

(2022) 10 OHC CK 0171
In the Orissa High Court
Case No : Writ Appeal No. 468 Of 2016

Sri Kalakar Chakra

APPELLANT

Vs

Orissa Gramya Bank And Others

RESPONDENT

Date of Decision : 31-10-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code., 1860 — Section 120B, 420, 467, 468, 471

Citation : (2022) 10 OHC CK 0171

Hon'ble Judges : S. Muralidhar, CJ; Chittaranjan Dash, J

Bench : Division Bench

Advocate : M.K. Khuntia, S.C. Samantaray

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 18th May 2016, passed by the learned Single Judge dismissing the O.J.C. No.6048 of 1994, filed by the present Appellant. In the said writ petition, the Appellant had challenged the enquiry report dated 31st July 1992, submitted by the Enquiry Officer (EO) and the consequential order of dismissal passed on 29th September, 1992 by the Disciplinary Authority (DA) as well as the order dated 18th July, 1994 of the Appellate Authority (AA), confirming the dismissal of the Appellant for acts of misconduct committed by him while he was working in the Soso Branch of the Baitarani Gramya Bank ('Bank').

2. The background facts are that the Appellant was appointed in 1980 as Sweeper-cum-Water Boy-cum-Messenger at the Soso Branch of the Bank in Keonjhar on a temporary basis. On 4th August, 1981 he was transferred from Soso Branch to the Batto Branch, Keonjhar. Pursuant to the instructions issued by the Chairman of the Bank, the Appellant applied on 14th November, 1988 for being considered for regularization. He appeared in the interview and viva-voce.

3. On 15th January, 1989 the Central Bureau of Investigation (CBI) registered a First Information Report (FIR) for alleged financial irregularities in the Bank. On 30th September 1989, the CBI filed a charge sheet against three persons: (i) Bansidhar Sahoo, Junior Cashier-cum-Clerk of the Bank, (ii) Sibnarayan Dash, Manager of the Bank in Keonjhar and (iii) Gajendra Kumar Mishra, Junior Cashier-cum-Clerk of the Bank at the Saintala Branch, Keonjhar. They were charge-sheeted for the offences punishable under Sections 120-B/420/467/471 IPC read with Section 468 of IPC.

4. Meanwhile, on 15th November 1990, the services of the Appellant was regularized with effect from 31st December, 1987.

5. On 18th June 1991, the Appellant was placed under suspension on the charge of having prepared five credit advices totaling Rs.79,900/- purportedly drawn in the Keonjhar Branch of the Bank favouring one Sri Subash Chandra Samal, stated to be a fictitious account holder of the branch. The said amount was stated to have been withdrawn subsequently from the said Bank account thereby causing direct pecuniary loss to the Bank.

6. On 14th August 1991, in the disciplinary proceedings, the Appellant was issued a charge sheet by the Bank seeking his explanation on the following two charges:

"Charge-I: Sri Kalakar Chakra got prepared a round stamp for the branch without any approval/sanction. This round seal was found to be affixed on forged credit advices purported to be drawn by Soso Branch of Keonjhar Branch.

Charge-II: Sri Kalakar Chakra is alleged to have prepared 5 credit advices totaling Rs.79,900/-purported to be drawn by Soso branch on Keonjhar Branch favouring one Sri Subash Chandra Samal, a fictitious account of the branch, which was withdrawn subsequently from the said fictitious account, thereby causing heavy loss to the Bank."

7. On 27th August 1991, the Appellant submitted his explanation to the charge sheet basically denying having anything to do with the above five credit advices. He denied to getting any round seal for the branch prepared without approval/sanction. On 27th August 1991, the Appellant furnished a detailed explanation to the charge sheet before the DA.

8. On 31st July 1992, the EO submitted an enquiry report holding the Appellant guilty of both the charges and placing the report before the DA for appropriate action.

9. On 12th August 1992, the DA issued a Show Cause Notice (SCN) to the Appellant based on the above enquiry report. On 21st September 1992, the Appellant submitted his explanation to the above SCN. On 29th September 1992, the Chairman of the Bank issued an order dismissing the Appellant from services.

10. The Appellant then challenged the dismissal order in O.J.C. No.7065 of 1993,

which was disposed of on 7th April, 1994 permitting the Appellant to file an appeal before the appropriate authority. Pursuant thereto, the Appellant on 27th April, 1994 filed an appeal against the dismissal order dated 29th September, 1992. However, on 18th July, 1994 a reply was sent by the Board of Directors of the Bank informing the Appellant that his appeal had already been disposed of. In fact, it was pointed out that the appeal had been disposed of on 6th January, 1993 and the said fact had been communicated to him on 13th January, 1993. It is the contention of the Bank that these facts were not disclosed by the Appellant when O.J.C. No.7065 of 1993 was disposed of by this Court by its order dated 7th April, 1994.

11. The Appellant contended before the learned Single Judge that the CBI had filed a charge sheet against three of the Bank's employees and not the Appellant, although the Appellant was questioned by the CBI. In the criminal case, which was registered against the three employees of the Bank, a judgment was passed on 27th April, 1996 by the Additional Chief Judicial Magistrate (ACJM), Bhubaneswar, acquitting them. Thereafter, all the three were reinstated in the service of the Bank.

12. The case of the Appellant is that after the aforementioned judgment of the ACJM negated the case of the Bank and the CBI that the sum of Rs.79,900/- had been withdrawn from the fictitious account of one Subash Chandra Samal, the charge against the Appellant that he got prepared two round seals of the Bank and used that to prepare the aforementioned credit advices must fail. It is submitted that since the criminal case ended in the acquittal of the three co-accused persons and with the Appellant being only a witness and not an accused in that case, the enquiry report as well as the consequential order of dismissal were bad in law.

13. Mr. M.K. Khuntia, learned counsel appearing for the Appellant, specifically drew attention to the order of the ACJM acquitting the three accused persons, where it was categorically held that the said Sri Subash Chandra Samal was not a fictitious person and that "question of forging the signature by the accused B.D. Sahu an authenticated with the signature by accused S.N. Das respectively is not believable".

14. It is contended by Mr. Khuntia, learned counsel for the Appellant, that if indeed the finding was that S.C. Samal was not a fictitious person and his S.B. Account No.1021 was not a fictitious account, the logical conclusion was that the Appellant ought to be exonerated of the charges in the disciplinary enquiry and he also ought to have been reinstated in service.

15. Mr. S.C. Samantaray, learned counsel appearing for the Respondent-Bank submitted that the settled legal position is that mere acquittal in a criminal case would not automatically bring to an end the disciplinary proceedings as they proceed on different standards of proof.

16. The learned Single Judge also took note of the decisions in Division Controller

N.E.K.R.T.C v. H. Amaresh AIR 2006 SC 2730, Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy AIR 2005 SC 2769. It is pointed out that the Appellant's specific misconduct was not subject matter of the criminal trial and, therefore, not much reliance can be placed on it by the present Appellant to escape the consequences of facing disciplinary proceedings.

17. The above submissions have been considered. The scope of interference by the High Court under Article 226 of the Constitution of India in disciplinary enquiries is fairly well settled. In *Government of A.P. v. Mohd. Nasrullah Khan* AIR 2006 SC 1214, it was observed as under:

"11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority."

18. Further, the High Court is not expected to act as an appellate Court sitting in appeal over factual findings in a disciplinary enquiry. All that the High Court had to examine was whether there were any errors of law or procedural law resulting in manifest miscarriage of justice or violation of principles of natural justice. In the present case, it is a fact that the Appellant never himself faced any criminal charges. In other words, he was not sent up for trial at all. Therefore, as far as the Appellant was concerned, the mere fact that arising out of the same case, the criminal case was instituted against three other persons, stated to be involved in the misconduct, were acquitted by the trial Court would not ipso facto mean that the Appellant also should be exonerated in the disciplinary proceedings.

19. Even if it was the Appellant himself who was acquitted in the criminal case, the position would be no different as was explained by this Court recently in its judgment dated 9th March, 2022 in W.P. (C) 10444 of 2009 (*Sk. Akbar Ali v. State of Odisha*) where, after referring to the judicial precedents of the Supreme Court, it was held as under:

"In *State of Rajasthan v. Heem Singh* 2020 SCC OnLine SC 886, the Supreme Court while considering the effect of an acquittal observed that precedents indicate that any such acquittal under special circumstances narrated therein does not conclude a disciplinary enquiry while referring to one of its earlier judgment in *Southern Railway Officers' Association v. Union of India* (2009) 9 SCC 24, wherein, it was observed that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority as the position of law is well settled that an order of dismissal can still be passed even if the delinquent had been acquitted of the criminal charge. Another decision in *Inspector General of Police v. S. Samuthiram* (2013) 1 SCC 598 was also referred to by the Supreme Court in *Heem Singh*

case to hold that unless the accused has an honourable acquittal in the criminal case as opposed to an ordinary one shall not affect the decision in the disciplinary proceeding leading to an automatic reinstatement. The meaning of the expression 'honourable acquittal' was under consideration before the Supreme Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541 and in that case, it was held that mere acquittal does not entitle an employee to reinstatement in service and the acquittal has to be honourable, which means, the accused is said to be fully acquitted of blame or exonerated and the aforesaid decision was also quoted with approval in *Heem Singh* case. In fact, the celebrated and judgment legal classicus on the subject is of the Supreme Court in *R.P. Kapur v. Union of India* AIR 1964 SC 787 in which it was held that even in the case of acquittal, departmental proceeding may follow where the acquittal is other than honourable. In *Union of India v. Dalbir Singh* 2020 SCC OnLine SC 768, the Supreme Court affirmed the view that a disciplinary action cannot be stifled unless the foundation is based on a false case or no evidence. Again, in *State of Assam v. Raghava Rajgopalchari* 1972 SLR 44 (SC), the Supreme Court borrowed the view expressed in *Robert Stuart Wauchope v. Emperor* ILR (1934) 61 Cal. 168, wherein, the expression 'honourably acquitted' was elaborated upon and defined."

20. Again, in *Division Controller N.E.K.R.T.C v. H. Amaresh* (supra) the Supreme Court observed: "Once a domestic Tribunal based on evidence comes to a particular conclusion normally it is not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal."

21. Turning to the case on hand, two of the five credit slips, viz., ME-5 and ME-6 were found to contain not only the affixation of the round seal recovered from the drawer of the table frequently used by the Appellant, but it also bore the handwriting of the Appellant. Although it was argued that the findings of the EO in this regard are perverse since no handwriting expert was examined, this Court is unable to accept that the entire enquiry report will stand vitiated only for that reason. The EO has recorded how three of the witnesses in fact identified the signature and handwriting of the Appellant. On factual basis, therefore, the Appellant cannot possibly argue that the learned Single Judge exercising jurisdiction under Article 226 of the Constitution should have reviewed the factual findings as an Appellate Authority. That was definitely beyond the scope of interference by the writ Court. As already pointed out, the scope of the proceedings was to examine whether there were any procedural irregularities in the conduct of the enquiry. The learned Single Judge as well as this Court have been unable to find any such irregularity. The mere non-examination of a handwriting expert cannot be viewed as a procedural irregularity since there was sufficient evidence to otherwise prove the signature and handwriting of the Appellant on the relevant documents. Therefore, there is no scope in the present case, for the Court to interfere either with the report of the EO or the order of the DA on the merits i.e. finding the Appellant guilty of the two charges.

22. As regards the quantum of punishment, the legal position as regards the scope of interference was explained in Division Controller N.E.K.R.T.C v. H. Amaresh (supra) as under:

"18...This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's 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."

23. In the present case too, one of the issues is the Bank losing confidence in the Appellant given the nature of his duties. As observed in Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy (supra):

"25....The Labour Court has itself come to the conclusion the management has lost confidence in the respondent. If that be the case the question of it exercising its jurisdiction under Section 11-A to alter or reduce the punishment does not arise.

26. That apart the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent, no finding has been given by the courts below including Labour Court that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records interference with the award of punishment in a domestic inquiry is impermissible."

24. To summarize the legal position, an acquittal in a criminal case involving certain other persons, in relation to the same incident, will not result in an automatic exoneration in disciplinary proceedings of another employee who never faced the criminal trial. Moreover, the standards of proof in a criminal trial and in disciplinary proceedings are different. In the former standard of proof is beyond reasonable doubt, whereas in the latter, the charges are required to be established on a preponderance of probabilities.

25. Consequently, the Court is not satisfied that the Appellant has made out any ground for interference with the impugned order of the learned Single Judge. The writ appeal is accordingly dismissed but in the circumstances with no order as to costs.

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