

GAHC010246612012



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

Case No. : WP(C)/2934/2012

BHORAT CH. BORAH
SR NO. 54557 SON OF LT. SARURAM BORAH R/O VILL- CHANDMARI, P.O.
LILABARI DIST NORTH LAKHIMPUR, ASSAM.

VERSUS

THE G.M., INDIAN BANK and ORS.
HO HRM 254-260 AVVAI SHANMUGAM ROAD, ROYAPETTAH, INDIAN
BANK, CHENNAI- 600014.

2:ASSISTANT GENERAL MANAGER
HRM CORPORATE OFFICE HRM DEPARTMENT
SETTLEMENT SECTION 254-260 AVVAI SHANMUGAM ROAD
ROYAPETTAH CHANNAI - 600014.

3:GENERAL MANAGER ZONAL OFFICE GUWAHATI
2ND FLOOR SHARMA AND SHARMA MARKET COMPLEX
R.G. BARUAH ROAD
OPPOSITE GUWAHATI COMMERCE COLLEGE
GHY 781003.

4:ASSISTANT GENERAL MANAGER and DISCIPLINARY AUTHORITY
ZONAL OFFICE GUWAHATI 2ND FLOOR
SHARMA and SHARMA MARKET COMPLEX
R.G. BARUAH ROAD
OPP GUWAHATI COMMERCE COLLEGE
GUWAHATI- 781003.

5:SENIOR MANAGER SECURITY OFFICER INDIAN BANK ZONAL OFFICE
GUWAHATI 2ND FLOOR SHARMA and SHARMA MARKET COMPLEX
R.G. BARUAH ROAD OPP- GUWAHATI COMMERCE COLLEGE
GUWAHATI-781003.

6:VIGILANCE OFFICER INDIAN BANK ZONAL OFFICE GUWAHATI
2ND FLOOR SHARMA and SHARMA MARKET COMPLEX
R.G. BAROAH ROAD OPP- GUWAHATI COMMERCE COLLEGE
GUWAHATI- 781003.

7:BRANCH MANAGER INDIAN BANK NORTH LAKHIMPUR BRANCH
K.B. ROAD NORTH LAKHIMPUR ASSAM PIN- 787001.

8:ASSISTANT BRANCH MANAGER INDIAN BANK
NORTH LAKHIMPUR BRANCH K.B. ROAD NORTH LAKHIMPUR
ASSAM PIN- 787001.

9:INDIAN BANK REPRESENTED BY THE GENERAL MANAGER HO HRM
254-260 AVVAI SHANMUGAM ROAD ROYAPETTAH
INDIAN BANK CHENNAI 600014

Advocate for the Petitioner : MR.D SAIKIA

Advocate for the Respondent : MS S CHAKRABORTY (r-1,2,3)

Linked Case : MC/88/2023

BHORAT CH. BORAH SR NO. 54557 SON OF LT. SARURAM BORAH
R/O VILL- CHANDMARI P.O. LILABARI DIST NORTH LAKHIMPUR
ASSAM.

VERSUS

THE G.M. INDIAN BANK and 8 ORS.HO HRM 254-260 AVVAI SHANMUGAM
ROAD ROYAPETTAH INDIAN BANK CHENNAI- 600014.

Advocate for : MR. B GOGOI

Advocate for : SC INDIAN BANK appearing for THE G.M. INDIAN BANK & 8 ors.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 18.04.2024

Date of Judgment : 18.04.2024

Judgment & order(Oral)

Heard Mr. B. Gogoi, learned counsel, appearing on behalf of the petitioner.
Also heard Mr. M. Sharma, learned standing counsel, Indian Bank, appearing on
behalf of all the respondents.



2. The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 28.06.2011, issued by the disciplinary authority imposing upon him the penalty of "compulsorily retired with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment". The petitioner has further assailed the communication, dated 20.01.2012, by which an amount of Rs. 5,00,000/- was directed to be recovered from the arrears due to the petitioner upon imposition of the penalty vide order, dated 28.06.2011.

3. The facts requisite for adjudication of the issues arising in the present proceeding is noticed as hereunder:

The petitioner while working as the Head Cashier of Indian Bank, North Lakhimpur Branch, on 16.12.2010, an incident occasioned wherein an amount of Rs. 5,00,000/- kept in his office cabin, went missing. On the said information coming to light, a First Information Report(FIR), dated 16.12.2010, came to be lodged by the Bank Officials with the police of the Lakhimpur Police Station leading to registration of North Lakhimpur P.S. Case No. 764/2010 under Section 380 of the IPC.

The said loss having occasioned when the said money was in the possession of the petitioner, herein; the Bank Officials required the petitioner to make good, the said loss. However, the petitioner not having cleared the said amount; a disciplinary proceeding came to be initiated against the petitioner vide the communication, dated 24.03.2011, framing the following charges

against the petitioner, herein:

“1. You had on 16.12.2010 reported a cash shortage of Rs.5.00 lacs (Rs. Five lacs) in the denomination of Rs.500.00 (one bundle of Rs.500.00) in the bank's cash balance that was held by you in your custody while working as cashier on date and you were unable to account for the said shortage of cash.

2. You were directed by the Branch Manager of your branch to make good the shortage amount, vide branch letter dated 16.12.2010, duly acknowledged by you. You had failed to make good to the Bank the shortage of Rs 5.00 lacs, reported by you. As a result Branch SR-II a/c was debited for Rs 5.00 lacs for the shortage of cash.”

At this stage, it is to be noted that the petitioner came to be placed under arrest in connection with North Lakhimpur P.S. Case No. 764/2010 on 19.12.2010 and he was thereafter released on bail vide order, dated 14.03.2011, passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur. The petitioner submitted his written statement against the said Show Cause Notice, dated 24.03.2011. Being not satisfied with the reply, the disciplinary authority directed for a departmental inquiry into the charges levelled against the petitioner and an Inquiry Officer came to be appointed. The petitioner accordingly participated in the said inquiry and on conclusion of the inquiry; the Inquiry Officer submitted his report on 14.06.2011 therein, holding the charges levelled against the petitioner to be proved.

The said inquiry report was forwarded to the petitioner, herein, and he accordingly submitted his representation against the same. Thereafter, the disciplinary authority i.e. Assistant General Manager, Indian Bank, vide his order, dated 28.06.2011, on consideration of the inquiry report and the materials coming on record in the inquiry along with the representation as submitted against the said Inquiry Report by the petitioner; agreeing with the findings arrived at by the Inquiry Officer, proceeded to impose upon the petitioner the

penalty of "compulsorily retired with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment".

On the penalty being so imposed upon the petitioner vide order, dated 28.06.2011, the Chief Manager of Indian Bank, North Lakhimpur Branch, vide communication, dated 20.01.2012, while forwarding to the petitioner his dues; directed after adjustment of the credits due to the petitioner to make arrangement for all liabilities after including loss of Rs. 5,00,000/-(Rupees Five Lakhs).

It is to be noted that the words "including loss of Rs. 5 lacs" was so incorporated by the Chief Manager, Indian Bank, North Lakhimpur Branch, in the said communication, dated 20.01.2012, by hand.

The petitioner, thereafter, vide representation, dated 01.03.2012, prayed before the authorities for release of Rs. 5,00,000/-(Rupees Five Lakhs) as recovered from his dues. The said representation was responded to by a communication, dated 24.03.2012, wherein, it was held that the petitioner having failed to make up for the loss of Rs. 5,00,000/-(Rupees Five Lakhs) and there being an admitted shortage of cash proved in the inquiry; the order of recovery of Rs. 5,00,000/-(Rupees Five Lakhs) was consistent with the orders passed by the disciplinary authority.

In this connection, reference was made to Rules 11 and 17 of the Indian Bank Staff PF Rules wherein it was provided that the loss occasioning to the Bank can be recovered from the Provident Fund account of the petitioner, herein, and accordingly, the recovery was held to be justified.

4. Being aggrieved by the penalty as imposed by the disciplinary authority, as well as the order directing for recovery of Rs. 5,00,000/-(Rupees Five Lakhs) from the Provident Fund account of the petitioner, the present proceeding has been instituted by the petitioner.

5. Mr. Gogoi, learned counsel for the petitioner, by taking this Court through the materials brought on record, has contended that the Inquiry Officer for the purpose of holding the charges levelled against the petitioner, has resorted to surmises and conjectures in-as-much as the conclusions arrived at by the Inquiry Officer in his Inquiry Report are all forced conclusions and the same are not supported by materials coming on record in the inquiry.

6. Mr. Gogoi, learned counsel, has further submitted that the Inquiry Officer while recording the conclusions to saddle the petitioner, herein, with the loss occasioning of Rs. 5,00,000/-(Rupees Five Lakhs) from his cabin, has not considered the contention of the petitioner that the same was on account of the fact that there was no proper security arrangement put in place in the Bank premises and accordingly, the theft of Rs. 5,00,000/-(Rupees Five Lakhs) was in continuation of such incidents which had taken place in the Bank on earlier occasions also.

7. Mr. Gogoi, learned counsel for the petitioner, has also submitted that the petitioner was subjected to a criminal proceeding wherein the police on completion of the investigation, had submitted its charge-sheet in G.R. Case No. 1593/2010 before the Court of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. The learned trial Court after conclusion of the trial, vide judgment & order, dated 10.09.2015, had acquitted the petitioner from the charges as levelled against him therein and while doing so, the discussions made, would reflect that the petitioner was in no way responsible for the loss of Rs. 5,00,000/-(Rupees Five Lakhs) as occasioning from his cabin.

8. Mr. Gogoi, learned counsel, by further referring to the Indian Bank Staff PF Rules, more particularly, Rules 11 and 17 thereof, contends that the said Rules mandates that when an employee is dismissed, discharged, compulsorily retired or removed from service for misconduct causing financial loss to the Bank, the Bank shall be entitled to recover such loss from the Provident Fund account of the employee concerned.

9. Mr. Gogoi, has further submitted that the provisions of Rules 11 and 17 of the Indian Bank Staff PF Rules limit such recovery only to the contribution made by the Bank to the fund together with the interest thereon payable.

10. Mr. Gogoi, learned counsel, clarifies that the recovery if any that is to be made from the Provident Fund account for the loss sustaining to the Bank, can be only so made from the contribution made by the Bank to the said fund and the employee's contribution cannot be subjected to such recovery. However, the

learned counsel submits that in the present case, in respect of the petitioner, the recovery was made even from the contributions as made by the petitioner to the said Provident Fund account and accordingly, the same is held to be impermissible.

11. Mr. Sharma, learned counsel appearing for the respondent Bank, has submitted that in view of the categorical findings recorded by the Inquiry Officer in his report saddling the petitioner, herein, with the responsibility of loss of Rs. 5,00,000/- (Rupees Five Lakhs) as occasioning from his cabin, the penalty as imposed upon the petitioner was fully justified and further the loss having been so established and the petitioner having been so saddled with the responsibility of the same; the recovery as made from the Provident Fund account of the petitioner in terms of the provisions of the Indian Bank Staff PF Rules, requires no interference from this Court.

12. Mr. Sharma, learned standing counsel, Indian Bank, has further pointed out that the petitioner has not brought on record any material to demonstrate any lapse occasioning in the conduct of the inquiry. Further, the petitioner has also not brought on record any material to demonstrate that he was denied of an opportunity to effectively defend the charges levelled against him in the inquiry and as such, the penalty as imposed upon the petitioner, also does not call for any interference from this Court.

13. I have heard the learned counsels appearing for the parties and also given due consideration to the materials placed on record.

14. The grievance raised in the writ petition basically relates to the recovery of Rs. 5,00,000/-(Rupees Five Lakhs) from the Provident Fund account of the petitioner by the Bank to make good, the loss occasioning to the Bank of Rs. 5,00,000/-(Rupees Five Lakhs) from the cabin of the petitioner on 16.12.2010. The petitioner has not brought on record any contention with regard to any deprivation caused to him in not extending to him due opportunity to defend the charges levelled against him in the inquiry so conducted in the matter.

15. A perusal of the representation, dated 01.03.2012, preferred by the petitioner after imposition of the penalty upon him by the disciplinary authority, vide order, dated 28.06.2011, would go to reveal that therein, the petitioner has not assailed the penalty so imposed upon him but had only made a vague statement to the effect that the said penalty was so imposed without giving him a reasonable opportunity to defend himself. However, in the said representation, dated 01.03.2012, the petitioner has extensively dealt with the recovery of Rs. 5,00,000/-(Rupees Five Lakhs) and had prayed therein, to refund the same. The contentions as made by the petitioner in the representation, dated 01.03.2012, being of relevance, is extracted hereinbelow:

“In view of the above, I am aggrieved to find that the bank first has not extended reasonable opportunity, arbitrarily proved the charge and took action against me. After imposing one punishment, the act of adding a hand written instruction (to recover Rs. 5 lacs), without authenticated by signature is not only illegal but also unbecoming for a public sector bank.

1, therefore, strongly urge upon your kind authority to kindly look into the matter and kindly instruct for full payment of my retirement benefit without recovering Rs 5 lacs, at the earliest.

I have not accepted the PF and the Gratuity amount, with recovery of Rs 5 lacs and therefore earnestly request you to kindly issue instructions for release of my due retirement benefit, at the earliest.”

16. Given the manner in which the disciplinary proceeding was so conducted against the petitioner and also the fact that the petitioner has failed to highlight any inconsistency in the inquiry so held in the matter against him; this Court is of the considered view that the penalty as imposed upon the petitioner by the disciplinary authority vide order, dated 28.06.2011, would not call for any interference and accordingly, the said penalty as imposed upon the petitioner, is hereby upheld.

17. This brings to the Court to consider the grievance of the petitioner with regard to the recovery as made from his terminal benefits, more particularly, from his Provident Fund dues vide the communication, dated 20.01.2012, and the recovery of Rs. 5,00,000/-(Rupees Five Lakhs) so made from his said Provident Fund account.

18. The Inquiry Officer in his Inquiry Report, had held the charges as levelled against the petitioner to be proved basically on the issue of negligence on his part in keeping the money in his cabin before the same was demanded by the customers for payment. In the Inquiry Report; the Inquiry Officer has not averred that the petitioner had misappropriated the said amount in any manner. The disciplinary authority while proceeding to consider the Inquiry Report as well as the representation so submitted by the petitioner against the said Inquiry Report, for the purpose imposition of penalty upon the petitioner, herein; had not recorded any finding that the amount, in question, was required to be recovered from the petitioner, herein. The disciplinary authority while imposing the penalty of "compulsorily retired with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under

the Rules or Regulations prevailing at the relevant time and without disqualification from future employment"; had not directed for recovery of the said amount of Rs. 5,00,000/-(Rupees Five Lakhs) from the Provident Fund account of the petitioner, herein.

19. After issuance of the said order, dated 28.06.2011, and after a lapse of around 7 months; the Chief Manager of the Bank, an authority lower than the disciplinary authority, vide the communication, dated 20.01.2012, while proceeding to issue a credit advice in favour of the petitioner, required the authorities of the Indian Bank of North Lakhimpur Branch to credit the amount so involved in the credit advice after making arrangement for recovery of all liabilities. In the said communication, by way of an endorsement made by hand; the words "including loss of Rs. 5 lacs" was added to the words "all liabilities". Before proceeding further with the above-noted discussion, it would be relevant to note that the criminal case as instituted against the petitioner, resulted in his acquittal.

20. The learned trial Court vide judgment & order, dated 10.09.2015, has made a detailed discussion with regard to the evidences coming on record in the trial so held and therein, had held that there was no evidence adduced by the Prosecution Witnesses that there was recovery of the said amount either from the petitioner or from anyone else and further that there is no evidence adduced by the prosecution side that the accused was responsible for commitment of the said theft or missing of the said money.

21. There is a further conclusion recorded by the learned trial Court to the extent that there is no evidence projected by the prosecution side that the accused misappropriated or did anything wrong with the money entrusted to him.

22. The above conclusions of the learned trial Court in the criminal proceedings as instituted against the petitioner herein, would go to show that there is no material available to connect the petitioner with the loss of the amount involved.

23. The amount having been missing from the Bank premises; the petitioner alone cannot be saddled with the responsibility of the said loss so occasioning and the same is to be noted as a shared responsibility between the employees working in the Bank.

24. Having noticed the conclusions as reached by the learned trial Court in the criminal case instituted against the petitioner; the issue of recovery of Rs. 5,00,000/-(Rupees Five Lakhs) as ordered in the case of the petitioner by the respondents, is examined. It is to be also noted that the petitioner in the inquiry, had taken a categorical stand that the security scenario in the Bank premises was not at the desired level and the locking system of the cash cabin was a defective. Further, there were similar incidents occasioning in the Bank of money being stolen on earlier occasions also. The said stand of the petitioner was not appreciated properly by the Inquiry Officer or by the disciplinary authority.

25. At this stage; it is also to be noted that the recovery now sought to be made from the Provident Fund account of the petitioner is also so made in clear violation of the stipulations in Rules 11 and 17 of the Indian Bank Staff PF Rules therein, while under the provisions of the said Rules; the Bank is entitled to make good its loss occasioning on account of a misconduct committed by an employee of the Bank, but, such recovery was restricted only to the extent of the Bank's contribution and the interest working-out thereon from the Provident Fund account of the employee concerned.

26. A perusal of the communication, dated 20.01.2012, would go to show that the said stipulation was admittedly not followed and the recovery as directed to be made by the said communication, also would mean a recovery from the contribution made and the interest accruing in the Provident Fund account of the petitioner against the contributions made thereto by the petitioner, herein. Accordingly, the said recovery must also to be held to be in clear violation of the Rules 11 and 17 of the Indian Bank Staff PF Rules.

27. Further, the disciplinary authority having not directed in his order, dated 28.06.2011, while imposing the penalty upon the petitioner, for a recovery of the amount involved; an authority subordinate thereto could not have proceeded to effect the said recovery in-as-much as it is the settled position of law that if any recovery is to be made on account of a misconduct made by a delinquent; the same has to be so quantified and held to be so recoverable by the disciplinary authority in the order itself by which the penalty is so imposed upon such delinquent. The said course of action not having been followed in the present case; this Court is of the considered view that the recovery as made

from the Provident Fund account of the petitioner, in addition to the same being in violation of the Rules 11 and 17 of the Indian Bank Staff PF Rules, would not be justifiable and would require an interference from this Court.

28. In view of the above conclusions reached in the matter by this Court; the order of penalty as imposed upon the petitioner vide the order, dated 28.06.2011, while being upheld, the recovery of Rs. 5,00,000/-(Rupees Five Lakhs) so made from his Provident Fund account in response to the communication, dated 20.01.2012, stands interfered with.

29. Accordingly, the respondent Indian Bank shall now re-authorize to the petitioner the amount of Rs. 5,00,000/-(Rupees Five Lakhs) as recovered from his Provident Fund account along with an interest at the rate of 6% per annum from the date of effecting of such recovery till the date of re-authorization of the same to the petitioner, herein.

30. The above exercise now required to be carried out by the authorities of the respondent Bank shall be so initiated and completed within a period of 30(thirty) days from the date of receipt of a certified copy of this order and the amount involved along with the interest be so computed and authorized to the petitioner within the said time-frame.

31. With the above directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant