(2012) 08 GAU CK 0031

In the Gauhati High Court

Case No : Writ Appeal No. 54 of 2009

Sri Ajit Dutta APPELLANT

Vs

Vijaya Bank RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2013) 1 LLJ 489

Hon'ble Judges : Ujjal Bhuyan, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : K.N. Choudhury and Mr. R. Dubey, for the Appellant; P.C. Deka and Mr. N.Deka, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—This writ appeal has been preferred against the judgment and order dated 22-05-2007 passed by the learned Single Judge in W.P.(C) No. 4214/1998 dismissing the writ petition whereby the appellant had challenged the legality and validity of the show-cause notice issued to him by the Vijaya Bank (respondent bank). The facts of the case may be briefly noted.

2. Appellant was serving as a Clerk under the respondent bank and at the relevant point of time, he was posted at the Tinsukia Branch, Tinsukia. The disciplinary authority of the respondent bank issued a show-cause notice to the petitioner on 20-02-1997 asking him to show-cause as to why disciplinary proceeding should not be initiated against him for the acts of misconduct mentioned therein. The allegations of misconduct as disclosed in the show-cause notice are as under:-

You have been working as a clerk at our Tinsukia branch since 07-08-1982.

You had applied for an LMV (Loan against Motor Vehicle) to the then Branch Manager, Tinsukia branch vide your loan application dated 20-02-1991 under staff loan scheme of the bank, enclosing therewith a quotation dated 11-02-1991 for Rs. 16,500/- of M/s Ayyappa Motors of Vijayawada (Andhra Pradesh) for purchasing a Bajaj super scooter with accessories amounting of Rs. 16,500/-. After scrutiny of your LMV loan application by the then Branch Manager of the branch, LMV amounting to Rs. 15,000/- was sanctioned to you.

The said loan amount of Rs. 15,000/- was disbursed to you on 21-02-1991 under LMV A/C No. 2/91 of the branch. After the disbursement of the loan, you had also produced to the branch a "stamped receipt" No. 19121 dated 25-03-1991 for Rs. 16,500/-purportedly issued by M/s Ayyappa Motors, Vijayawada in your name.

While submitting loan application dated 20-02-1991 to the branch, you had undertaken to comply with the guidelines / instructions issued by the bank pertaining to the LMV availed of by the staff members from the bank. However, a special investigation conducted at the branch reveals that you had not complied with the following basic guidelines / instructions pertaining to the LMV availed of by you from Tinsukia branch.

(a) You had not produced to the branch a certified copy of R.C. book of the vehicle purchased by you from M/s Ayyappa Motors evidencing the registration of the vehicle and noting hypothecation endorsement in favour of the bank.

(b) You had not submitted to the branch duplicate key of the vehicle.

(c) You had not submitted comprehensive insurance policy of the vehicle with the bank clause.

(d) You had not produced the vehicle at all to the branch for inspection. Further, you had also not arranged for the inspection of the vehicle by an official of the branch subsequent to the disbursement of the loan.

The then Senior Branch Manager of the branch vide his letter No. OR:TNA:LD: 793/94 dated 05-08-1994 had advised you to produce before him on or before 08-08-1994 the following documents pertaining to the LMV availed of by you from the bank :-

(i) Photo copy of R.C. book with original;

(ii) Duplicate key of the vehicle;

(iii) Comprehensive insurance policy duly incorporating the bank clause;

(iv) Vehicle inspection report.

You had failed to comply with the advise given to you by the then Senior Branch Manager vide his letter dated 08-08- 1994 and instead, you had submitted a letter to the Senior Branch Manager on 08-08-1994 informing him about your illness and sought sanction of P.L. till your recovery form the illness.

On 25-08-1994, you had closed your LMV A/C No. 2/91 by repaying the balance amount of Rs. 8,340/- with interest amount of Rs. 3,193/- due thereon. You were nominated for Senior Clerical Training Programme at Staff Training Centre

(STC), Mumbai from 11-07-1994 to 16-07-1994 vide Head Office letter No. 2906/94 dated 02-05- 1994 and thus, you were sanctioned with T.A. advance of Rs. 10,000/- on 20-05-1994 to enable you to purchase your ticket in advance for journey to Mumbai. In spite of availing T.A. advance of Rs. 10,000/- on 20-05-1994 from the branch, you had failed to produce the tickets before the then Senior Branch Manager till 02-07-1994 in terms of Head Office Circular No. 196/92 dated 05-12-1992. Thus, the then Senior Branch Manager vide his letters bearing number 730/94 dated 02-07-1994 and 734/94 dated 04-07-1994 informed you about the eligible journey time for your travel to Mumbai for attending the said training programme. Disregarding the instructions of the then Senior Branch Manager, you had proceeded on your own to Mumbai and sought admission into the said training programme at STC, Mumbai. But, the Senior Manager, STC, did not allow you to attend the training programme in the absence of relieving order which was to be obtained by you from the branch before proceeding to Mumbai.

On 16-06-1994, Sri K.L. Sutradhar, the acting Branch Manager of the branch instructed you orally and thereafter again in writing vide letter dated 16-06-1994 to perform the duty of the second cashier for the said day in place of Mr. I. Sonwal who was absent in the branch on that day. You failed to comply with the said instructions of the acting Branch Manager and left the branch after collecting a copy of the said letter without acknowledging receipt of the same.

In view of the foregoing, it is evident that you have committed the following lapses :-

(a) You had not complied with the basic guidelines pertaining to the L.M.V. formulated by the bank and thus there are reasons to believe that you had not purchased the vehicle at all.

(b) Despite being instructed by the then Senior Branch Manager of the branch to produce before him the documents pertaining to the vehicle, you failed to produce the same and instead you had sought for sanction of leave in the pretext of concealing your misdeeds which would be further corroborated by your premature closing of L.M.V. account.

(c) You had disobeyed the instruction of the then Senior Branch manager of the branch regarding production of tickets before him and finally you had proceeded to Mumbai to attend the training programme at STC, Mumbai without obtaining relieving order from the branch.

(d) You had also disobeyed the instruction of the acting Branch Manager regarding handling second cashier''s counter in the absence of regular cashier of the said counter on 16-06-1994 in the branch.

Your aforesaid irregularities constitute serious acts of misconduct in the light of the provisions laid down in the Bipartite Settlement, 1966.

The bank, therefore, charges you as under :-

1. Your action in not complying with the basic guidelines / instructions enunciated by the bank pertaining to the availing of LMV from the bank and especially not submitting the particulars / documents as stated vide item No. (a) to (d) above gives an indication that you had not purchased the vehicle at all from M/s Ayyappa Motors, Vijayawada, which amounts to an act of displaying dishonesty and doing an act prejudicial to the interests of the bank and hence the same constitutes an act of gross misconduct within the meaning of sub-clause (i) of clause 19.5 of chapter XIX of the Bipartite Settlement, 1966.

2. Your action in not complying with the instruction of the then Senior Branch Manager as communicated to you vide his letter dated 05-08-1994 regarding production of relevant documents / material as mentioned above vide item No. (i) to (iv) above and instead closing of your LMV A/c prematurely gives an indication that you had not purchased the vehicle at all from M/s Ayyappa Motors, Vijayawada, which amounts to an act of displaying dishonesty and doing an act prejudicial to the interests of the bank and hence the same constitutes an act of gross misconduct within the meaning of sub-clause (j) of clause 19.5 of chapter XIX of the Bipartite Settlement, 1966.

3. Your action in not producing the particulars of train ticket before the then Senior Branch Manager after availing the advance T.A. of Rs. 10,000/- from the branch and thereafter proceeding for attending the training programme at STC, Mumbai without obtaining relieving order from the branch and subsequently not attending the training programme at STC, Mumbai because of non-production of the relieving order at STC. Mumbai, amounts to an act of insubordination and disobedience of the lawful and reasonable orders of the management / official superior which is subversive of discipline and thus the same constitutes an act of gross misconduct within the meaning of sub-clause (e) of clause 19.5 of chapter XIX of the Bipartite Settlement, 1966.

4. Your action in not carrying out the instruction of the acting Branch Manager of the branch in regard of handling cash counter of the branch as second cashier on 16-06-1994 in the absence of regular cashier in the branch on the said day, amounts to an act of insubordination and disobedience of the lawful and reasonable orders of the official superior which constitutes an act of gross misconduct within the meaning of sub-clause (e) of clause 19.5 of chapter XIX of the Bipartite Settlement, 1966.

3. Appellant filed Civil Rule No. 4214/98 challenging the above show-cause notice dated 20-02-1997. A Single Bench of this Court while admitting the writ petition, ordered that the respondents may proceed with the enquiry but no final order should be passed without the leave of the Court.

4. Though the disciplinary authority had concluded the enquiry, following receipt of the order of this Court, the disciplinary authority decided to initiate a fresh enquiry into the matter and appointed a new enquiry officer.

5. At this stage, the appellant filed miscellaneous petition in Civil Rule No.

4214/1998. By order dated 06-01-1999, a Single Bench of this Court suspended the fresh enquiry proceeding. The respondent bank thereafter came up for modification of the above order. This Court by order dated 15-06-1999 allowed the respondent bank to proceed with the enquiry and to conclude the same as early as possible but restrained the respondent bank from passing any final order without the leave of the Court.

6. The disciplinary authority thereafter proceeded with the enquiry. In the course of the enquiry, the management examined two witnesses and exhibited twenty documents whereas the appellant examined two witnesses and exhibited thirty six documents. The enquiry officer at the conclusion of the enquiry, submitted his report on 05-04-2000 holding charge Nos. 1 and 3 as proved.

7. The disciplinary authority thereafter forwarded a copy of the enquiry report to the appellant, who then submitted his representation with the prayer for his exoneration. Not satisfied with the representation, the disciplinary authority proposed imposition of penalty of reduction to a lower stage in the time scale of pay by two stages for a period of one year with cumulative effect. Appellant submitted reply to the proposed penalty. However, the reply was not accepted and the disciplinary authority decided to impose the penalty as proposed upon the appellant.

8. Thereafter, the respondent bank filed application before the Single Bench to allow them to pass the final order. However, the earlier interim order was not vacated / modified but the case was taken up for final hearing.

9. In the meanwhile, the appellant was transferred from Tinsukia to Silchar by order dated 15-05-2001, which was challenged before this Court in W.P.(C) No. 3547/2001. This Court by order dated 21- 05-2001 while admitting the said writ petition, suspended the transfer order dated 15-05-2001.

10. Both the cases were heard together by the learned Single Judge.

11. The learned Single Judge by the impugned judgment dismissed Civil Rule No. 4214/1998, further granting leave to the respondent bank to pass the final order regarding imposition of the penalty on the appellant. However, W.P.(C) No. 3547/2001 was allowed by setting aside the transfer order dated 15-05-2001.

12. Aggrieved by the dismissal of his writ petition in Civil Rule No. 4214/1998, the appellant has filed the present appeal.

13. Heard Mr. K.N. Choudhury, learned Senior Counsel for the appellant as well as Mr. P.C. Deka, learned Senior Counsel for the respondent bank.

14. Learned Counsel for the appellant submitted that the appellant was involved in trade union activities because of which he has been victimized. Issuance of the show-cause notice and holding of departmental proceeding against the appellant were instances of victimization, he contends. He submits that learned Single Judge failed to consider the challenge in the above perspective and the same has

vitiated the impugned judgment. He also submits on the merit of the allegation to contend that on the materials available, charges 1 and 3 could not be said to have been proved against the appellant. He therefore prays for setting aside of the impugned judgment as well as the penalty imposed.

15. On the other hand, learned Counsel for the respondent bank submits that the disciplinary authority was fully justified in show-causing the appellant and in the disciplinary proceeding, reasonable opportunity of hearing was afforded to the appellant. Supporting the view taken by the learned Single Judge, the respondents prayed for dismissal of the appeal.

16. The submissions made have been considered.

17. The power of the disciplinary authority to enforce discipline by taking resort to disciplinary action including holding of enquiry is not disputed. In the instant case, four distinct charges were brought against the appellant out of which two were proved in the enquiry. From the materials on record, it is quite evident that the appellant was given reasonable opportunity to defend his case. Appellant has failed to show violation of any procedural norms while conducting the enquiry. All procedural safeguards were adhered to while holding the departmental proceeding. The further plea taken that the disciplinary proceeding was not bonafide and was accentuated by ulterior motives was also negatived by the learned Single Judge. The learned Single Judge held as follows :-

The original record of the case has been placed before the court by the learned counsel appearing for the respondents Bank. I have perused the same and nothing was found therein to suggest the disciplinary proceeding was actuated with malice. Further no other suspicious circumstances are made out to permit contrary inference. No roving enquiry is called for in the matter within the scope of judicial review when there is a lack of firm foundation of facts pleaded in regard to malafide. Thus there is no basis to accept the contention that there is malafide in initiating the departmental proceeding which was occasioned by malafide of the then respondent Nos. 6, 7 and Mr. A.K. Mandal having not been arrayed as party respondent in the writ petition and the allegations having been rebutted as indicated above, the disputed questions cannot be gone into in this writ petition and therefore the contention of malafide fails.

Finally, the learned Single Judge concluded as under :-

The Court in dealing with the case relating to the charge sheet was allowed to proceed and accordingly the Bank authority proceeded with the enquiry and the Enquiry Officer submitted its report and the final order is required to be passed on the proposed penalty. The judicial review being limited in the matter of disciplinary proceedings and on the proposed penalty, the court has no other alternative but to hold that the writ petitioner had failed to make out a case for interference in the matter of charge sheet dated 20-02-97 holding that the writ petition is devoid of any merit and accordingly dismissed the same, directing the respondents Bank to pass the final order in the matter of awarding the penalty as proposed.

We are in agreement with the view taken by the learned Single Judge. Appellant has failed to produce any cogent material to support his plea that the show-cause notice was actuated by malice. The contentions advanced by the appellant, according to us, are without any merit and, therefore, do not appeal to us. The view taken by the learned Single Judge is a reasonable one and calls for no interference. Moreover, considering the charges which stood proved in the enquiry, the punishment imposed on the appellant cannot also be said to be harsh or excessive. In view thereof, the writ appeal is dismissed but without any order as to cost.