

GAHC010128092014



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

Case No. : WP(C)/5846/2014

RAMESH JARADHARA
BANK, REGIONAL OFFICE, KOKRAJHAR, ASSAM.

VERSUS

ASSAM GRAMIN VIKASH BANK HEAD OFFICE BHANGAGARH and 2 ORS.
HEAD OFFICE BHANGAGARH, G.S. ROAD, BHANGAGARH, GHY- 5.

2:THE CHAIRMAN
ASSAM GRAMIN VIKASH BANK
BHANGAGARH
GHY- 5.

3:THE GENERAL MANAGER
ASSAM GRAMIN VIKASH BANK
BHANGAGARH
GHY- 5

Advocate for the Petitioner : MS.A CHETIA, MISS A CHETIA,DR. R SARMAH,MR.B K BHATTACHARJEE

Advocate for the Respondent : SC, A G V B, MR S DUTTA,MS. S. MOCHAHARI,MR. S DUTTA,MR S DUTTA,MR.S SARMA

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Dr. R Sarmah, Advocate.

For the Respondents : Shri S Dutta, Sr. Advocate and
Ms. S Mochahari, Advocate.

Date of Hearing : 01.08.2024.

Date of Judgment : 01.08.2024.

JUDGMENT & ORDER

Heard Dr. R Sarmah, learned counsel for the petitioner. Also heard Shri S Dutta, learned Senior Counsel for the respondent-Assam Gramin Vikash Bank (Bank) assisted by Ms. S Mochahari, learned counsel.

2. The challenge in this petition is with regard to an order dated 25.03.2014 by which, the penalty of reduction of basic pay by 2 (two) stages with cumulative effect has been imposed upon the petitioner after a disciplinary proceeding.

3. As per the facts projected, the petitioner was, at the relevant point of time, posted in the Sivasagar Branch and was acting as the In-charge Branch Manager. As three unclaimed cheques of a total amount of Rs. 6,241/- was pending for a long time, the petitioner decided to utilize the same amount for constructing an overhead shed in the Bank building as the employees and the customers were facing difficulties mostly in the summers. On the said decision, a proceeding was initiated on the petitioner with the allegation that an attempt to defraud the Bank was made. As per the petitioner, the amount was actually not utilized and the petitioner from his own fund

had made the shed. However, the proceeding continued and the impugned penalty was imposed.

4. Dr. Sarmah, learned counsel for the petitioner has submitted that apart from the issue being trivial in nature wherein, no action was contemplated, the penalty imposed is grossly disproportionate to the nature of the allegations. The learned counsel for the petitioner has contended that the allegation was not proved by proper evidence and the inquiry report was acted upon and the impugned penalty has been imposed. It is specifically submitted that the disciplinary authority did not apply his independent mind to the materials on record and had taken a decision solely on the report of the inquiry report which is not permissible under the law. The learned counsel has also raised the issue that he was not given proper opportunity to represent against the inquiry report. By drawing the attention of this Court to the Service Regulations, 2010 (Regulations of 2010) pertaining to the Officers and Employees of the Bank, the learned counsel for the petitioner has referred to Regulation 39 dealing with the penalties. It is submitted that the penalty imposed does not fall within the minor penalties as, while directing reduction of pay, the same has been made to be with cumulative effect. He submits that even if the act of the petitioner is held to be some kind of misconduct, a minor penalty could have been given to him. The learned counsel has also informed this Court that during the pendency of this writ petition which was filed in the year 2014, the petitioner has retired from service on attaining the age of superannuation.

5. Dr. Sarmah, learned counsel has also submitted that initially, an investigation was done which culminated in a report dated 13.08.2012 and in the said process, the petitioner was not given any opportunity of hearing and based on the said investigation report, the memorandum of charge was issued on 10.09.2012. By drawing the attention to the defence statement, the learned counsel has submitted

that it was categorically stated that the steps taken by the petitioner were in the interest of the Bank. It is submitted that the building in which the Bank was operating would become unbearably hot during the summer season and construction of the shed on the roof was only for the interest of the Bank and there was no personal interest of the petitioner involved and this aspect of the matter has been overlooked by the respondent-Bank.

6. *Per contra*, Shri Dutta, learned Senior Counsel for the Bank has submitted that the duties and responsibilities of an officer of the bank is built on trust. The officer of the Bank is to exercise more caution and alertness as a Bank deals with public money. Any attempt to misuse one's discretion would come within the ambit of misconduct. On the merits of the charge, it is submitted that even if the amount in question is not a huge amount, the petitioner did not have the authority to utilize the same. He submits that it is also not relevant whether the money was actually utilized and the attempt to encash itself is misconduct.

7. As regards, the investigation report dated 13.08.2012, it is clarified that the said report was only a fact finding report and based upon the same, no penal measure has been taken and therefore, there is no requirement to involve the petitioner in the said investigation by giving him opportunity. It is reiterated that discreet investigation is required only to have the facts clarified and to come to a conclusion as to whether a proceeding is to be initiated or not. It is submitted on behalf of the Bank that at all stages, necessary procedural safeguards were afforded to the delinquent officer and the proceeding was held in a transparent and fair manner. On the aspect whether second show cause notice was issued to the petitioner, this Court had passed an order on the last occasion i.e. 25.07.2024 directing to take specific instructions.

8. Ms. Mochahari, learned counsel assisting the learned Senior Counsel

representing the Bank has handed over the original copies of the documents pertaining to the disciplinary proceeding. A perusal of the same would show that the inquiry report was not only duly forwarded to the petitioner on 19.11.2013, the petitioner had also submitted his reply on 04.12.2013 and it is only thereafter that the impugned penalty order has been passed.

9. On the aspect of the proportionality of the penalty imposed, Shri Dutta, learned Senior Counsel has submitted that the magnitude of the amount involved is not material and the very intention to encash certain amount of unclaimed money is itself indicative of the aspect of lack of integrity of the petitioner. He, therefore, submits that the penalty is commensurate to the gravity of the allegation and proven misconduct. He submits that there are graver penalties prescribed in the Regulation of the Bank which includes removal and dismissal and the petitioner was only given the penalty of reduction of basic pay by 2 (two) stages with cumulative effect.

10. The rival submissions have been considered and the materials on records, including the original documents of the proceeding placed have been duly considered.

11. The preliminary investigation on the allegation was done on 13.08.2012. Such investigation being discreet in nature, this Court is of the opinion that there is no requirement to give any opportunity to the officer concerned as no penalty can be prescribed only on the basis of such discreet inquiry and penalty, if any, can be imposed only after duly conducted disciplinary proceeding. In this case, after the investigation, the proceeding was initiated against the petitioner by submission of a memo of charge on 10.09.2012 prior to which, the petitioner was placed under suspension on 23.08.2012. It may be mentioned that the learned counsel for the petitioner has also raised an issue with regard to the aspect of the issuing authority of the said suspension order. It was submitted that the suspension order was issued by

the Chairman and not by the Managing Director and thereby, the petitioner would lose an opportunity of further appeal. The aforesaid aspect was, however, clarified by the learned Senior Counsel of the Bank that at that relevant point of time, the Chairman was the disciplinary authority and subsequently, only, the disciplinary authority for a Scale-II Officer was changed to the Managing Director. In any case, it is clarified that even if the disciplinary authority was the Chairman that will not be in conflict with the law as the Chairman is above the Managing Director and the appellate forum would still be available before the Board.

12. The disciplinary proceeding appears to be held by giving a fair and reasonable opportunity to the petitioner wherein, he had replied to the articles of charges whereafter he had participated in the inquiry which culminated in the inquiry report. The aspect of furnishing copy of the inquiry report to the petitioner has also been clarified as indicated above and the records would demonstrate that the petitioner had, in fact submitted his response to the second show cause notice.

13. This brings us to the aspect of the proportionality of the penalty imposed. The penalty is reduction of basic pay by two stages with cumulative effect. The allegation against the petitioner is to utilize the amount of three unclaimed cheques, total of which is Rs. 6241/-. It has been emphasized by Dr. Sarmah, learned counsel that ultimately, the amounts of the cheques were not utilized and the construction of the shed was done by the funds of the petitioner. That by itself will not totally absolve the petitioner of his liability as the bank officer. At the same time, this Court has noticed that while the penalty of reduction of basic pay by 2 (two) stages has been imposed, the same has been given cumulative effect. In the penalties prescribed under Regulation 39, a reduction to a lower stage in Time Scale of Pay for a period not exceeding 2 years without cumulative effect is one of the minor penalties along with others. In this context, one may refer to the concurring judgment of Hon'ble **Mr.**

Justice BL Hansaria in the case of ***BC Chaturvedi Vs. Union of India***, reported in **(1995) 6 SCC 749**. In the said judgment, the powers conferred upon a High Court by Article 226 have been compared with Section 11A of the Industrial Disputes Act. It has been observed that when a Tribunal can be vested with powers to impose any lesser punishment, it would not be unreasonable, if such powers can be deemed to be within the powers conferred by Article 226 of the Constitution of India. Considering the facts and circumstances and also the aspect that the attempt to utilize the unclaimed money of Rs. 6241/- was in the interest of the Bank and its customers and not for any personal gain and there is no allegation of any misappropriation, this Court while not interfering with the procedure adopted and reaching the conclusion to impose the penalty, directs that said penalty be altered to the penalty of reduction of basic pay without cumulative effect. Since the petitioner has been stated to have been superannuated in the meantime, it is directed that on the alteration of the said penalty, as indicated above, the pension of the petitioner and other retirement benefits be fixed at the proper fitment by making the calculations by the Bank.

14. The original records are handed back to Ms. Mochahari, learned counsel assisting the learned Senior Counsel of the respondent-Bank.

JUDGE

Comparing Assistant