IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.87 of 2009(O&M)
Date of decision: **27.05.2015**

Kiran Wadhera and others ----Appellants

Versus

State Bank of India and others ----Respondents

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Ms.Kiran Bala Jain, Advocate
for the appellants.

Mr.Ashok Gupta, Advocate
for the Bank - respondents.

****

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 21.10.2008, whereby, CWP No.11031 of 1999 filed by Sh.B.K.Wadhera challenging the order dated 21.2.1997 dismissing him from service and the order dated 20.3.1999, whereby, the said dismissal was upheld in appeal , has been dismissed. The appellants herein are the legal representatives of said Sh.B.K.Wadhera, being his widow four daughters and a son.

Sh.B.K.Wadhera joined the services of respondent –

Bank as Money-Tester on 12.11.1957. He was promoted as Officer Junior Management Grade Scale-I in 1972. In 1985, he was promoted as Middle Management Grade-II Officer. While posted as Deputy Manager (Cash) at the Ambala Cantt. Branch of the respondent-Bank, he was placed under suspension vide order dated 16.6.1994 (Annexure P-1) on the charge that a sum of Rs.1,00,000/- was found short in the cash vault of the respondent – Bank. Along with him one Sh. D.S.Marwaha, Officer MMGS-II, who was then Deputy Manager (Accounts) and being a Supervisory officer, was joint custodian of the cash was similarly charged and placed under suspension. The following articles of charge were served upon Mr. Wadhera:-

> *“<u>Charge No.1</u>*
> *You surreptitiously removed cash from the currency chest of Ambala Cantt Branch and made certain alterations/ additions in the Cash Books to cover-up your fraudulent acts.*
> *<u>Charge No.2</u>*
> *You, with your malafide and fraudulent intensions, resorted to frequent overwriting/ cuttings/ alterations in the currency chest books and violated Bank's laid down instructions.*
> *<u>Charge No.3</u>*
> *You violated the terms of the undertaking signed by you with the Bank as per Cash Department's Revised systems and procedures.*
> *<u>Charge No.4</u>*
> *You issued cheques on your Current Account maintained at the Branch without maintaining sufficient balance*

therein.

Charge No.5

You raised loans from the Bank and various cooperative societies as a result of which the total monthly deductions from your salary on account of repayment of installments exceeded the prescribed limit of 25% of the salary.

Charge No.6

You obtained loan from a thrift and credit society on the basis of undertaking given by you to the society as a Branch Manager, whereas, you were posted there as Manager (P).”

Departmental inquiry was instituted. The enquiry officer held the charges to be proved against him. He submitted his reply to the enquiry report and on consideration of the same, the disciplinary authority vide order dated 21.2.1997 (Annexure P-6) imposed the penalty of dismissal from Bank service in terms of Rule 67(j) of the State Bank of India Officers Service Rules. The appeal filed by Sh.Wadhera was dismissed vide order dated 20.3.1999 (Annexure P-9). Aggrieved thereof, Sh.Wadhera filed the Civil Writ Petition, which was dismissed. During the pendency of the writ petition, Sh.Wadhera died on 9.11.2004, whereafter, the present appellants, who are the widow, daughters and son of Sh.Wadhera were impleaded as his legal representatives and pursued the writ petition.

The main grounds taken in the writ petition, which have been re-iterated in the present appeal were:

(i) Sh.Wadhera and Sh.D.S.Marwaha were charge-sheeted for the same lapse. However, Sh. Marwaha was let off with a minor punishment of bringing down by one stage in his time-scale in terms of Rule 67(e) of State Bank of India Service Rules but Sh.Wadhera was awarded the maximum penalty of dismissal;

(ii) that the punishment awarded to Sh.Wadhera was grossly disproportionate to the alleged misconduct as prior to this, he had put in an unblemished service of 40 years and no consideration was given to his long years of service with the Bank.

The Learned Single Judge did not agree with the aforesaid contentions. He held that on perusal of the enquiry report it cannot be concluded that findings of the Enquiry Officer are either perverse or based on no evidence. The different treatment awarded to Sh. D.S.Marwaha was held justified on the ground that Sh.Wadhera was not only found guilty of misappropriation of money, but also of an attempt to cover up the same by making cuttings and alterations in the cash register. In view of the above, the writ petition was dismissed.

We have heard Learned counsel for the appellants and gone through the records and find ourselves unable to agree with the decision of the Learned Single Judge.

Learned Counsel for the appellants has contended that the observation of the Learned Single Judge that Sh.Wadhera had been guilty of misappropriation of money is not justified, because no report of misappropriation was ever lodged by the Bank against him and no criminal case was got registered. It has been contended that the very basis of the finding of the enquiry report was that when Sh.Wadhera was confronted with a shortage of Rs.1 lac from the currency chest of respondent Bank after it was detected on 1.4.1994, he gave a confessional statement and undertook to deposit the sum within a day. The English translation of the said alleged confessional statement is as under:-

> "*Shortage of Rs.1 lac as found in currency book dated 7.1.94 I will make good the same by any means by tomorrow. I take the full responsibility of the same.*"

Learned counsel submitted that this statement cannot be construed as a confessional statement, but is in the nature of, admitting a moral responsibility to make good the deficiency in cash as Sh.Wadhera, at the relevant time, was Deputy Manager (Cash) of the respondent- Bank and as per long established practice, whenever cash shortage occurred, money had been recovered from the Head Cashier. It is further argued that the shortage alleged to have been occasioned on 7.1.1994 was detected on 1.4.1994 i.e., after three months and in between on several occasions the cash changed hands. Sh. Wadhera as also the joint custodian had gone on leave on more occasions than one during this period. There are instructions of the Bank for taking/ handing over the charge of cash. If cash was found short during this period it would have been pointed out by the officers who had taken over during the intervening period. Moreover cash verification was done on 10.1.1994, 11.1.1994 and

12.1.1994 by Sh. R.K.Suri, the then Verifying official deputed by the Controlling authority and he had certified the particulars, as shown therein, to be correct.

It has further been argued that Shri Marwaha was absolved of the first charge of having connived with Shri Wadhera, Deputy Manager (Cash) in the removal of cash from the currency chest, only on the ground that the Deputy Manager (Cash) (i.e., Mr. Wadhera) had admitted to the Chief Manager in writing that he is responsible for the loss of Rs.1 lac and would repay the same, while in fact this was not an admission of guilt on his part. It is argued that out of the amount of Rs.1 lac, found short, Sh.Wadhera had deposited Rs.65,000/- and Sh.Marwaha deposited the remaining Rs.35,000/-. If responsibility were to be apportioned merely on the basis of making good the shortage which is one of the primary basis of the findings of the Enquiry officer and the appellate authority, then also, the entire blame could not have been fastened on Sh.Wadhera, to the exclusion of Sh.Marwaha.

It has also been argued that in any event the punishment awarded to Sh.Wadhera is totally disproportionate to the charges, whereas, in the case of Sh.Marwaha, against whom at least two charges, namely:

> "*(ii) He, being the joint custodian of cash, did not check the frequent overwriting/cuttings/ alterations being made by the Dy.Manager (cash) in the cash books. He thus failed to protect Bank's interest; and*
> *(iv) He did not ensure effective control as joint custodian*

> *over the currency chest transactions and violated Bank's laid down instructions. He also failed to ensure the integrity of the Dy.Manager (Cash) who surreptitiously removed cash from the currency chest as mentioned in Charge No.1*"

were held proved, lenient view was taken considering the length of service put in by him in the Bank. However, no such consideration of length of service was given in the case of Sh.Wadhera.

To the contrary the Ld. Counsel appearing for the respondent Bank stressed that absolute integrity, honesty, devotion to duty is expected of a bank official and no leniency can be shown to any employee who does not meet those standards.

Having heard Learned counsel for the parties and taking into consideration the facts that, there was no charge of illegal gratification or of criminal misappropriation against Sh. Wadhera; the amount found short was paid immediately on its detection, Rs.65,000/- by Sh.Wadhera and Rs. 35,000/- by Sh.Marwaha who was the joint custodian of cash with him; Shri Wadhera before the alleged lapse, had put in 40 years of unblemished service and had only three years left before his superannuation and the fact that during the pendency of the petition, he has died leaving behind him a widow, four daughters and a minor son, we are of the considered view that the punishment awarded to him is grossly disproportionate to the alleged lapse. Accordingly, we substitute the punishment of dismissal with punishment of removal from service, which is also one of the major penalties under the State Bank of India Officers Service

Rules. By the aforesaid substitution the appellants would be entitled to some retiral benefits in view of the forty years service rendered by Sh. Wadhera.

Accordingly the appeal is allowed to the extent indicated above.

It is directed that the benefits to which the appellants would be entitled to in terms of the applicable Rules/ Regulations, in view of the substitution of the punishment of dismissal with removal from service be disbursed to the appellants within three months.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

May 27, 2015
gian