
(1998) 04 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 1217 of 1996

Smt. Sharda Devi

APPELLANT

Vs

Bank of India and others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 PLJR 911

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : Subodh Kumar, Rajeev Prakash and Sushil Kumar, for the Appellant; Shivaji Pandey and B.B. Sharan, for the Respondent

Final Decision : Dismissed

Judgement

Dr. J.N. Dubey, J.—This writ petition is directed against the order dated 11.9.95 of the respondent no. 2 Zonal Manager, Bihar North Zone, Bank of India, Patna dismissing the appeal of the petitioner. It appears that on conclusion of the disciplinary proceedings, the petitioner was dismissed from service without notice by respondent no. 3, Deputy Zonal Manager, Bihar North Zone, Bank of India, Patna on 4.5.95. She filed appeal to the respondent no. 2, which was dismissed on 11.9.95. Feeling aggrieved the petitioner has filed this writ petition.

2. Heard the learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner contended that the respondent no. 2 was not legally justified in dismissing the appeal of the petitioner by a non-speaking order. I find no substance in this argument of the learned counsel. The respondent no. 2 has passed a detailed order running into as many as 11 pages and, as such, it cannot be claimed that he has dismissed the appeal by a non-speaking order. He has considered entire materials on record while confirming the order of the Disciplinary Authority. Moreover the order of the respondent no. 2 is an order of affirmance and, therefore, he was not required to go into all the

minute details of the case. In S.L.A. (Civil) No. 8147/92 (S.B.I. Bhopal & ors. vs. S.S. Koshal) the following order was held to be an speaking order by the Supreme Court :

With reference to your Appeal dated the 31st August 1984, we have to advise that the said appeal was placed by us before the Local Board, the Appellate Authority, on the 25th January 1985. We further advise that the Board in the meeting held on the aforesaid date resolved as under :

THE BOARD considered at length the facts of the case including the fact that the Disciplinary Authority has differed from the findings of the inquiring Authority in respect of two charges. After having considered the appeal and other relevant papers and having applied their minds, the Board concluded that there are no grounds to sustain the appeal and, accordingly RESOLVED that the order of the Disciplinary Authority be upheld and that the appeal made by Shri S.S. Koshal be dismissed.

4. In the present case, respondent no. 2 after considering entire materials on record in the end observed :

Upon considering the materials on enquiry record, I am of the opinion that the Deputy Zonal Manager Bihar North Zone and Disciplinary Authority was right in concurring with the findings of Enquiry Officer in respect of charge no. 2, 3, 5, 7, 8 and 9 and was also right in differing with the findings of Enquiry Officer in respect of charge no. 1, 3 & 6. I find that the Disciplinary Authority recorded his substituted findings dated 14.03.95 in respect of charge no. 1, 3 and 6 with the reasons for reaching at a conclusion and his findings are based on the materials on enquiry record and he (Disciplinary Authority) was also judicious in awarding separate punishment for each charge and consolidated punishment of "DISMISSAL WITHOUT NOTICE" from Bank's service to Smt. Sharda Devi for charges proved against her in the Departmental Enquiry. The Bank is the custodian of public money and therefore the conduct of it's employee should be above board. Any attempt to dishonestly misappropriate the customer's money even for a shorter period should be dealt with severely. I do not find any justifiable reason to interfere with the punishment already awarded by the Disciplinary Authority to Smt. Sharda Devi vide said penalty Order No.ZO:IR:95-96:090, dated 04.05.95. Accordingly I order as under:

ORDER

THE SEPERATE PUNISHMENT FOR EACH PROVED CHARGE AND CONSOLIDATED PUNISHMENT OF "DISMISSAL WITHOUT NOTICE" FROM BANK'S SERVICE AWARDED BY DY.ZONAL MANAGER AND DISCIPLINARY AUTHORITY VIDE HIS PENALTY ORDER NO.ZO:IR:95-96:090 DATED 04.05.95 TO SMT. SHARDA DEVI BE AND IS HEREBY CONFIRMED AND ACCORDINGLY THIS APPEAL IS DISPOSED OFF.

According to the law laid down by the Supreme Court in the aforesaid decision

even the above quoted portion of order of respondent no. 2 would be treated to be an speaking order.

5. The second contention of the learned counsel for the petitioner is that respondent no. 3, the Disciplinary Authority, did not afford the petitioner an opportunity of hearing while differing with the findings of the Enquiry Officer. This contention of the learned counsel is also without substance. According to the Enquiry Officer, out of nine charges framed against the petitioner, while two were proved, two were partly proved and the remaining five were not proved. The Disciplinary Authority after careful consideration of the entire materials on record concurred with the findings of the Enquiry Officer in respect of charge nos. 2, 4, 5, 7, 8 & 9, but differed with him in respect to charge nos. 1, 3 & 6. He, accordingly, recorded his substituted findings on charge nos. 1, 3, & 6. On 25.3.95 the Disciplinary Authority sent second notice of proposed punishment to the petitioner alongwith copies of the findings of Enquiry Officer as well his own substituted findings. He also afforded the petitioner opportunity of personal hearing on 17.4.95. The petitioner appeared before the Disciplinary Authority on 17.4.95 for personal hearing. The minutes of the personal hearing reads thus:

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Smt. Sharda Devi was given a date for personal hearing on 31.3.95 vide Show Cause proposed Punishment Notice No.ZO:IR: 94-95/1083 dated 25.3.95. Smt. Sharda Devi represented vide her application dated 31.3.95 for grant of 15 days time to prepare herself for the said hearing. The DZM & DA considered the request of Smt. Sharda Devi and fixed the date of personal hearing on 7.4.95 vide letter No.ZO:IR: 95/19 dated 10.4.95. The Defence Representative Shri Rameshwar Prasad on behalf of Smt. Sharda Devi represented once again for extension of time vide letter dated 7.4.95. Accepting to the request of the Defence Representative of Smt. Sharda Devi the DZM & DA fixed the personal hearing on 17.4.95 which was advised to Smt. Sharda Devi vide letter No.ZO:IR:95/19 dated 10.4.95.

To-day i.e. 17.4.95, Smt. Sharda Devi alongwith the Defence Representative Shri Rameshwar Prasad appeared before the Deputy Zonal Manager & D.A. for the personal hearing and made the following submission:

- (i) that Smt. Sharda Devi belongs to Scheduled Caste community comes from poor and downtrodden family;
- (ii) that the findings of Enquiry Officer and the Disciplinary Authority are based on preponderance and probabilities;
- (iii) that the makers of the statement/complaint were not produced before the enquiry as such no chance for cross examination was provided to the Chargesheeted employee. The reason of non-production of complainant has been assigned to the defence on the ground of giving threat for appearance of the

individual complaint. This is in itself false and concocted story by the PO and concurred by you;

(iv) that the statement which were relied upon during the enquiry/investigation was not recorded in presence of the delinquent employee;

(V) statement of complaints has been on hearsay basis and relied upon in the said findings;

(vi) Smt. Sharda Devi was taken in absence of Defence Representative or any authorised representative;

(vii) that there is no financial loss to the Bank;

(viii) that the quantum of punishment proposed is on a very high side and needs reconsideration by the authorities. The nature of allegation is similar and in atleast 2 of the charges the punishment of stoppage of 5 increments were proposed whereas against few charges the punishment were proposed from discharge to dismissal without notice;

(ix) whole process, right from investigation to the conclusion and the findings stage biased approach has been adopted in this case.

Under the above situation the proposed punishment is based on erroneous findings and deserves to be set aside.

Thereafter the Deputy Zonal Manager and the Disciplinary Authority advised Smt. Sharda Devi that he will go through the representation before passing the final order.

Sd/- Shri Rameshwar Prasad Defence Representative

Sd/- Smt. Sharda Devi Chargesheeted Employee

Sd/- Dr. S.C. Yadav Dy. Zonal Manager & Disciplinary Authority.

6. A plain reading of the minutes would show that the petitioner was afforded opportunity of hearing by the Disciplinary Authority before passing the order of punishment. In para 11(d) of the counter affidavit it has been stated that the petitioner did not make any such grievance in her appeal filed to the respondent no. 2. They have also enclosed a copy of the memo of appeal to substantiate their claim. From the memo of appeal, I find that the petitioner did not take this ground before the appellate authority, which further disproves her claim that she was not afforded opportunity of hearing against the substituted findings of the Disciplinary Authority.

7. The impugned orders do not suffer from any illegality or impropriety, which may warrant interference by this Court under Article 226 of the Constitution. The writ petition is devoid of merit and is, accordingly, dismissed. No order as to costs.