(2013) 06 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1393 of 2004

Sudhir Nath Modi APPELLANT

Vs

Bank of India and Others RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 4 AJR 557 : (2013) 3 JLJR 387

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sumir Prasad, for the Appellant; A. Allam, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has prayed for quashing of the order dated 18.07.2002, Annexure-8 issued by the respondent No. 4, Chief Manager (HRD), Bank of India, Jamshedpur whereby he has been imposed with the penalty of compulsory retirement from service. He has also challenged the Appellate Order dated 09.12.2002, Annexure-9 issued by the respondent No. 3, Zonal Manager, Bank of India, Jamshedpur, by which the penalty has been confirmed and his appeal has been rejected. The petitioner is also aggrieved vide order dated 17.12.2003, Annexure-10 issued by the respondent No. 2, General Manager (HR), Bank of India, Star House C/5, G-Block, Bandra East, Mumbai whereby his review application has also been rejected and the Original Order of punishment has been upheld. Consequently, he has prayed for reinstatement upon quashing of the aforesaid orders.

2. According to the petitioner, he was appointed as Agricultural Clerk in the respondent-Bank and promoted as Grade-II Officer and posted at different places. He was posted as Branch Manager, Nawalsahi Branch Koderma district and transferred and posted at Jhumri Telaiya in 1996. Later on, while he was posted on deputation in Singhbhum Gramin Bank at Chaibasa. Vide letters dated 17.08.1999 and 05.04.2000 (Annexure-1 and 2 respectively), he was served

with charge sheet and supplementary charge sheet in respect of initiation of the departmental proceeding for total number of nine charges. The petitioner submitted his detailed reply vide Annexure-3 series which includes the letter of the complainants and challans etc. Upon conclusion of the enquiry the report was submitted vide Annexure-6 dated 28.12.2001 and the petitioner asked to furnish his detailed reply which he did vide Annexure-7 dated 11.01.2002 denying all the charges, which, however were found to be established against him. Thereafter, the impugned order dated 18.07.2002. Annexure-8 has been issued imposing major penalty of compulsory retirement upon the petitioner. The Appellate Authority and Reviewing Authority has confirmed the Original Order vide order dated 09.12.2002 and 17.12.2003 Annexure-9 and 10 respectively.

3. It is contention of the petitioner that the alleged charges have not been supported by the witnesses on whose complaint, the articles of charges were framed who were also shown in the list of witnesses as part of the charge sheet. The important witness i.e. Siteshwar Ram and Mathura Saw have not been examined to establish the charges by the prosecution. It is further submitted that the petitioner had already left the place of his posting after being transferred and the period of three years have elapsed since then the charge sheet was issued. He has also relied upon Annexure-5 which is guidelines issued in respect of the transfer of charge by outgoing Branch Manager to his successor. As per the said guidelines, he has completely handed over the charge to his successor and therefore, none of the allegations in respect of his previous place of posting relating to the alleged charges can be said to be sustainable against the present petitioner.

4. Learned counsel for the petitioner submits that the Disciplinary Authority has also not taken into account the detailed reply filed on his behalf against the findings of the enquiry report while imposing the punishment of major penalty of compulsory retirement from service. It is further submitted that the Appellate Authority as well as Reviewing Authority had also not taken into account his defence and the grounds of appeal and review raised on his behalf. Learned counsel for the petitioner, therefore, submits that the punishment imposed on the basis of alleged charges have not been fully substantiated by any cogent evidence and proof and cannot be made basis for the imposition of punishment of compulsory retirement upon the petitioner.

5. Learned counsel for the respondents-Bank has however, vehemently opposed the contention of the petitioner. According to him the petitioner being Branch Manager was in position of trust and faith with the Bank. The manner in which he has acted in conducting the transaction which are contain in 9 articles of charges show that he has violated the procedure of the Bank in granting loans and advances to the loanees. It is further submitted that the complainants may have withdrawn the charges only on being satisfied that the '' amount in question has been deposited in their account. However, that does not exonerate the petitioner from the alleged default on his part in violating the Bank norms and procedure

by sanctioning and disbursal of loans and also carrying out the transaction which established his lack of integrity and diligence in acting in the best interest of the Bank. It is further submitted that enquiry was conducted in detailed manner and pursuant to it, the report will show that all such materials evidence has been taken into account by the enquiry officer in coming to a finding in respect of nine charges many of which are found to be fully established and some of charges have been found to be partly established. In any case, the petitioner was given enough opportunity to represent himself against enquiry report and disciplinary authority also has considered each of the submissions in the order imposing penalty before inflicting the major punishment. Similarly, the Appellate and Reviewing Authority have also considered all such grounds in appeal and review made on behalf of the petitioner before confirming the Original Order of punishment, which does not suffer from any illegality. The impugned orders are not vitiated in any manner and this Court should not interfere in the findings of the facts of the departmental proceeding as the powers of the judicial review are confined to testing the decision making process. This Court does not sit in appeal as an Appellate Authority. It is also submitted that in such circumstances when the Employer-Bank has lost faith in the employee-petitioner, the petitioner has rightly been imposed the punishment of compulsory retirement which is rather lenient as he has not been more severely punished by dismissal from service. All these issues have been addressed in the counter affidavit filed on behalf of the respondents.

6. I have heard learned counsel for the parties and have gone through the relevant materials on record including the impugned order as also articles of charges contained at Annexure-1 and 2 and the enquiry report contained at Annexure-6. The petitioner, who was the Branch Manager was proceeded against number of charges. He had indulged in sanctioning and disbursement of loans without obtaining documents in relation to the loan account and keeping it in on record so far as it relates to article No. 1. In respect of the article No. 2 of charges, it has been alleged that the petitioner in his official capacity had accepted from the said four borrowers of Dongodih village a sum of Rs. 6,500/- for crediting to their loan accounts and returned to them title deeds of their lands alongwith rent receipts. However, with a malafide intention, he had neither given any receipts to them nor did he credit the amounts in their respective loan accounts. On their complaint, he stealthily returned the said amounts to all these borrowers to cover up his fraudulent act. Similar is the allegation in respect of article 2(b) of the charge. In respect of article-3 of the charge, it has been alleged that for supply of a tractor to Shri Neeru Sao, loan was sanctioned and the tractor was supplied to the said borrower in June, 1995 vide Delivery Challan dated 27.06.1995. However, he failed to get the said tractor registered with RTA immediately, which was registered after six months whereby he failed to discharge his duty. Article No. 4 contained in the supplementary articles of charges alleged that during his tenure as Manager at Nawalsahi Branch during the period from 17.12.1992 to 27.01.1996, he had sanctioned a loan of Rs.

55,000/- on 27.09.1994 against two DBD receipts of Rs. 25,000/- each held in the names of Sri Siteshwar Ram and Smt. Kanti Devi and also Rs. 27,000/- on 07.02.1995 against one of the same receipts. However, he had scored off the said debit entry of Rs. 510/- and written ''NIL'' balance in the loan ledger folio and authenticated by putting his initials detrimental to the bank''s interest. He had released the DBD receipts eventhough the 1st loan account was not repaid fully. Article 5 of the charge also pointed out that he had abused his official position by unduly accommodating three borrowers by sanctioning them fresh loans knowing fully well that the loans availed earlier by the borrowers or their spouses were either written off or were out of order, detrimental to the bank''s interest resulting or likely to result in financial loss of Rs. 9,248/- and also uncharged interest. Article-6 of the charges also related to sanction of three loans in the names of three persons in an irregular manner. He had also resorted to window dressing whereby he had sanctioned, disbursed and closed these loan accounts within a span of few days and thus, inflated the deposit/advances figure of the branch. Article 7 of the charges also relates to return of the original title deed after accepting a sum of Rs. 9,000/- from the borrower for crediting in his loan account However, he neither had given any receipt to the borrower nor the same amount was accounted for in the books of the branch and thus, he had misappropriated the said amount. Articles 8 and 9 are also relate to the similar incident in which as Manager at Nawalsahi Branch during the period from 17.12.1992 to 27.01.1996, he had abused his official position. A perusal of detailed enquiry report shows that each of these charges are found to be proved after consideration of the materials produced on behalf of the prosecution, in which the petitioner was given enough opportunity to defend himself. The enquiry officer after considering the submission of the defence i.e. the petitioner and upon assessment and analysis of the evidences and arguments against each of the charges para wise, came to a conclusion that the charge No. 1, 2(a), 2(b), 3, 4, 5(b), 6 and 9 were fully proved. In respect of the charge Nos. 5(a), 7 and 8 they were found to be partly proved. The contention of the petitioner that complainant had not deposed during the department proceeding is not of much consequence as the complainant might have later on, been managed and could not be interested in coming and deposing in a departmental enquiry. There is no authority or power conferred on the enquiry officer in the nature of the judicial proceeding to compel the complainant to depose in the disciplinary proceeding. In the instant case, the evidences which were documents of the Bank transactions were enough to come to such a finding by the enquiry officer on being produced by the prosecution.

7. The petitioner was, thereafter, given enough opportunity to represent against the said enquiry report, which he did vide Annexure-7. Thereafter, the impugned order of punishment has been passed by the disciplinary authority. A perusal of the original punishment order shows that the findings of the enquiry officer in respect of each of the charges have been discussed in detail alongwith the submission made by the delinquent in respect of each of the charges and

observations have been arrived at thereafter by the disciplinary authority. The impugned order, therefore, does not appear to be suffering from non-application of mind in the case of the alleged charges, which have been found to be proved. The Appellate Authority has also taken into record each of the grounds raised by the petitioner in the Appellate Order dated 09.12.2002 and has confirmed original order of punishment. The Reviewing Authority i.e. the General Manager (HR) has also considered the detailed contention raised on behalf of the petitioner in his review petition as would appear from the perusal of the order passed in the review. Therefore, from perusal of the aforesaid enquiry report and the impugned orders passed by the Original Authority, Appellate Authority as well as by the Reviewing Authority, the entire departmental proceeding does not appear to be suffering from any illegality or perversity in the decision making process, the findings have been arrived at by the concerned authorities on the materials available on record. This Court does sit in appeal as an Appellate Authority in the matter of departmental proceeding. Moreover, from perusal of the impugned orders, it appears that the petitioner/employee through his conduct has lost confidence of his employer-Bank. Therefore, the impugned punishment does not appear to be either disproportionate or excessive to the established misconduct committed by the petitioner. Counsel for the respondent has rightly put reliance upon the judgment of the Hon''ble Supreme Court rendered in the case of State Bank of India and Others Vs. Ramesh Dinkar Punde, . where in it has been held that in the case of departmental proceeding specially in respect of delinquent employee of organization like the bank, the confidence of the employer in the concerned employee is of utmost requirement. The punishment of compulsory retirement imposed upon the delinquent does not shock the conscience of the Court. In the facts and circumstances, no ground for any interference on behalf of the petitioner has been made out. Accordingly, this writ petition is dismissed as being devoid of any merit.

