(2011) 08 DEL CK 0291

In the Delhi High Court

Case No : Writ Petition (C) 717 of 1997 and CMs 1286 of 1997, 6674 of 2011

Vijay Kumar Sharma APPELLANT

Vs

Punjab and Sind Bank and Others RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Citation : (2011) 7 AD 1 : (2011) 125 DRJ 337 : (2012) LLR 86

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : V.K. Rao and Pramod Gupta, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner who was working as a branch in-charge of the Sherpur Khadar rural branch of the Punjab and Sind Bank (''the Bank'') challenges an order dated 18th September, 1995 passed by the Disciplinary Authority (''DA'') awarding the Petitioner the punishment of "dismissal which shall ordinarily be a disqualification for future employment" under Clause 4 (h) of the Discipline and Appeal Regulations of the Bank.

2. The Petitioner joined the Respondent Bank as a clerk on 30th March 1974. He was promoted as officer on 7th February 1977. In January 1988 he was posted as a branch in charge of the Sherpur Khadar rural branch of the Bank in the interiors of Uttar Pradesh. The Petitioner states that the said branch serviced thirty-three villages and was manned only by four persons, viz., the branch in-charge, the cashier, the peon and the guard. On 11th January 1991, the cashier of the branch left early on the pretext of some work and did not return to the branch. The Petitioner states that he was anxious to keep the branch running and having No. other option recovered the cashier''s keys from his drawer and closed the Bank''s safe in the presence of the peon and the guard. When on 12th January 1991 also the cashier did not turn up for duty, the Petitioner sent an intimation to the Regional Office. Thereafter on discovering certain anomalies in

the passbooks of the customers and the Bank''s ledger, the Petitioner sent an intimation to the Regional Office on 18th January 1991 with respect to the embezzlement by the cashier. This was followed by a telegram dated 21st January 1991. The Petitioner also lodged an FIR against the cashier in consultation with the Regional Office.

3. The Petitioner states that although he had No. role to play in the alleged fraud by the cashier, he was served with an order of suspension on 20th February 1991 and subsequently a charge sheet dated 19th June 1991. There were four articles of charge.

The first was that the Petitioner had handled both sets of keys illegally and unauthorisedly from 11th to 21st January 1991 as the cashier was absent from the Bank branch on those dates. The Petitioner did not inform the competent authority that he was handling both sets of keys and this was in violation of the head office (H.O.) instructions. The second article of charge was that the Petitioner had issued a cash receipt of Rs. 1000 to one Shri Karam Singh on 20th November 1990 being the cash deposited by the party to be credited in his account. The cash was not deposited in the account but pocketed. The third article of charge was that the Petitioner out of dishonest motives and in dereliction of his duties failed to check why the cashier was making payments of more than Rs. 5000 on withdrawal forms instead of issuing loose cheques or using the cheques issued to the depositors. The fourth article of charge was that the Petitioner did not keep proper control on the working of the branch. Some of the withdrawal forms filled up by the cashier had been verified by the Petitioner therefore the Petitioner had aided and abetted the fraudulent act committed by the cashier and as a consequence a loss of about Rs. 20 lacs was perpetrated on the Bank. A sample of fourteen cases amounting to Rs. 0.73 lakhs where fraudulent acts were committed by the cashier in connivance with the Petitioner was enclosed with the charge sheet. According to the Petitioner, the Bank needed a scapegoat and therefore foisted a false enquiry on the Petitioner.

4. The Enquiry Officer (''EO'') submitted a report dated 3rd September 1993 holding the charges against the Petitioner not to be proved. As regards the first charge, the EO concluded that part of the said charge to the effect that the Petitioner did not inform the competent authority that he was handling both sets of cash keys stood proved. As regards charges 2, 3 and 4 the EO held that Presenting Officer (''PO'') had not produced evidence to prove the charges. The result was that the EO held only a small part of the first charge to be proved.

5. The enquiry report was served on the Petitioner by letter dated 18th October 1993 of the DA. The Petitioner replied on 6th November 1993 clarifying that he had to keep the branch running and since the cashier had left the keys behind, he had No. option but to keep them. They were locked in the Bank almirah duly witnessed by the peon and the armed guard. The Petitioner further pointed out that there was No. allegation that in the period between 11th and 22nd January 1991 there was any financial loss to the Bank.

6. The Petitioner states that thereafter nothing was heard from the DA for almost two years. In the meanwhile, the Petitioner was served another charge sheet dated 24th June 1995 to which he replied on 11th July 1995 stating that the charges were a repetition of the charges in the previous charge sheet dated 19th June 1991. The Petitioner did not hear anything on the second charge sheet thereafter.

7. The Petitioner states that nearly two years after the report of the EO the DA passed the impugned order dated 18th September 1995 imposing the penalty of "dismissal which shall ordinarily be a disqualification for future employment." Further, the Petitioner was held not entitled to any salary or allowance over and above his subsistence allowance during the period of suspension. Aggrieved by the aforementioned order of dismissal the Petitioner preferred an appeal. However, the Appellate Authority (''AA'') concurred with the DA and rejected the Petitioner''s appeal by an order dated 16th May 1996.

8. Mr. VK Rao, learned Senior counsel appearing for the Petitioner submitted that the enquiry proceedings had exonerated the Petitioner on three of the four charges. Even as regards the first charge, the enquiry report held only a small part thereof to be proved. The order of the DA was therefore vitiated by non-application of mind and the punishment was harsh and disproportionate. The mere failure to immediately inform the regional office that he was operating two sets of keys in the absence of the cashier was not sufficient to draw an inference of the Petitioner having acted in connivance with the cashier in perpetrating a fraud on the Bank. The AA failed to consider the grounds of appeal raised by the Petitioner. Mr Rao pointed out that at the time of the dismissal of the Petitioner he was the sole bread earner in the family supporting his parents, his wife and three teenaged children. His dismissal by the Bank was so arbitrary and drastic that it destroyed him financially and left him to face a stigma for the rest of his life. He pointed out that the Petitioner would reach the age of superannuation in July 2012 and therefore he deserved to be reinstated in service with full back wages and all consequential benefits including seniority and promotion. He also prayed for a direction to the Bank to pay him his full salary and allowances during the period of suspension. The Petitioner has also claimed punitive damages in the sum of Rs. 5 lakhs for making him and his entire family go through the humility and ordeal for two decades and litigation for over fourteen years for No. fault of his.

9. On the other hand, Mr Jagat Arora learned Counsel appearing for the Respondents sought to defend the punishment imposed by the Bank by pointing out that as long as one part of the first charge was held to be proved by the EO it was grave enough to warrant the punishment of dismissal from service. He next submitted that there was a second charge sheet dated 24th June 1995 issued to the Petitioner which specifically alleged that the Petitioner had acted in connivance with the cashier. Mr. Arora submitted that in the present case the Bank suffered a loss to the tune of Rs. 14.34 lakhs on account of having to settle

over 133 claims lodged by different account holders. The criminal case against the Petitioner and the cashier was still pending consideration before the criminal court. Lastly, it was submitted that even if loose housekeeping was attributable to the Petitioner, the Bank can take action to save its image in the eyes of the public. As regards the relief of reinstatement with back wages he submitted that it was unlikely that the Petitioner remained unemployed during all these years. The Petitioner had to furnish a certificate to that effect in terms of Regulation 14 (3) of the Discipline and Appeal Regulations. Mr. Arora relied on the judgements of the Supreme Court in Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, , UP State Road Transport Corporation v. Muniruddin 1991 SCC (L&S) 214 and G.M. Tank Vs. State of Gujarat and Another, to urge that compensation in lieu of reinstatement would be an adequate remedy. He submitted that it would be too difficult for the Petitioner to work in the Bank after a gap of almost sixteen years and that too for a short period of time. It was accordingly prayed that in the event that dismissal order dated 18th September 1995 was set aside the consequential relief should be suitably moulded.

10. The above submissions have been considered. The report of the EO shows that only a small part of the first charge was proved. The first charge was that the Petitioner had handled both sets of keys illegally and unauthorisedly from 11th to 21st January 1991 as the cashier was absent from the branch during the said dates. The second part of the charge was that the Petitioner had not informed the competent authority that he was handling both sets of cash keys and that this was in violation of the H.O. instructions. The EO found only that part of the charge concerning the Petitioner not intimating the competent authority of his handling two sets of keys to be proved." On the other hand, the EO noted that the PO "has not produced any documentary or oral evidence that this was in violation of the H.O. instructions and as such part does not stand proved." Thus, even the first part of the first charge was held not proved. The net result was that only a small part of the first charge which too did not reveal any misconduct was held proved. The other three charges were held not proved. The DA on the other hand simply stated that a perusal of the relevant record of enquiry showed that the Petitioner "acted in contravention of banks rules of the Regulations and procedures." There is No. basis for such a conclusion. The DA further observed, "the findings of the EO has established that the CSO handled both the set of cash keys illegally and unauthorisedly from 11th January 1991 to 21st January 1991 without informing the competent authority. Thus it is proved that he violated the HO instructions." Again for this conclusion there is No. basis whatsoever. On the contrary the report of the EO holds otherwise. It specifically states that the PO had failed to prove either that the Petitioner had acted illegally or unauthorisedly or that he violated the H.O. instructions. The impugned order of the DA is therefore plainly perverse and wholly unsustainable in law. The order of the AA is also vitiated by non-application of mind. The AA overlooked the obvious errors in the impugned order of the DA. Both orders are therefore

perverse and shocking to the judicial conscience and deserve to be set aside. This was not a case where any punishment, even a minor penalty, was called for. This Court has therefore No. hesitation in setting aside the impugned order dated 18th September, 1995 of the DA and the order dated 16th May 1996 of the AA imposing the punishment of dismissal from service on the Petitioner.

11. This Court has considered the cases cited by learned Counsel for the Respondents as regards the consequential relief. The attempt by the Respondent to prejudice the case of the Petitioner by adverting to the fact that claims of the customers of the branch in question to the tune of Rs. 14.34 lakhs had to be settled deserves to be deprecated. The charge sheet did advert to the alleged losses caused to the Bank but was held by the EO as not proved. There is therefore No. basis whatsoever to fasten the Petitioner with the liability for these losses. As regards the second charge sheet dated 24th June 1995, it is more or less on the same subject matter and was nothing but a plain harassment of the Petitioner. As regards the pendency of the criminal case, it will make No. difference to the disciplinary proceedings for the simple fact that after a full-fledged enquiry the Petitioner was exonerated in three out of four charges and only one small portion of the first charge about his not informing the competent authority about handling the two sets of keys was held to be proved.

12. This Court is satisfied that the Petitioner has been treated unfairly by the Bank by its DA passing a wholly perverse order of dismissal despite the Petitioner being exonerated in the enquiry proceedings. The relief of compensation in lieu of reinstatement would neither be adequate nor proper. The Petitioner has had to suffer the trauma of dismissal from service for over sixteen years and has lived during this entire period with a needless stigma which affected not only him but his entire family. He has also had to suffer the long pendency of fourteen years of litigation. Therefore this is a case where apart from being entitled to reinstatement with full back wages the Petitioner should also be suitably compensated.

13. In the circumstances this Court directs as under:

(a) The impugned orders dated 18th September 1995 passed by the DA of the Bank and 16th May 1996 passed by the AA of the Bank are hereby set aside.

(b) The Petitioner will be reinstated in service forthwith with full back wages and all consequential benefits including seniority, promotion and increments as and when they fell due. The Petitioner is also entitled to full salary and allowances during the period of his suspension.

(c) The Bank will pass the appropriate consequential orders implementing the above directions within a period of four weeks from today. The arrears of back wages will be paid to the Petitioner within a further period of four weeks.

(d) The Bank will pay the Petitioner within four weeks a sum of Rs. 1 lakh towards compensation for his unfair dismissal from service and for subjecting him and his family to mental agony and trauma for over sixteen years.

(e) The Bank will, within a period of four weeks from today, also pay to the Petitioner a sum of Rs. 20,000 being the costs of litigation.

(f) If there is a delay in making the payments as directed above, the Bank will pay the Petitioner simple interest at 12% per annum on the aforementioned amounts for the period of delay.

14. Writ petition is allowed in the above terMs. All the pending applications stand disposed of.

