

(2012) 02 PAT CK 0111

In the Patna High Court

Case No : LPA No. 70 of 2012 in CWJC No. 10706 of 2009 with Interlocutory Application No, 537 of 2012 in LPA No. 70 of 2012

The Punjab National Bank and Others

APPELLANT

Vs

Suresh Prasad Malakar

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 PLJR 339

Hon'ble Judges : R.M. Doshit, C.J;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : Y.V. Giri, Raj Nandan Prasad and Rakesh Kumar, for the Appellant; Alok Kumar, Jagdish Prasad, Ashok Kumar Verma and Pranav Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, CJ

1. This Appeal under Clause 10 of the Letters Patent is preferred by the respondent Punjab National Bank (hereinafter referred to as "the Bank") against the judgment and order dated 23rd July 2010 passed by the learned single Judge in above C.W.J.C. No. 10706 of 2009. With the consent of the learned advocates the Appeal is heard and decided finally.

2. The respondent, the petitioner in C.W.J.C. No. 10706 of 2009, (hereinafter referred to as "the delinquent") was at the relevant time in service as Clerk-cum-Cashier in the Barkagaon Branch of the Bank, District-Buxar. On 6th March 2007, a disciplinary proceeding was initiated against the delinquent for several acts of commission and omission amounting to misconduct as envisaged by Paragraph 5(a), 5(e), 5(f) and 5(j) of the Settlement dated 10th April, 2002. Paragraph 5 of the said Settlement enumerates the acts of commission and omission which amount to gross misconduct. Clauses (a), (e), (f) and (j) thereof read as under:--

- (a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;
- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- (f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
- (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.

3. The memorandum of charge referred to seven charges. Under the memorandum of charge the delinquent was alleged to have committed financial irregularities in several loan accounts mentioned therein and in respect of the loan accounts of the farmers. He was alleged to have deposited unexplained cash in his CAOD (Current Account Over Draft) Account beyond the approved limit of Rs. Two lakhs. The delinquent was alleged to have approved loans, disbursed the amounts and settled the death claim without the authority. The delinquent submitted his reply to the said memorandum of charge on 6th April, 2007. The delinquent denied the imputation of charge made against him in general. In respect of the cash received by him he submitted that the said cash was received as repayment from the relatives to whom he had extended financial assistance. After holding a due enquiry the enquiry officer, under his report dated 3rd October, 2007, held the delinquent guilty in respect of all charges except the charge no. 5. Charge No. 4 was held partly proved. The delinquent was given opportunity to comment upon the finding of guilt recorded against him. In his reply to the show cause notice the delinquent submitted that the finding of guilt recorded against the delinquent was not tenable for the reasons stated in the reply. In respect of the cash receipts the delinquent maintained that he could have proved that the said amounts were received from the relatives and that still he could prove the same. After receipt of the reply, by order dated 13th September, 2008 made by the Chief Manager and disciplinary authority, the delinquent was ordered to "be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment in terms of para 6(b) of Bipartite Settlement dated 10.4.2002." The said order was confirmed in appeal before the appellate authority on 25th February, 2009. Therefore, the writ petition.

4. In the writ petition the delinquent alleged that the finding of guilt recorded against the delinquent was illegal and unsustainable. The delinquent had not been given adequate opportunity of defence. He was not allowed to cross-examine the witnesses and he was not allowed to explain and prove the cash receipts. The delinquent alleged that the comments on the enquiry report and

the reply submitted by him on 6th August, 2007 in answer to the show cause notice had not at all been considered by the disciplinary authority. The order of punishment was, therefore, vitiated. The petition was contested by the Bank. The Bank maintained that the disciplinary proceeding was conducted against the delinquent in accordance with the principles of natural justice. The delinquent had been given adequate opportunity of defence and that the delinquent had committed a gross misconduct inviting the order of removal from service.

5. The learned Single Judge has allowed the writ petition. The learned Single Judge has held that the enquiry officer had failed to give opportunity to the delinquent to explain and prove the cash receipts; that the finding of guilt was vitiated on the ground of lack of adequate opportunity of defence; that the loan advanced by the delinquent on land receipts in the name of the father and the grandfather of the borrower could not be held to be illegal, the finding of guilt was too technical and misconceived; that in absence of the complaint by the heirs of the deceased, the settlement of the death claim by the delinquent could not be held to be a misconduct; that the delinquent had not been given opportunity to cross-examine the witnesses. Having found the above illegalities/irregularities in the conduct of the enquiry, the learned Single Judge has set aside the order of punishment made against the delinquent. The delinquent is directed to be reinstated in the service of the Bank. The Bank has been allowed to continue the proceeding in respect of all the charges under the charge-sheet dated 6th March, 2007. Feeling aggrieved the Bank has preferred this Appeal.

6. Learned counsel Mr. Y.V. Giri has appeared for the Bank. He has read out the proceedings in detail. He has produced the original record of the proceeding for perusal by the Court. He has submitted that the disciplinary proceeding against the delinquent had been conducted in consonance with the principles of natural justice. The delinquent had been given fair opportunity of defence. He has submitted that in exercise of power of judicial review conferred by Article 226 of the Constitution, the learned Single Judge has erred in examining the validity of finding of guilt recorded against the delinquent. He has submitted that the standard of proof in the departmental enquiry cannot be as stringent as one in the criminal prosecution. He has submitted that by no stretch of imagination the finding of guilt can be said to be based on "no evidence" or can be held to be "perverse". The learned Single Judge was not justified in interfering with the finding of guilt recorded against the delinquent. In support of his submissions Mr. Giri has relied upon the judgment of the Hon'ble Supreme Court Bank of India and Another Vs. Degala Suryanarayana, and the judgment of this Court in the matter of Sri Kapildeo Narayan Singh vs. The State of Bihar & Ors., (Letters Patent Appeal No. 539 of 2000 decided on 9th September, 2010; coram: S.K. Katriar and B.P.Verma, JJ.).

7. Learned Advocate Mr. Alok Kumar has appeared for the respondent-delinquent. He has contested the Appeal. He has raised a preliminary objection that the learned Single Judge having reserved the liberty to the Bank to continue

the disciplinary proceeding against the delinquent in respect of all the charges, the present Appeal is not maintainable. The contention is recorded with a view to rejecting the same.

8. Mr. Alok Kumar has supported the judgment of the learned Single Judge. He has submitted that the enquiry and the finding of guilt recorded against the delinquent are vitiated as held by the learned Single Judge. He has taken us through the reply dated 6th April, 2007 submitted by the delinquent in answer to the enquiry report. Mr. Alok Kumar has submitted that the reply to the enquiry report is supposed to be filed with a view to filling-in the lacunae in course of the disciplinary proceeding. Under the said reply the delinquent has successfully disproved the finding of guilt recorded against him. However, the disciplinary authority did not consider the said reply. The order of punishment is, therefore, vitiated.

9. We have perused the record of the disciplinary proceeding. The imputation of charge made against the delinquent discloses grave acts of commission and omission in respect of the term loan accounts of the farmers. The delinquent is alleged to have disbursed the amount in respect of 14 borrowers which the borrowers have refused to have received. The said amounts have been alleged to have been disbursed on 2nd and 3rd August, 2004, the days on which the delinquent was holding the charge of the Manager of the Branch. Similarly, acts of financial irregularities had been alleged to have been committed by the delinquent on 12th August, 2004, the date on which he was holding the charge of the Branch Manager. He is alleged to have advanced loans beyond his authority and on the strength of the land documents not standing in the names of the borrowers. He is alleged to have settled a death claim beyond his authority.

10. It is evident that the alleged acts of commission and omission were committed by the delinquent beyond his authority as Clerk-cum-Cashier or during the days on which he was holding the charge of the Branch Manager. The allegations are of grave acts of misconduct. Any of the charges, if proved, would warrant an extreme penalty and would justify the order of removal from service.

11. We may note here that under the charge no. 1(a), the delinquent was alleged to have committed misconduct in respect of 14 accounts and in respect of 8 accounts under charge no. 1(b). Although the complainants gave statement before the Vigilance Officer during the preliminary enquiry, only four of them were examined in the disciplinary proceeding. The four examined in the disciplinary proceeding were allowed to be cross-examined by the delinquent. The enquiry officer has held all the charges to have been proved on the basis of the evidence of the said four witnesses. We cannot agree to the said finding. We cannot accept the submission of Mr. Giri that the charges were proved by the sample evidence, if the four of the complainants gave evidence in the disciplinary proceeding and they were permitted to be cross-examined by the delinquent; only the charges in respect of those four accounts can be held to be proved. The charges in respect of the rest of the accounts cannot be said to have been

proved by sample evidence. But then, the proof of guilt in respect of four accounts also was sufficient to invite the order of punishment of removal from service. Besides, we may note that in respect of the said charges the delinquent submitted a general denial. He did not deny any of the charges in specific. In absence of a specific denial by the delinquent the said allegations stood proved. The Bank was not obliged to prove the same by leading evidence.

12. Same is true for the rest of the charges. Except the general denial the delinquent did not deny any of the charges in specific. Although the delinquent maintained that he had received the cash amount from his relatives to whom he had extended financial assistance, he did not name any of such relatives nor did he produce any evidence in support of his claim; nor did he examine any of them as his witness. Even in reply to the enquiry report although he maintained that he could have proved and he was ready to prove the cash receipts, the delinquent did not name any person from whom he had received the said amounts. In our opinion, the learned Single Judge has erred in holding that the delinquent had not been given opportunity to examine his relatives from whom he had received the cash amounts. There is nothing on the record to suggest that the delinquent was not allowed to give proper reply to the memorandum of charge or to examine witnesses. As recorded hereinabove, the delinquent did not deny the charges in specific; nor did he disclose the evidence he intended to lead in his defence; nor was he restrained from examining any witness if he wanted to do so.

13. As to the settlement of the death claim, the learned Single Judge has erred in holding that in absence of the complaint by the heirs, the said act of delinquent cannot be held to be a misconduct. It must be noted that the death claim was settled in favour of the heirs of the deceased account-holder. The heirs were the beneficiaries, they had no reason to complain about it. The learned Single Judge has failed to notice that the charge was that the delinquent settled the death claim beyond his authority. The delinquent did not deny the charge; nor did he assert that he had the authority to settle the death claim.

14. In respect of the advancement of loan beyond his authority and the acceptance of land documents not in the names of the borrowers, the learned Single Judge has erred in holding that such documents were in the name of the father and the grandfather of the borrower and that the stand of the enquiry officer was too technical. We may note here that the delinquent was alleged to have acted beyond his authority that too by receiving the documents which were not adequate in respect of several borrowers. The learned Single Judge has considered the land receipts in respect of one borrower alone. If the Bank felt that the documents submitted in the name of the father or grandfather were not adequate, the Court cannot have its own opinion about it. It is the question of banking business and the rules/practice are required to be adhered to. Even if the documents were adequate, the action of the delinquent in approving loans without the authority would still be a misconduct.

As recorded by the enquiry officer the land documents received by the delinquent in some cases were of total strangers. This charge also was not specifically denied by the delinquent. In our opinion, here also the learned Single Judge has erred in holding that the charge was not proved.

15. True the delinquent has submitted a long reply, although may not be adequate, to the report of the enquiry officer to prove his innocence. We, however, do not agree with Mr. Alok Kumar that a reply to the enquiry report is intended to fill-in the lacunae. We reiterate that apart from a general denial and a declaration that he had acted for the benefit of the Bank, the delinquent did not specifically deny any of the charges leveled against him; nor did he lead any evidence in the disciplinary proceeding to support his claim. In absence of his specific denial or any evidence led in the defence, the delinquent cannot be permitted to improve his case in reply to the enquiry report at the end of the disciplinary proceeding.

16. The upshot of the aforesaid discussion is that the delinquent was charged with grave acts of misconduct amounting to financial illegalities/irregularities and of acting beyond his authority; the delinquent did not specifically deny any of the charges levelled against him; the delinquent had been given fair opportunity of defence; the delinquent failed to avail of such opportunity. In the circumstances the finding of guilt recorded by the enquiry officer and upheld by the disciplinary authority cannot be interfered with in exercise of power of judicial review conferred by Article 226 of the Constitution. The learned Single Judge has erred in setting aside the order of punishment.

17. For the aforesaid reasons, the Appeal is allowed. Impugned judgment and order dated 23rd July, 2010 passed by the learned Single Judge in C.W.J.C. No. 10706 of 2009 is set aside. C.W.J.C. No. 10706 of 2009 is dismissed.

18. Interlocutory Application stands disposed of. The parties will bear their own cost.

Birendra Prasad Verma, J.

I agree.