(2017) 05 TP CK 0003

In the Tripura High Court

Case No : 85 of 2012

Sri Sukumar Das, S/o Lt. Chitta Ranjan Das APPELLANT

Vs

The Tripura State Co-operative Bank Ltd., & Ors. RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Indian Penal Code, 1860, Section 420, Section 468, Section 471, Section 477A, Section 380, Section 465, Section 477 - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Falsification of accounts - Theft in dwelling-house, etc. - Punishment for forgery - Fraudulent cancellation, destruction, etc. of will, authority to adopt, or valuable security

Citation : (2017) 05 TP CK 0003

Hon'ble Judges : T. Vaiphei

Bench : Single Bench

Advocate : Somik Deb, P Saha, Sankar Deb, P K Pal

Judgement

1. The twin reliefs claimed in this writ petition are: (i) to quash the departmental enquiry against the petitioner on the ground of his acquittal in a criminal case and (ii) to release the financial and retirement benefits including salary arrears as by this time he has retired from service on attaining the age of superannuation.

2. The facts giving rise to the writ petition, as projected by the petitioner, may be briefly noticed at the outset. While the petitioner was serving as Assistant Development Officer, Tripura State Cooperative Bank Ltd., he was placed under suspension as a departmental enquiry was contemplated against him for committing fraud and embezzlement of Rs.1,60,000/- at Melaghar Branch under Clause 47(1) of the Service Rules of the Bank. The charge ran along the following lines. He had opened one SB Account on 2-4-2002 in the fictitious name of one Unus Mia by depositing Rs.200/- with the help of Shri Khagendra Chandra Deb, Grade-IV, Melaghar Branch and had prepared a false challan of Rs.1,60,000/-

and using his official capacity compelled one Satish Ch. Das, Asstt. Grade employee to credit Rs.1,60,000/- in the fictitious account of the said Unus Mia (A/C No.6443) LF No.27/37 as fictitiously opened by the said Sukumar Das on 2-4-2002.

3. It would appear that a criminal proceeding had earlier been initiated against the petitioner at the instance of the Bank whereafter the police filed the charge sheet, which resulted in the commencement of the trial before the learned Sub-Divisional Judicial Magistrate, Sonamura, West Tripura (SDJM) U/s 468/471/477/380/420 IPC vide GR No.90 of 2002. The learned SDJM by the judgment dated 4-2-2009 acquitted the petitioner. The State preferred an appeal being Criminal Appeal No.5(2) of 2009 from the said judgment before the learned Additional Sessions Judge, West Tripura, Sonamura on 30-11-2010. The appeal was dismissed on 30- 11-2010. Thereafter the Bank Authority filed Criminal Revision Petition before this Court, which was subsequently converted into Criminal Appeal No.26 of 2011. However, the appellant-Bank made a prayer and was granted permission to withdraw the appeal with liberty to file a fresh appeal vide the order dated 13-1-2012.

4. It is the contention of the petitioner that the charges framed against him in the departmental enquiry and the charges framed against him by the learned SDJM which resulted in his honorable acquittal are based on the same set of facts and the same set of evidence and the ongoing departmental enquiry is, therefore, liable to be quashed. He also submits that the Presenting Officer also has failed to produce documentary evidence before the Enquiry Officer which led to the halting of the enquiry after 27-1-2005. According to the petitioner, he made several representations to the General Manager of the Bank for revoking his suspension order as it had exceeded three years, more so, when the proceeding was stayed by the authority without any reason. It is pointed out by the petitioner that he has in the meantime retired from service on 30-9-2010 on attaining the age of superannuation, but no retiral benefits could be extended to him due to the pendency of the departmental enquiry. His representation to the Bank authority to extend his service for a period of one year including normal extension of 3 months along with medical fitness certificate was not considered. So are his representation for early payment of salary arrears and allowances including full retirement benefits since May, 2002. This is how this writ petition came to be filed by him for appropriate reliefs.

5. While contesting the writ petition, the main contentions of the State-respondents as pleaded by them in their counter are that acquittal in a criminal proceeding does not, ipso facto, render the disciplinary proceeding bad, and the petitioner cannot claim exoneration of the charge against him in a departmental enquiry on the ground of his acquittal in a criminal proceeding. In the criminal proceeding, he was charged of commission of the offences punishable U/s 468/465/471/477-A/380/420 IPC whereas he was charged for misconduct under Rule 44(b) and Rule 44(c) of the Tripura State Cooperative Bank Service Rules;

the scope and ambit of the two proceedings are absolutely different from one another. The answering respondents, therefore, deny that the disciplinary proceeding was initiated against the petitioner under the same set of charges. It is, however, denied that the departmental enquiry was stayed for a long time because of the change of Enquiry Officer. It is further denied that the Department failed to produce the documents before the Enquiry Officer; it could not do so since they were seized by the police in connection with the criminal proceeding. It is pointed out that the Bank has released his Provident Fund and EPF linked pension. The petitioner is not entitled to the benefits claimed. These are the sum and substance of the case of the answering respondents.

6. In the criminal proceedings, the points for determination, which could be said to be the charges framed against the petitioner, are as follows:

"1. Whether the accused Sukumar Das in between 02/04/02 to 12/05/02 at any point of time forged certain documents in respect of S/B Account No. 6443 of TSCB Ltd. Melaghar Branch and a false deposit challan of Rs.1,60,000/- of the said A/C intending to use those documents for the purpose of cheating?

2. Whether the accused in between 02/04/02 to 12/05/02 used a false deposit challan of Rs.1,60,000/- in respect of S/B. A/C. No. 6443 of one Unech Miah, knowing fully well that the challan was a fake one and despite used the same as genuine for the purpose of cheating?

3. Whether the accused Sukumar Das being the ADO of the TSCB Limited, West Tripura on 12/05/02 at about 12.00 noon wilfully with an intention to defraud TSCB Limited, Melghar Branch, falsified the Savings Bank A/C of one Unech Miah vide SB. A/C No. 6443 and a false Bank Challan for Rs.1,60,000/- of the said A/ C, and erased the entry in the Bank Pass Book issuing register with regard to the said A/C?

4. Whether the accused on 12/05/02 at about 12 noon at TSCB Ltd., Melaghar Branch, committed theft of specimen signature card and ledger page of S/B. A/C No.6443 from custody of the Manager TSCB Ltd., Melaghar Branch?

5. Whether the accused person Sukumar Das in between 02/04/02 to 12/05/02 at any point of time dishonestly cheated TSCB Ltd., Melaghar Branch, by inducing to deliver Rs.1,60,000/- to him, which was the property of the said Branch and thereby committed cheating of Rs.1,60,000/- to TSCB Ltd., Melaghar Branch?"

7. Compare the aforesaid points for determination in the criminal proceeding with the articles of charges in the departmental enquiry, which are in the flowing terms:

"Article-I

That Shri Sukumar Das, Assistant Development Officer (under suspension) had opened on 2-4-2002 one S.B. Account in fictitious name of Unus Miah by depositing Rs.200/- with the help of Shri Khagendra Ch. Deb, Grade-IV Officer, Melaghar Branch without observing the proper procedure for opening S.B. account, viz. photograph, citizenship card, etc. of that fictitious person.

Then Shri Sukar Das, Assistant Development Officer (under suspension) has wilfully committed act of fraud and also gross violation of banks standing rules for opening S.B. A/C and thereby has violated the provision of Service Rules No.44(b) relating to General Conduct of Tripura State Co-operative Bank Ltd.

Article-II

That on 12-5-2002 (Sunday), Shri Sukumar Das, AD) (under suspension) without any prior authority and intimation forced Mr. Manik Lal Sarma, Subordinate Staff of Melaghar Branch and compelled him exerting his official designation to open the main door of Melghar Branch on Sunday without presence of Branch Manager or any other staff. Shri Sukumar Das had removed relevant documents in connection with opening of fictitious SB A/C of Unus Miah and also damaged personal ledgers and other documents of the Branch. Shri Sukumar Das, being Ex-Manager of Melaghar Br. was in the know of secret place where keys of ledger and almirahs are usually kept.

Thus, Shri Sukumar Das, had committed misconduct in gross violation of clauses 44(b) and 44(c) of Services Rules of the Bank.

Article-III

That said Sukumar Das, ADO (under suspension) on 13-4- 2002 had prepared a false deposit challan of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand) and exerting his official capacity compelled Shri Satish Ch. Das, Asst. Grade employee to credit Rs.1,60,000/- in the account of Unus Miah (A/C No.6443) L.F. No. 27/37 fictitiously opened by Shri Sukuar Das on 2-4-2002. It transpires from record that on 13-4-2002, no amount was deposited to cash counter of the Bank.

Thus, Shri Sukumar Das had committed misconduct in gross violation of clauses 44(b) and 44(c) of the Service Rules of Tripura State Co-operative Bank.

Article-IV

That Shri Sukumar Das on 13-4-2002 had placed a false withdrawal slip signed by fictitious account holder Unus Miah against fraudulent deposit of Rs.1,60,000/- in S/B account No.6443 and exerting his official influence managed to transfer Rs.1,60,000/- by Shri Satish Ch. Das Ledger Keeper, Melaghar Branch and by Smt Dipali Mandal, Grade-IV Officer, acting as cashier to credit Rs.1,60,000/- (Rupees One Lakh Sixty thousand) in the SB A/C of one Shri Sunil Barman (S/B A/C No.5484).

Thus, Shri Sukumar Das, ADO (under suspension) had committed act of fraud, embezzlement of Bank''s fund and illegal activities unbecoming on the part of an officer of the bank by gross violation of Service Rules clause No.44(b) and 44(c) of the bank.

Article-V

That said Sukumar Das, ADO (under suspension) on 17-4- 2002 had placed a withdrawal slip signed by Shri Sunil Barman, holder of SB A/C No.5484 for Rs.1,60,000/- and exerting his influence on Ledger Keeper Shri Satish Das, Office Asst. had got payment of Rs.1,60,000/- in cash after obtaining payment order from Branch Manager, Melaghar Branch on that date. Shri Sukumar Das had received Rs.1,60,000/- from Shri Dipali Mandal, Grade-IV Officer, acted as Cashier on that date by encashing said withdrawal slip.

Then Shri Sukumar Das, had committed offence embezzlement and defalcation of bank''s fund with fraudulent activities are unbecoming on the part of an officer of State Cooperative Bank Ltd. and violated grossly provision of Service Rules under clause No.44(b) and 44(c) of the bank."

On careful reading of the charges framed against the petitioner in the criminal case and the charges framed against him in the impugned departmental enquiry, it becomes crystal clear that the common thread which runs through both the proceedings is that the petitioner opened on 2-4-2002 one SB Account in the fictitious name of one Unus Miah by depositing Rs.200/- with the help of Shri Khagendra Ch. Deb, Grade-IV Officer, Melaghar Branch, without observing the proper procedure or without photograph, citizenship card, etc. and compelled the Ledger Keeper, Shri Satish Das to credit Rs.1,60,000/- in the fictitious account of the said Unush Miah and received the said amount by him after obtaining payment order from the Branch Manager, Melaghar Branch. As already noticed, the petitioner was acquitted by the criminal court. In my opinion, the charges in both the criminal and departmental enquiry are directly and substantially one and the same and sought to be proved by the same set of evidence. The first point for consideration is whether the petitioner was honourably acquitted in the criminal case.

8. Before proceeding further, it will be beneficial to quote from paras 20, 30 and 31 of the judgment of the Apex Court in Deputy Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598:

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India, AIR 1964 SC 787 it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari, 1972 SLR 44(SC) this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor, ILR (1934) 61 Cal 168 which is as follows: (Raghava case, para 8)

"8. ... ''The expression "honorably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honorably acquitted.''" (Robert Stuart case)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honorably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honorably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

9. In my opinion, we cannot also overlook the equally important judgment of the Apex Court in GM Tank v. State of Gujarat and others, (2006) 5 SCC 446, the relevant paras thereof read thus:

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant''s residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case, (1999) 3 SCC 679 will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

10. Having understood the concept of "honorable acquittal", it is now necessary to consider whether the petitioner was honorably acquitted in accordance with the parameters laid down in S. Samuthiram case (supra) and GM Tank case (supra). This leads me to refer to the findings of the trial court while acquitting the petitioner in the criminal trial and the same read thus:

"However, I have discussed the entire evidence of the witnesses, so far examined on behalf of the prosecution and it reveals from the evidence of the witnesses that except the oral evidence of the witnesses, I find there is no cogent and/or material witness to connect the accused with the alleged commission of offences and merely on the basis of oral evidence of the witnesses, there is no scope to draw any presumption with regard to the alleged commission of offences by the accused herein and thereby I find it needless to go on further discussion on the aforesaid points and can be said that the prosecution badly fails to bring home the charges leveled against the accused and thereby the same are decided in negative on the benefit of doubt."

On perusal of the findings extracted above, it is clear that this is not a case where the petitioner was acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. On the other hand, the petitioner was acquitted after regular trial and on hot contest by the prosecution and the petitioner. The learned counsel for the State, however, forcefully submits that when the trial court clearly stated that the petitioner was acquitted on benefit of doubt, it can be conclusively held that the petitioner acquitted on technical grounds. In my opinion, whether he was acquitted on benefit of doubt cannot be decided by some stray words appearing in the judgment. What is decisive is the presence of materials from which it can be safely said that he was fully exonerated from the charge. The following findings of the trial court may be relevant for our purpose:

"Thus there is no evidence elicited from the evidence of the witnesses so far examined on behalf of the prosecution to show that there was any fraudulent or dishonest inducement on the part of the accused herein and there is no evidence that on the inducement of accused herein Bank authority handed over the alleged amount to the accused herein.

There may have been a damage suffered by the Bank authority but there is no evidence to connect that (sic) accused with the alleged commission of offences, except the oral statement of the witnesses."

What persuaded the trial court to come to the above conclusions is that the prosecution had failed to bring any evidence that any false documents was ever prepared by the petitioner to defraud the Bank; that there was no evidence to prove that there was no witness examined on behalf of the prosecution who saw the petitioner entered the Bank on 12-5- 2002; that prosecution failed to show that any entry was ever made in the key register evidencing the taking away of the key of the Branch on the alleged date of incident; that the prosecution failed to recover the alleged stolen documents from the possession of the petitioner so much so that there was no evidence to connect the petitioner with the commission of theft. Though one of the prosecution witnesses turned hostile, such development can hardly save the case of the prosecution. In my opinion, what the trial court did was to acquit the petitioner honorably and not on benefit of doubt. In other words, the effect of the judgment of the trial court is that the petitioner was acquitted as fully and completely as it was possible for him to be acquitted, which is equivalent to saying that he was "honorably acquitted".

11. The second question to be decided is whether the criminal trial and the departmental enquiry are based on the same set of facts and to be proved by the same evidence and the same witnesses. To substantiate the charges against the petitioner, the prosecution proposed to examine 16 witnesses including Manik Lal

Sharma, Khagendra Ch. Deb, Dipali Mandal, Gopal Choudhury and Sunil Barman, who all are Bank officials. Some ten documents were sought to be examined by the Department, which were also exhibited in the criminal trial along with other documents. The inference is thus irresistible and the conclusion inescapable that both the criminal and disciplinary proceedings are based on the same set of facts, the same set of documentary documents and the same set of identical witnesses. Once it is held that the petitioner was honorably acquitted by a criminal court based on the same set of facts, evidence and witnesses, it would be unjust, unfair and rather oppressive to allow the continuance of the departmental enquiry against him. The petitioner had already retired from service on 30-9-2010 on attaining the age of superannuation, i.e. before the filing of this writ petition.

12. The result of the foregoing discussion is that this writ petition succeeds. The impugned departmental enquiry conducted against the petitioner is hereby quashed. The petitioner is, therefore, exonerated of all the charges. The suspension order dated 27-5-2002 is deemed to have been revoked on the date of his superannuation. As the petitioner has been fully exonerated on the charges, all the pension and other financial benefits due to him including his salary arrears shall be released to him as per the admissible rules within a period of three months from today. No costs.

