

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

+ **Writ Petition (Civil) No.2676/2008**

% Date of Decision : April 01, 2008

Sukh Ram Sharma Petitioner

Through : Mr. Sanjoy Ghosh,
Advocate

Versus

State Bank of India Respondent

Through : Mr. Anurag Mathur,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J : *(Oral)*

1. The petitioner, Sukh Ram Sharma, has assailed the award passed in ID No.39/2002 by the Central Govt. Industrial Tribunal cum Labour Court No.1 on 13.03.2007, whereby the punishment of discharge from service imposed upon him was upheld.

2. On 01.09.1967, the petitioner was employed as a Messenger with the respondent. He was thereafter upgraded and assigned the duties of a Cashier. On 06.05.1992, the Disciplinary Authority placed the petitioner under suspension

after it was noticed that cash under his charge was short by Rs.24,870/-. Criminal proceedings were also initiated against the petitioner. He was convicted under Section 405/409 IPC by Metropolitan Magistrate, Karkardooma Court, Shahdara, Delhi vide judgment dated 27.2.1997 and was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- and in default to undergo a further simple imprisonment for three months. In appeal, the Additional Sessions Judge modified the sentence by an order dated 27.9.1999 and the petitioner was directed to be released on probation of good conduct on furnishing a personal bond of Rs.5,000/-. However, the petitioner was discharged from the service of the bank, on 26.11.1999, by the respondent, on the grounds of moral turpitude.

3. The petitioner preferred an appeal against the above order issued by the Disciplinary Authority imposing upon him the penalty of discharge from the service of the bank in terms of para 521(2) (b) of the Shastri Award dated 29.3.2000. The action of the Disciplinary Authority was confirmed by the Appellate Authority and the appeal was dismissed on 03.05.2000.

4. Thereafter, an industrial dispute was raised by the petitioner and a reference was made by the Government of India, Ministry of Labour on 28.5.2002 in the following terms :

“Whether the action of Assistant General Manager, State Bank of India, Region-IV, Delhi Zonal Office in imposing punishment of discharge from bank's service w.e.f.

26.11.1999 to Sh. Sukh Ram Sharma, Ex-Assistant, Nand Nagari Branch on the basis of order of Additional Sessions Judge in Crl. A.No.50/98 given on 29.9.1999 is justified? If not, what relief and benefit the workman is entitled?"

After considering the facts and circumstances of the case, the Labour Court held that mere release on probation, i.e. suspension of conviction during the period of probation, does not exonerate the claimant of a proved charge of misappropriation or from departmental action. It was further held that no detailed and further enquiry is required to be conducted when the charge sheeted officer has admitted that he was convicted of the offence of misappropriation. It held the order of discharge of the petitioner as legal and valid.

5. One of the contentions raised by the petitioner in the present petition is that although he was held responsible for shortage in the cash to the tune of Rs.24,870/-, the same amount was deposited by his wife on the very next day with the respondent bank; and that therefore, no loss has been caused to the bank. According to him, the learned Industrial Adjudicator failed to appreciate this aspect. To my mind, the fact that the petitioner's wife reimbursed the amount in question the next day, is wholly irrelevant to the fact in issue, which was, whether the said amount entrusted to the petitioner, was misappropriated by him or not. Once this is demonstrated to have happened, the offence is complete. At the very least, it is gross misconduct. It is a settled fact that the highest standards

of honesty are expected from the employees of a bank who deal with public money. In the case of ***Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain JT 2005 (1) SC 70***, the employee withdrew some money unauthorizedly because of an emergency, but deposited the same with 24% interest with the bank. The Disciplinary Authority agreed with the findings of the Enquiry Officer and passed the order of his removal. In appeal, the said order of removal was maintained. While a Single Judge of the High Court upheld that decision; however, on the grounds, inter alia, that there was no allegation that the employee had committed any kind of delinquency earlier and there was no loss caused to the bank, the Division Bench concluded that the Board should be compassionate and gracious enough to reconsider the employee's case, and to pass any punishment other than dismissal, removal or termination. While setting aside this judgment of the High Court, the Supreme Court observed as follows;

“a bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in ***Disciplinary Authority-Cum-Regional Manager Vs. Nikunja Bihari Patnaik 1996 (9) SCC 69***, there is no defence available to say that

there was no loss or profit resulted in case, when the officer/employee acted without authority.”

The observation made in ***Nikunja Bihari Patnaik's*** case (supra), was reiterated by the Supreme Court in ***State Bank of India Vs. Ramesh Dinkar Punde (2006) 7 SCC 212*** and ***Chairman and MD, United Commercial Bank Vs. P.C. Kakkar (2003) 4 SCC 364***. Similarly in ***State Bank of India Vs. Bela Bagchi (2005) 7 SCC 435***, the delinquent employee was dismissed for not depositing the amount received from an account holder, even though the account holder subsequently withdrew his grievance and no loss was caused to the bank. Even in ***Suresh Pathrella Vs. Oriental Bank of Commerce (2006) 10 SCC 572***, it was held that misappropriation of customer's money, even though no loss was caused to the bank, will nonetheless be a misconduct which does not warrant a lenient view.

Although a much higher standard of probity and honesty is required by bank officials entrusted with their depositors' money, even by the standard of ordinary criminal law, the fact that the accused made good the loss either by refunding the amount or replacing the goods in question, whether before or after the loss was discovered, has never been accepted either as an adequate defence or even a mitigating factor.

6. As regards the contention of the petitioner that he had no intention of defrauding the bank; by misappropriating the

money, the petitioner has undeniably breached the trust and confidence reposed in him by his employer. The fact that the delinquent officer refunded or replaced the money, or intended to do so, is wholly irrelevant to the issue. Once the conclusion that the amount was misappropriated is reached, as was done by the Criminal Court in this case, nothing remains. In ***Ram Narain Popli Vs. CBI (2003) 3 SCC 641***, the Supreme Court was of the view that even if there is an intention to restore the property misappropriated at some future point of time, such a misappropriation is nonetheless dishonest. In any event, there is no gainsaying the fact that the act of the petitioner clearly amounted to misconduct. As pronounced by this Court in ***R.P. Chhabra Vs. Punjab National Bank 2004 (IV) AD (Delhi) 629***, an act or omission, which runs counter to the expected code of conduct, or which is contrary to the written norms, guidelines or practice followed, amounts to misconduct. Furthermore, the Supreme Court in ***Regional Manager, UPSRTC Vs. Hoti Lal (2003) 3 SCC 605*** observed that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Thus, the plea

of the petitioner that he had no intention to defraud the bank cannot, under the circumstances, be countenanced by this Court.

7. Mr. Ghosh, counsel for the petitioner also states that 32 years of unblemished service of the petitioner have been washed away because of his one alleged indiscretion, and that there also his wife deposited the amount in question by way of reimbursement the very next day. I think learned counsel for the petitioner rather mistakes the matter. To say that it is his first indiscretion, is to put it too simplistically. Far from being a mere indiscretion, what the petitioner did was a criminal act. What has happened is that this is the first time that the petitioner was caught.

8. Mr. Ghosh has also tried to rely on paragraph 521(2) (b) of the Shastri Award which provides as follows :

“Any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law, if he be convicted he may be dismissed with effect from the date of his conviction or be given any lesser punishment.”

He states that inasmuch as the petitioner has been released on probation, it cannot be said that he has been sentenced for the offence in question and therefore also a lenient view ought to be taken in the matter. I am afraid, I am not in agreement with this contention for the reason that the expression used is, “is liable to conviction and sentence under any provision of law.....”. In other words, it is not necessary that there should be actual

conviction or sentencing of the individual concerned. It is sufficient if, on the facts alleged, the individual concerned was liable to conviction and sentence. In this case, there is no doubt that not only was the petitioner liable to conviction and sentence, he was, in fact, convicted. The only question that remains is as to whether he has also been duly sentenced. Without going into the question as to whether release on probation also amounts to a sentence or not and I think, to my mind, it does, it is undeniable that consequent upon his conviction, the petitioner was certainly liable to sentencing. Merely because the Criminal Court has taken a lenient view in the matter and has decided to release him on probation cannot mean that he was not liable to be sentenced. Furthermore, in this case, the Additional Session Judge had concluded that; "the conviction of the appellant for the offence punishable under Section 409 IPC, do not suffer from any illegality or call for any interference." This observation cannot be ignored. In that view of the matter, I do not think the paragraph 521(2) (b) of the Shastri Award can be of much assistance to the petitioner. Learned counsel very fairly does not challenge the procedure whereby the impugned decision was taken. It was also found by the Labour Court that the order of the disciplinary authority and the Appellate Authority is reasoned one. In the case of **Chairman and MD, United Commercial Bank & Ors. Vs. P.C. Kakkar** (supra), the Supreme Court pronounced as follows;

“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 logical or moral standards.”

It was further observed that;

“in view of what has been stated in *Wednesbury* principle, the court could not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.”

9. Under the circumstances, I do not consider it a fit case for interference in exercise of writ jurisdiction.

10. Writ petition is dismissed.

Sudershan Kumar Misra, J

April 01, 2008
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