

GAHC010008232011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4899/2011

ASHIT KUMAR GOSWAMI
S/O LT. PRIYANATH GOSWAMO, R/O TARUN RAM PHUKAN ROAD,
CHOLADHARA, SUAGPUR, P.S. JORHAT, DIST. JORHAT, ASSAM.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY, MINISTRY OF FINANCE, GOVT. OF INDIA, SASHTRI
BHAWAN, NEW DELHI.

2:THE CENTRAL BANK OF INDIA

REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR OF CENTRAL
BANK OF INDIA
CHANDARMUKHI
NARIMAN POINT
MUMBAI-40021

3:THE ZONAL MANAGER

CENTRAL BANK OF INDIA
GUWAHATI ZONE
C.B.BUILDING
BHANGAGARH
GHY-5

4:THE REGIONAL MANAGER

CENTRAL BANK OF INDIA
GUWAHATI REGION
C.B.BUILDING
BHANGAGARH

GHY-5

5:THE ENQUIRY AUTHORITY/BRANCH MANAGER

FANCY MARKET
BHARALUMUKH
GH

For the Petitioner : Mr. A. Choudhury, Advocate.
Mr. S. Islam, Advocate.

For the Respondents : Mr. M.K. Mishra, Advocate.

Date of Hearing & Judgment : **27.07.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

The instant writ petition has been filed challenging the order dated 22.03.2010 issued vide Memo No. RO/GUWA/HRD-DAD/2009-10/304 by the Respondent No. 4 thereby imposing the penalty of dismissal which shall ordinarily be a disqualification for future employment; for setting aside and quashing the order dated 28.02.2011 whereby the appeal so filed by the Petitioner was dismissed; as well as for a mandamus directing the official respondents to impose minor punishment upon the Petitioner as provided under Regulation 4 (a), (b), (c), (d) & (e) of the Central Bank of India Officer Employee's (Discipline & Appeal) Regulations, 1976.

2. The facts of the instant case is that the Petitioner initially was appointed as a Clerk at Purbanchal Bank on 08.01.1975. Subsequent thereto, he was promoted to the post of Assistant Manager at Purbanchal Bank. The said Purbanchal Bank thereupon amalgamated with the Central Bank of India and the Petitioner continued to render service as the Assistant Manager at Numaligarh Branch of the Respondent Bank. The Petitioner thereupon was transferred to Jorhat in the same capacity. The Petitioner rendered service for around 12 years at Jorhat and was transferred to the Panbazar Market Branch from where he was again transferred to Maharipara Branch as the Branch Manager at the BTAD area. Thereupon the Petitioner was transferred to Kohima Branch as the Assistant Manager.

3. While the Petitioner was rendering his service as the Assistant Manager at Kohima Branch, he was issued a notice on 16.04.2009 thereby calling upon the Petitioner to show cause as to why departmental proceedings should not be initiated against him for commission of gross misconduct while discharging his official duty at Maharipara Branch. The Petitioner thereupon submitted his reply to the show cause notice. The disciplinary authority being not satisfied with the said explanation so given by the Petitioner initiated departmental proceedings and served a chargesheet on 06.06.2009 which contained four specific charges. Subsequent thereto, a supplementary charge-sheet was also issued on 25.08.2009 which

contained another three charges.

4. The Petitioner though participated in the said departmental proceedings but did not submit any statement of defence to either the original chargesheet or even to the supplementary chargesheet. Thereupon the enquiry was conducted and the Enquiry Officer submitted the report dated 27.11.2009 to the Respondent No. 4 on 30.11.2009. The Petitioner was given the opportunity to submit his reply to the said enquiry report within seven days. It further appears that the Petitioner submitted his reply. The disciplinary authority thereupon taking into account the enquiry report as well as the reply so submitted by the Petitioner, passed the order dated 22.03.2010 whereby the penalty of dismissal upon the Petitioner which shall ordinarily be a disqualification for future employment was imposed. This order has been put to challenge in the instant writ proceeding.

5. The Petitioner being aggrieved thereupon preferred an Appeal before the Appellate Authority. The Appellate Authority vide an order dated 28.02.2011 dismissed the Appeal thereby confirming the penalty so imposed upon the Petitioner. This Appellate Order dated 28.02.2011 is also the subject matter of challenge in the instant writ proceeding.

6. It appears from the record that the instant writ petition was filed on 17th of September, 2011 and this Court vide an order dated

21.09.2011 had issued Rule making it returnable on 16.11.2011. The record further shows that an affidavit-in-opposition was filed by the Respondent Nos. 2, 3, 4 and 5, wherein it was stated that various opportunities were granted to the Petitioner for filing the Statement of Defence to the original chargesheet as well as the supplementary charge-sheet. However, the Petitioner failed to file the Statement of Defence. It was stated that the Petitioner duly participated in the departmental proceedings as would be seen from the records. It was further stated that from the evidence on record, it would be clear that the charges against the Petitioner have been duly proved. It was further mentioned that as the charges have been duly proved and the Petitioner was working in a financial institution and the allegations so proved pertained to misappropriation, the same had resulted in the loss of confidence of the employee by the Respondent Bank and as such the Petitioner was rightly dismissed from service.

7. The Petitioner filed an affidavit-in-reply refuting to the statements made in the affidavit-in-opposition.

8. I have heard the learned counsel for the parties and perused the materials on record.

9. This Court before proceeding with the adjudication of the contentions so submitted by the learned counsel for the parties, finds it relevant to take note of that this Court is not exercising an appellate

jurisdiction over the disciplinary authorities and the limited jurisdiction so exercised is only to consider as to whether the decision making process is vitiated on account of unreasonableness, arbitrariness, perversity or had occasioned manifest injustice to the Petitioner.

10. The learned counsel appearing on behalf of the Petitioner during the course of the hearing could not show any perversity in the findings so arrived at by the Enquiry Officer as well as by the Appellate Authority in respect to the charges levelled against the Petitioner. Therefore, the question which arises is as to whether the penalty so imposed upon the Petitioner was disproportionate to the charges so proved.

11. It appears from the records that out of the seven charges which were levelled against the Petitioner, Charge Nos. 1 and 2 related to serious negligence on the part of the Appellant in performing his duty as a Branch Manager which stood proved in the Inquiry Proceedings and was confirmed by the Appellate Authority. It further reveals from the records that certain employees of the Respondent Bank misappropriated an amount of Rs. 36,89,474/- and for that the Respondent Bank had suffered pecuniary loss to the tune of the said amount. The charges levelled against the Petitioner were on account of the Petitioner's indifferent attitude and negligence, for which other employees of the Respondent Bank were able to misappropriate the amount of Rs.36,89,474/- and the said charges were proved. Now

taking into consideration that it is on account of the negligence and indifferent attitude of the Petitioner, the Respondent Bank had pecuniary loss to the tune of Rs. 36,89,474/-, this Court is of the opinion that such conduct on the part of the Petitioner had resulted in the loss of confidence upon the Petitioner of the Respondent Bank. Under such circumstances, it is the opinion of this Court that the imposition of penalty of dismissal cannot be said to be disproportionate to the charges proved against the Petitioner.

12. Mr. A. Choudhury, the learned counsel appearing on behalf of the Petitioner submits that the Petitioner at present is 72 year old and on account of his dismissal, the pension which he otherwise would have been entitled to has been forfeited in view of the Regulation 31 of the Central Bank of India (Employees Pension) Regulations, 1995. He however submitted that taking into account that the Petitioner had not misappropriated any amount, but it was on account of his negligence and indifferent attitude, some other employees could misappropriate the amount which had occasioned loss to the Respondent Bank, the authority higher than the Respondent No. 3 ought to have taken into consideration the proviso to Regulation 31(1) of the said Regulations of 1995 and ought to have granted a compassionate allowance. He however submitted that taking into account that the Petitioner has challenged the dismissal order as well as the Appellate Order, the Petitioner had not sought for that relief in

the instant proceedings but the interest of justice would be met, taking into account that the instant litigation has been pending since 2011, an appropriate direction be issued by this Court directing the General Manager, HRD, Central Office Mumbai, who is the authority higher than the Respondent Nos. 3 and 4 to take a decision as regards the Petitioner's entitlement for the compassionate allowance in terms with Regulation 31 of the Regulations of 1995.

13. This Court has given due consideration to the said submission. The records further reveal that the Respondent Authorities have not taken any decision in terms with Regulation 31 of the Regulations of 1995.

14. Taking into account the above, this Court therefore grants liberty to the Petitioner to submit a representation to the General Manager, HRD, Central Office Mumbai claiming the compassionate allowances. This Court directs the General Manager, HRD, Central Mumbai of the Respondent Bank to consider such representation if submitted and take a decision as regards the Petitioner's entitlement for compassionate allowance within 45 days from the date of receipt of the representation. The said authority shall also bear in mind at the time of consideration that nothing had been proved against the Petitioner that he misappropriated any amount and it is only on account of the Petitioner's negligence/indifferent attitude that some other employees were able to misappropriate the amount.

15. With the above observations and directions, instant petition stands disposed off.

JUDGE

Comparing Assistant