(2006) 03 CHH CK 0005

In the Chhattisgarh High Court

Case No : Writ Petition No. 1026 of 2003

Surendra Kumar Thakur APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 3 CGLJ 164 : (2006) 3 LLJ 431

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : P.S. Koshy, for the Appellant; P.R. Patankar, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The present writ petition filed under Article 226 of the Constitution of India impugns the order of removal from service dated December 16, 2002 (Annexure P-26).

2. The facts in nutshell are that the petitioner was initially appointed on the post of Assistant (Cash and Accounts) in the State Bank of India (hereinafter referred to as "SBI"), vide order dated October 9, 1995 and he was posted at Sukma, District-Dantewada. The respondents /Bank received a complaint from one Smt. Rukmini Bai (hereinafter referred to as "the complainant") that a sum of Rs. 10,000/- has been withdrawn from her Account No. 01190010093 of Kirandul Branch of SBI. In the complaint, it was stated that, in the meantime, she was threatened by the cashier that she would go to jail if she refused to sign on the withdrawal slip. It was further stated that one bank security guard came with one blank slip for obtaining her signature, which she declined to do.

3. On the basis of the said complaint, the Branch Manager, Kirandul issued a memo to the petitioner seeking details and clarification of the alleged withdrawal of Rs. 10,000/- on March 18, 2000 from the account of the complainant. The petitioner submitted his reply on January 1, 2000 vide Annexure P-3, stating that

the petitioner does not remember as to whether the account holder was having pass book at the time of submitting withdrawal slip. However, the petitioner admitted that he knew the complainant, as his residence was in the same block, where the complainant was living.

4. The petitioner was placed under suspension by order dated September 27, 2000 (Annexure P-4) passed by the Disciplinary Authority and Assistant General Manager on the ground that the petitioner has made entry in the ledger-sheet and got the withdrawal slip passed by the passing officer, after identifying the complainant. It was further alleged that the payment was withdrawn by the petitioner from the cashier, Shri K.R.Kashyap.

5. The Assistant General Manager, SBI, Regional Office, Jagdalpur issued further a notice dated October 12, 2000 (Annexure P-5) to the petitioner seeking clarification about the withdrawal of Rs. 10,000/- from the account of die complainant. The petitioner submitted his reply vide communication dated October 24, 2000 (Annexure P-6) stating that the petitioner had no hands in the alleged withdrawal. The petitioner submitted for supply of a copy of the computer ledger sheet of the account of the complainant, a photocopy of withdrawal slip and inspection of the original slip and cash register dated March 18, 2000 of the cashier in order to know as to who had signed on the voucher at the time of taking the money from the cashier.

6. By communication dated November 6, 2000 (Annexure P-7), the Branch Manager of Kirandul Branch of SBI declined to supply photocopy of the required documents. However, the petitioner was granted permission to have inspection of the said documents in presence of the Branch Manager of the local branch. The petitioner has sent another communication dated November 9, 2000 (Annexure P-8) submitting that the petitioner was not given even inspection of the withdrawal slip of Rs. 10,000/- from the account of the complainant, when he had visited the branch on November 8, 2000 for inspection of documents. It was further requested that inspection of the withdrawal slip be given to the petitioner, as the allegations against the petitioner was that the petitioner has got the withdrawal slip passed by the passing officer, Shri K. K. Sahare on the ground that he knew the complainant personally. The petitioner requested for inspection of the bank scroll and transit book of the passing officer, Shri K.K. Sahare in order to rebut allegations made against him.

7. By another communication dated November 13, 2000 (Annexure P-9) the petitioner requested the Branch Manager, Kirandul Branch to grant him inspection of bank scroll and transit book of Shri K.K. Sahare, passing officer and withdrawal slip dated March 18, 2000 of the complainant.

8. The respondent No. 2 by letter dated November 9, 2000 (Annexure P-10) informed the petitioner that the petitioner has received a notice dated October 12, 2000 on October 14, 2000, whereby the petitioner was required to submit his explanation within a period of 15 days, which had been over, the petitioner was

further granted 3 more days to submit his explanation/clarification through the Branch Manager, failing which it would be presumed that the petitioner had nothing to say in the matter.

9. The petitioner by letter dated November 15, 2000 (Annexure P-11) submitted his explanation to the respondent No. 2, denying all the allegations and the fact that he had any role in withdrawal of Rs. 10,000/- from the account of the complainant. It was further stated that despite his repeated requests, he was neither supplied a copy of the withdrawal slips nor inspection of the withdrawal slips was given to him. It was further stated that the amount was not withdrawn by him.

10. The respondent No. 2 issued a charge-sheet on December 29, 2000 (Annexure P-13) on the ground that petitioner had presented a fake withdrawal slip in the name of the complainant on March 18, 2000 for withdrawal of the amount from the account of the complainant and got the slip passed by the passing officer. It was further alleged that the petitioner has himself received the payment against the said amount from the cashier and has received other amounts also on behalf of other account holders of A/c Nos. 01190008287 and 01190005150. In view of the said conduct the petitioner was charged to have violated Clause 521 (4) (J) of Sastri Award read with Desai Award for having committed fraud with the account holders, which comes within the purview of "serious misconduct". The petitioner was called upon to submit his explanation within a period of 15 days on the above stated two charges.

11. The petitioner vide letter dated January 3, 2001 (Annexure P-14) requested the Branch Manager, SBI, Kirandul to provide inspection of the withdrawal slips dated March 18, 2000, in case of Bank A/c. No. 01190008287, A/c No. 01190005150 and A/c No. 01190010093 of the complainant.

12. The respondent No. 2 vide letter dated August 20, 2001 (Annexure P-16) granted further 7 days time to the petitioner to submit his explanation, as the petitioner did not submit his explanation within a period of 15 days, granted earlier. Finally, the petitioner submitted his explanation by letter dated September 7, 2001 (Annexure P-17), denying all the allegations against him.

13. Vide letter dated September 12, 2001 (Annexure P-18) one Shri D. Chanda, Manager, SBI, Bacheli Branch was appointed as enquiry officer with a direction to submit the enquiry report within stipulated time i.e. on March 12, 2002. The enquiry officer conducted the detailed enquiry and submitted his enquiry report dated March 26, 2002 (Annexure R-IV) holding that the charge No. 1, to the extent that the petitioner presented the fake withdrawal slip on behalf of the complainant and got the entry in ledger-sheet (computer) and the withdrawal slip passed by the passing officer, was proved. The second charge that the petitioner has accepted the amounts against the withdrawal slip of the complainant and two other amounts against A/c No. 01190008287 and 0190005150 (Sic) from the cashier was proved partly.

14. The petitioner was given second show cause notice by letter dated March 27, 2002 (Annexure R-VII) to submit his explanation on the enquiry report. Thereafter one more show cause notice was issued by letter dated June 14, 2002 (Annexure R-IX, Annexure P-24). The petitioner submitted his reply by communication dated July 25, 2002 (Annexure R-25).

15. The respondent No. 2/Disciplinary Authority vide order dated December 16, 2002 (Annexure P-26), agreeing with the enquiry report, removed the petitioner from bank service under Clause 521 (6) (B) under (Annexure-II) Page-4 Para-6 of memorandum of settlement dated April 10, 2002 in accordance with Sastri Award read with Desai Award as modified on the ground that the petitioner has committed serious misconduct.

16. Being aggrieved, the petitioner has filed this petition without filing an appeal before the appellate authority i.e. Board of Directors.

17. Shri P.S.Koshy, learned Counsel appearing for the petitioner submitted that the findings of the enquiry report is based on no evidence and the conclusions are based on unreliable evidence and as such, the findings of the enquiry officer are perverse. Learned Counsel further submitted that the petitioner was neither supplied the relevant documents like withdrawal slips, bank scroll and transit book of the passing officer nor the petitioner was given inspection of all the withdrawal slips and the vouchers, whereby a person receives amount from the cashier, after signing on the back of the vouchers. The enquiry officer has not considered the statement of the security guard of the bank as under:

Vernacular matter omitted

In regard to charge No. 2, the enquiry officer has not considered the statement of Shri M.L.Nag and Shri A.R.Kashyap as under:

Vernacular matter omitted

The complainant has clearly stated that the cashier had threatened the complainant for obtaining her signature on a blank voucher that was also ignored by the enquiry officer.

18. Learned Counsel replied on decisions of the Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, and Yoginath D. Bagde Vs. State of Maharashtra and Another, in support of his contention that the findings are perverse and it does not reasonably follow the findings based on evidence available on record and in that event, the High Court has jurisdiction to interfere with the findings of the enquiry officer and grant relief of reinstatement in service.

19. Shri P.R.Patankar, learned Counsel appearing for the respondents, per contra, submitted that the petitioner has filed this petition directly without availing the statutory efficacious remedy available to him under the Sastri Award read with Desai Award and subsequent bipartite settlement between the management and the employees from time to time. Learned Counsel further submitted that this

Court should not exercise extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the findings of the enquiry report, which has been reached, after a detailed and thorough enquiry and after having considered all the evidence available on record and depositions made by the witnesses examined by both the parties. Learned Counsel further submitted that the enquiry is elaborate and exhaustive. The petitioner was given second show cause notice also, after enquiry report was submitted, to submit his explanation. The disciplinary authority having considered the enquiry report and the explanation submitted by the petitioner, has come to conclusion that the banking system works on public confidence and the act of the petitioner has shattered the public confidence in dealing of the bank.

20. The petitioner has committed serious misconduct by indulging into such an act, whereby he got the withdrawal slip passed by the passing officer on the basis that the complainant had given withdrawal slip to withdraw as sum of Rs. 10,000/- from her account and she had gone outside the premises for some work. Admittedly as stated by the complainant herself and recorded by the enquiry officer, on March 18, 2000, the complainant has not entered the premises itself and has not submitted any withdrawal slip for withdrawing the amount. This indicates the role of the petitioner. With regard to the second charge-sheet, it has been found partly proved in view of the fact that the allegation that the petitioner has received cash on behalf of Shri M.L.Nag and A.K.Kashyap, other account holders was not found proved. But, the acceptance of the amount on behalf of the complainant has been found proved.

21. Having heard learned Counsel for the parties and having perused the documents on records, it is found that a detailed enquiry, after having given proper opportunity of hearing to the petitioner, has been conducted.

22. It is evident on perusal of the enquiry report vis a vis averments made by the petitioner that the enquiry officer has found sufficient evidence to hold the petitioner as guilty of the charge No. 1. Statement of the security guard and complaint of the Rukmini Bai have not been found relevant to the allegation that the petitioner had informed to the passing officer that the petitioner knew the account holder i. e. the complainant and the account holder had gone outside for some work. On that basis, the petitioner got the withdrawal slip passed by the passing officer. Even if the statement of the complainant and the statement of the security guard to the effect that the cashier has sent a blank withdrawal slip/ voucher for obtaining signature of the complainant are taken into consideration, it does not go to prove that the petitioner was not guilty of getting the withdrawal slip passed by the passing officer on the basis of false statement that she had gone outside for some work. Admittedly, the complainant had not gone to the bank at all on March 18, 2000 for withdrawing money.

23. The Supreme Court in case of Kuldeep Singh (supra) held as under 1999-I-LLJ-604 at p. 605:

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

24. The another case of Yoginath D. Badge (supra), the Supreme Court after considering the earlier decisions held as under:

57...The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep v. Commissioner of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the Court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstances can the Court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

25. In case of B.C. Chaturvedi Vs. Union of India and others, held as under at p. 1235 of LLJ:

72. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is: concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/ Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would nave ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

26. In another latest decision, after having considered all the previous decisions of the Supreme Court, on the issue involved in the present petition, the Supreme Court in V. Ramana Vs. A.P.S.R.T.C. and Others, held as under at p. 731 of LLJ:

11. The common thread running through in all these decisions is that the Court should not interfere with the administrator''s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

In the light of the decisions cited above, there is sufficient evidence to support the findings of the enquiry officer and accordingly the findings as recorded by the enquiry officer are not perverse. The findings do not suffer from any infirmity. Accordingly, it does not call for any interference. The punishment thereto imposed by the disciplinary authority appears to be just and proper. This Court in exercise of its jurisdiction under Article 226/227 of the Constitution does not sit as an appellate Court to substitute its decision for that of the disciplinary authority. Hence, the punishment of removal from service is upheld.

27. The petition is accordingly dismissed. No order as to costs.

