellant were not proved. Thus, none of the said decisions relied upon by Mr. Saha Roy has any application in the instant case and we are unable to accept the second contention of the appellant.

15. So far as the contention of Mr. Saha Roy that the decisions of the disciplinary authority and the appellate authority do not disclose any reason, we find that after considering all the records of the case, the disciplinary Authority-cum-Chairman of the bank concurred with the findings of the enquiry officer that the charges mentioned against the appellant in the charge sheet had been proved beyond any reasonable doubt and thereafter, the disciplinary authority imposed the penalty upon the appellant. Against the said decision of the disciplinary authority, the appellant preferred an appeal before the appellate authority, when he made no complaint that the decision of the disciplinary authority does not disclose any reason. This would be evident from the petition filed by the appellant before the appellate authority as has been disclosed in the stay petition. The appellant faced no problem in stating the grounds to assail the decision of the disciplinary authority. So far as the decision of the appellate authority dated June 11, 2013 is concerned we have already quoted paragraph 3 of their decision, wherefrom it is evident that the appellate authority also applied its mind and disclosed the reasons why they found the appellant to be guilty of the charges levelled against him in the charge sheet. In these circumstances, we are unable to accept the contention of the appellant that the said decision of the disciplinary authority dated May 15, 2012 and the decision of the appellate authority dated June 11, 2013 do not disclose any reason for imposing punishment upon the appellant.

16. So far as the decisions of the Supreme Court relied upon by the appellant in the cases of Chairman, Disciplinary Authority Rani Laxmi Rai Kshetraya Gramin Bank and Ravi Yashwant Bhoir (supra) we are fully conscious about the principle of law enunciated in those decisions that even in disciplinary proceedings, the decisions of the disciplinary authority and the appellate authority should contain reason. However, as stated above, in the instant case, we are unable to accept the submission of the appellant that the decisions of the disciplinary authority and that the appellate authority do not contain any reason and as such we are of the view that none of the said decisions of the Supreme Court relied upon by the appellant has any application in the instant case.

17. At the end of his submissions Mr. Saha Roy submitted before us that although the appellant had put his signature on the said C.A. Advices and other documents only after the same had been signed by the Branch Manager of the said branch but no proceeding had been initiated against the said Branch Manager nor any penalty had been imposed upon him. This point was never

raised by the appellant either before the disciplinary authority or the appellate authority not even before the learned Single Judge. However, Mr. Hossain appearing for the respondent, took instructions from the officer of the bank present in Court and informed us that similar proceedings were initiated against the said Branch Manager and penal action was taken against him also.

18. At the end Mr. Saha Roy further submitted that the punishment imposed upon the appellant was disproportionate to the offence of the appellant. This point was also not to raise by the appellant either before the appellate authority or in the writ petition and as such the respondent bank had no opportunity to deal with such allegation now raised by the appellant before us. In the premises, we are unable to entertain such contention raised by the appellant. In any event, considering the charges levelled, we consider the punishment to be apt.

19. In view of the aforesaid, we find no merit in the instant appeal and the same stands rejected after making the costs imposed as easy. However, there will be no order as to costs.

Ashim Kumar Banerjee, J.

I agree.