

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (C) NO. 6149 OF 2003

Date of Decision : 30-05-2008

LALIT POPLI Petitioner
Through Mr. Satya Mitra Garg, Advocate

versus

CANARA BANK & ORS. Respondent
Through Ms. Hetu Arora, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the 'Digest'?

REKHA SHARMA, J.

The petitioner, Lalit Popli, who was working as a Clerk in Canara Bank was dismissed from service on June 13, 1995 consequent upon a departmental enquiry which found him guilty of the charge that while working at A.I.C.W.Extension Counter, DDU Marg, New Delhi, he had fraudulently withdrawn an amount of Rs. 1,07,000/- from Saving Bank A/c No. 4272 belonging to Shri S.V.Deshpande. Besides him, three other persons, namely, the Manager of the Bank, Shri Meenakshisundaram, an Officer – Shri S.S.Bhutani and the Special Assistant – Shri Rakesh Tyagi, also faced departmental enquiries in relation to the same incident. They were found guilty of negligence but in their case, the punishment imposed was 'censure' and recovery of the amount of loss caused to the Bank from them.

Consequently, a sum of Rs. 77,000/- was recovered from the Manager, Rs. 15,000/- each from the officer and the Special Assistant. All except the Special Assistant preferred appeals before the Appellate Authority but with no success. The Manager and the Officer took no further steps in the matter. As a result the punishment of 'censure' and the recovery of amount from them attained finality. As regards the Special Assistant, the punishment imposed upon him had already attained finality for he had not preferred any appeal before the Appellate Authority. However, the petitioner was not prepared to give up. He came in writ petition to this Court and succeeded before a learned Single Judge but his success was short-lived for the Bank preferred a Letters Patent Appeal to the Division Bench which reversed the order of the learned Single Judge. Not willing to accept defeat, he filed a Special Leave Petition in the Supreme Court which was dismissed and with that his dismissal from service became a reality. But his ordeal was not over. He was yet to recover his terminal benefits. After the dismissal of his 'Special Leave Petition', he made a representation to the General Manager of the Bank for release of his provident fund and gratuity. In response to the representation, he was told through a communication dated June 24, 2003 that as his acts had caused loss to the Bank to the extent of Rs. 1,07,000/- and further since the action taken against him by the Bank has been upheld by the Supreme Court, a sum of Rs. 1,07,000/- being the loss caused to the Bank has been adjusted from his terminal benefits of Rs. 1,08,923/- lying with the Bank. Resultantly, the balance sum of Rs. 1,923/- was paid to him. The order dated June 24, 2003 left the petitioner with no other recourse than to once again approach this Court. Hence, he preferred the present writ petition.

The Bank has filed an affidavit of its Divisional Manager Shri D.R.Deshpande dated December 3, 2007 and therein it has justified deduction of the amount of Rs. 1,07,000/- from the terminal benefits of the petitioner by relying upon clause 12 of the Canara Bank Employees' Gratuity Fund Rules and clause 19 of the Canara Bank Staff Provident Fund Regulations. The same read as under:-

“Rule 12. Notwithstanding anything contained in the preceding Clauses where an employee has been dismissed for misconduct and such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of the financial loss caused to the Bank.

Clause 19. If a member causes financial loss to the Bank by misconduct, fraud, gross negligence or other conduct of like nature and is dismissed from the service of the Bank or is permitted to leave the service of the Bank in consequence of such misconduct, fraud, gross negligence or other like conduct, the amount of such financial loss sustained by the Bank shall be deducted by the Trustees from the Bank's contribution out of the amount due to the member and be paid to the Bank.”

Should the action of the Bank in recovering the amount of Rs. 1,07,000/- from the gratuity and provident fund of the petitioner be held justified on the strength of the above Rule/Regulation?

The language of Rule 12 and Regulation 19 is unambiguous. It does empower the Bank to recover the loss caused to it owing to the misconduct of its dismissed employee from the gratuity and from the Bank's contribution to the provident fund of such employee. The question, however, is whether in the present case any

loss has been caused to the Bank?

As noticed above, the Bank had recovered the loss caused to it from its Manager, the officer and the Special Assistant against whom also departmental proceedings were held and consequent thereto an order was made to recover the loss caused to the Bank from them. The order passed against them by the Disciplinary Authority was upheld by the Appellate Authority. They did not assail the order before any other authority. Therefore, the punishment of 'censure' and the recovery of the amount to the extent of loss caused to the Bank passed against them has remained unaltered and holds the field. As the Bank has already recovered the loss from these three employees, any further recovery from the petitioner would be beyond the loss caused to it.

The recovery from the petitioner was sought to be justified by the Bank on the ground that as it was on account of misconduct of the petitioner that the loss accrued to the Bank the amount of Rs. 1,07,000/- which had earlier been recovered from the Manager, the Officer and the Special Assistant was refunded to them and consequently was recovered from him. In my view, this course adopted by the Bank was totally unwarranted. The punishment awarded to the Manager, the Officer and the Special Assistant was 'censure' and in addition thereto, recovery of the amount to the extent of the loss caused to the Bank. The punishment against them stands. It could only be altered or set aside by an authority possessed of quasi-judicial or judicial power. The quasi judicial authority in their case was the Appellate Authority which declined to do so. They chose not to approach any judicial authority. Therefore, if the Bank still chose to

refund the amount recovered from them, it did so through an administrative order which was totally impermissible. No order passed pursuant to disciplinary proceedings conducted against an employee can be set aside by an administrative order. The action of the Bank smacks of mala fide. It appears that it was to benefit these three persons and to further punish the petitioner that the amount was refunded to them and was recovered from the petitioner. The Bank under the aforesaid Rule/Regulation could recover the amount of loss caused to it from the petitioner but only if it had not recovered the same from the other three persons involved in the episode. The same having been recovered from them, the Bank cannot doubly enrich itself.

In view of the above, the writ petition is allowed. The Bank is directed to release the amount of Rs. 1,07,000/- to the petitioner along with the interest that has accrued on it while it was kept in the form of KDR.

REKHA SHARMA, J.

MAY 30, 2008
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