(2000) 04 PAT CK 0037

In the Patna High Court

Case No : C.W.J.C. No. 4793 of 1996

Utpal Sarkar APPELLANT

Vs

The Central Bank of India and Others RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Citation : (2000) 3 PLJR 517

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Shivendra Kishore, for the Appellant; Ajay Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—Heard counsel for parties.

2. This writ petition has been filed challenging the order of punishment dated 20th March, 1995 issued under the signature of the Disciplinary Authority by which the Petitioner has been dismissed from service as also against the appellate order dated 20th September, 1995 passed by the appellate authority affirming the said order. In this writ petition the Petitioner was proceeded against in a departmental proceeding on the basis of various charges. At the relevant point of time when the Petitioner was proceeded against he was functioning as the Branch Manager of Sukhashan Branch. The charges on the basis of which the Petitioner was proceeded against are set out below:

Charge No. 1: Sri Sarkar while working as Sub-Acctt. at Birpur branch fraudulently withdrew Rs. 1,000/ - on 18.11.89 from his own HSS A/C and adjusted the debit balance arisen out of the said withdrawal by depositing the amount of Rs. 1,000/ - on 15.01.90 with malafide intention of caring up the fraudulent withdrawal and thus temporarily misappropriated the amount.

Charge No. 2: Sri Sarkar while working as Branch Manager Sukhasan branch fraudulently withdrew Rs. 39,144/ - from his HSS A/C on different dates and defrauded the bank for the said amount.

Charge No. 3: Sri Sarkar, while working as BM, Sukhasan branch inflated the balance of his HSS/C 115 on different dates with malafide intention of deriving undue pecuniary gain out of inflated balance.

Charge No. 4: Sri Sarkar, while working as BM, Sukhasan branch withdrew fraudulently from different HSS A/cs by making fictitious credit entries therein and destroyed the withdrawals and struck out credit and debit entries with malafide intention of removing the evidence and to suppress the fraudulent withdrawals respectively and thereby defrauded the Bank for Rs. 18,000/ -.

Charge No. 5: Sri Sarkar while working as BM, Sukhasan branch forged the thumb impression on withdrawal slip and withdrew Rs. 5,000/ - from HSS A/c of the illiterate account holder and thus defrauded the bank for Rs. 5000/ -.

Charge No. 6 Sri Sarkar while working as BM, Sukhasan branch availed advance against TA bill amounting to Rs. 9,000/ - unauthorisedly and did not made the entries in the C/D Nominal ledger a/c advance against TA bill with malafide intention of concealing the advance from higher authorities.

Charge No. 7: Sri Sarkar while working as BM, Sukhasan brarich cheated the bank for Rs. 2,000/ - by discounting bogus withdrawal drawn by him on Ballyganj (Calcutta) branch.

Charge No. 8: Sri Sarkar while working as BM, Sukhasan branch defrauded the Bank for Rs. 2,000/ - by discounting the withdrawal slip drawn by him on Ballayganj (Calcutta) without maintaining the balance in the a/c on which the withdrawal slip was drawn and thereby defrauded the bank for Rs. 2,000/-.

Charge No. 9: Sri Sarkar while working as BM, Sukhasan branch made fictitious entry of Rs. 5,000/ - in the HSS A/c No. 3 as well as in relative passbook in the name of Sri JN Chaudhari with malafide intention of defrauding the Bank for the same amount.

Charge No. 10: Sri Sarkar while working as BM of Shahpur branch withdrew fraudulently Rs. 5,200/ - on different dates from his HSS A/c No. 434 and defrauded the bank for the same amount.

Charge No. 11: Sri Sarkar reported falsely position of balancing of books of HSS ledgers of Sukhasan branch to mislead the higher authorities of the bank and to conceal the fraudulent withdrawals made by him as have been elaborately exemplified in the charge No. 2 to 9 hereabove.

3. It is not in dispute that in respect of the said charges a departmental enquiry was initiated. The Petitioner participated in the said enquiry. After enquiry was conducted the Enquiring Officer submitted his report and in the said report the Enquiring Officer has held that the Petitioner has been found guilty of all the charges except charge No. 1. On the basis of such finding of the Enquiring Officer the Petitioner was given an opportunity to show cause and the Petitioner was

served with a copy of the enquiry report. The Petitioner has given his reply to the show cause. The disciplinary authority has passed a detailed order awarding punishment of dismissal of service upon the Petitioner. Against the said order the Petitioner preferred an appeal before the appellate authority and the appellate authority Assistant General Manager, Zonal Officer, dismissed the appeal and affirmed the finding of the disciplinary authority. Challenging the said departmental proceeding the Petitioner has raised the following points:

(i) In the charge sheet the Respondent Bank has not disclosed a list of witnesses and the list of documents on the basis of charges are levelled against him.

(ii) The impugned order of dismissal has been passed by the Chief Manager, which is not the Petitioner''s disciplinary authority, therefore, the impugned order of dismissal is bad.

(iii) Documents were not supplied to the Petitioner at the time of holding the enquiry. As such, the Petitioner has been prejudiced in his defence.

4. This Court has considered all these objections. So far as the first objection is concerned, the Petitioner is right that in the charge sheet no list of witnesses was appended nor the list of documents was disclosed. But that will not in any way vitiate the proceeding. The Petitioner in the proceeding has been given an opportunity to defend his case. If the Petitioner was not given any opportunity the proceeding could have been quashed. In order to have the proceeding quashed the Petitioner must show before this Court that sufficient opportunity of defence was not given to him. That the Petitioner has not been able to demonstrate before the Court. So mere non-mentioning the name of the witnesses in the charge sheet does not amount to denial of reasonable opportunity of defence of the Petitioner. So there is no substance in the first point.

5. So far as the second point is concerned, this Court finds from paragraph 5 of the counter affidavit that one Shri M.D. Deval who was appointed the Chief Manager functioned as the disciplinary authority of the Petitioner in place of previously appointed disciplinary authority Sri B. Ray, who was on long leave. It is stated in the said paragraph that the ranks of the Chief Manager and the Regional Manager are same. It is asserted by the Respondent Bank that the Chief Manager is not inferior in rank to the zonal Manager. A rejoinder has been filed by the Petitioner. The Petitioner has not disputed the fact that the rank of Chief Manager is inferior to the rank of Zonal Manager. On the other hand, the Petitioner has accepted the position that the rank of the Chief Manager is higher than that of the Regional Manager and as a result of dismissal order being passed by the Chief Manager, the Petitioner has lost his right to appeal.

6. Only right which an employee has got in this context is that the order of dismissal cannot be passed by an authority which is inferior in rank to the disciplinary authority. In the instant case the Petitioner''s stand is that Sri M.D. Deval who actually passed the order of dismissal is higher in rank to his

disciplinary authority. So there is no infirmity in passing the dismissal order.

7. It has been mentioned in this connection that the Petitioner''s grievance is that he has been deprived of his right of appeal. But the fact disclosed that the Petitioner filed an appeal and the same was considered and disposed of by the appellate authority by an order at annexure-2. So the Petitioner has not been deprived of his right of appeal.

8. So far as the Petitioner''s grievance about denial of opportunity at the enquiry stage is concerned, there is no representation made by him and he has not been given copies of the documents and given opportunity for inspection of documents for his proper defence. On the other hand, the representation of the Petitioner, which appears from the letter dated 21.12.1993, page 67 of the brief, is for immediate commencement of the enquiry proceeding. That shows that the Petitioner was not prejudiced in his defence by non-furnishing of any document. In fact there is no written representation by the Petitioner to that effect.

9. On the other hand, this Court finds from the representation of the Petitioner dated 10.5.1995 that the Petitioner has virtually admitted his guilt and prayed for a lenient treatment.

10. So on an overall consideration of the situation, this Court does not come to the conclusion that there has been denial of opportunities of defence to the Petitioner.

11. About the question of punishment, first of all this Court is not competent to pass an order, unless the punishment given is shockingly excessive to the gravity of the charges. Here the charges are very grave and the Branch Manager of a Nationalised Bank should not indulge in the activities mentioned in the charges. In respect of such charge this Court does not feel that there is any reason for interference with the quantum of punishment. This Court is not at all shocked with the order of dismissal of the Petitioner. This writ petition is accordingly, dismissed.

There will be no order as to costs.

