IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18018 of 2009

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Bashisth Kumar S/O Late Ram Parikshan Ram R/O Mohalla- Rajeev Nagar, Road No. 21, P.O.- Keshari Nagar, P.S.- Rajeev Nagar, Distt.- Patna

... ... Petitioner/s

Versus

1. Union Bank of India Through Chairman And Managing Director Union Bank Of India, Central Office, Nariman Point, Mumbai
2. Deputy General Manager Union Bank of India, Naseman Bhawan, Nodel Regional Office, Fraser Road, Patna
3. Field General Manager Union Bank of India, Kolkata
4. Disciplinary Authority Union Bank of India, Field General Manager Office, Kolkata
5. Chief Manager, Union Bank of India Nodel Regional Office, Naseman Bhawan, Fraser Road, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Uma Shankar Prasad, Sr. Adv.
Mr. S.N. Shukla, Adv.
Mr. Kamala Kant Tiwary, Adv.

For the Respondent/s : Mr. Birendra Kumar Sinha, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 30-03-2018

Heard learned counsel for the petitioner and counsel for the Bank.

In this case, the petitioner is challenging the order of punishment dated 14.5.2009, whereby and whereunder, the Bank has inflicted major penalty of compulsory retirement from service of the Bank. Against that, the petitioner had filed an appeal which was rejected affirming the order of punishment. The petitioner was appointed as Assistant Manager, Warsaliganj. After completing his four years of service, he was served with a show-cause dated 7.5.2007 wherein serious allegation of financial irregularities have been mentioned, relevant portion whereof rads as follows:-

"A Cheque No. 0010466

Mr. Bashisth Kumar, Branch Manager had violated laid down guidelines while making payment of instruments. It is apparent that *there is material alteration of date of cheque from 23.02.2005 to 23.07.2005 which in a 'naked' eye could be detected and addition in amount from Rs. 9,000/- to Rs. 90,000/-. In words also, additions made from 9 to 90 by taking advantage of blank space in the instrument but Mr. Bashisth Kumar, Branch Manager who did posting, passing the instrument by making payment of Rs. 90,000/- on 26.07.05 could not detect the same. 2nd signature on the reverse of the cheque was also different from the signature made by him in the cheque as drawer at the time of issue of cheque which was overlooked by Mr. Bashisth Kumar while passing the cheque for payment.*

B Cheque no. 0010469 dated 24.06.06

Mr. Bashisth Kumar, Branch Manager also did not verify signature of drawer of cheques. Mr. Bashitsh Kumar single handedly posted the cheques in computer and passed the instrument for payment though there was 2nd officer posted. Signature in specimen card of Mr. Dharam Nath Choudhury differs with signature made in cheque and on the reverse of the cheque also. Mr. Bashisth Kumar did not raise any objection on difference in specimen signature with the signature in the instrument. In figure under70,000/- there was cutting/overwriting for which Mr. Bashisth Kumar, Branch Manager also did not raise any objection and allowed the instrument paid.

Certain irregularities were also observed on KVIC Loans sanctioned during the tenure of Mr. Bashisth Kumar, Branch Manager:

Mr. Bashisth Kumar had sanctioned KVIC SSI Composite term loans in respect of 6 a/cs for Rs. 30.00 lacs and disbursements were made in cash though limit in respect of 3 a/cs yet to functional. Credit appraisal in assessing requirement of loan is not done properly. Internal auditors during audit on 12.01.07 reported serious irregularities in credit appraisal and monitoring of these a/cs. Equitable mortgage of properties created at Chapra Branch. Branch yet to complete inspection of properties mortgaged. Subsidy from KVIC is received in respect of one a/c only though claimed in all cases."

The petitioner has filed his explanation which did not satisfy the disciplinary authority and the same led to issuance of charge dated 21.6.2008 relevant portion whereof reads as follows:-

"A. Cheque No. 0010466 – Shri Bashisth Kumar, Branch Manager had violated laid down guidelines while making payment of instruments. It is apparent that there is material alteration of date of cheque from 23.02.2005 to 23.07.2005 without authorization of the drawer of the cheque and fraudulent alteration in amount from Rs. 9000/- to Rs. 90000/-. In words also, additions made from 9 to 90 by taking advantage of blank space in the instrument. Such alteration in apparent tenor of the cheque could have been detected in normal scrutiny of the cheque before passing for payment. But Shri Bashisth Kumar, Branch Manager who did posting, passing the instrument by making payment of Rs. 90000/- to Mr. Shambhu Rai on 26.07.05 could not detect the same. 2nd signature of Shri Dharam Nath Choudhury, Head Master on the reverse of the cheque was also diffeent from the signature made by him on the cheque as drawer at the time of issue of cheque which was overlooked by shri Bashisth Kumar while passing the cheque for payment.

B. Cheque No. 0010469 dated 24.06.06 – Shri Bashisth Kumar, Branch Manager did not verify the signature of drawer of the cheque which differs with the specimen signature card. Shri Bashisth Kumar single handedly posted the cheque in computer and passed the instrument for payment though there was 2nd officer posted. Signature in specimen card of Mr. Dharam Nath Choudhury differs with signature made in cheque and on the reverse of the cheque also. Shri Bashisth Kumar did not raise any objectin as regards difference/variation in the signature on the cheque with the recorded specimen signature. There was cutting/overwriting in the amount in figure i.e. Rs. 70,000/- for which Shri Bashisth Kumar, Branch Manager also did not raise any objection and allowed payment of the cheque.

Shri Bashisth Kumar had committed serious irregularities in disbursement of 9 SGSY loans for Rs. 1.80 lacs by giving credit proceeds of 9 SGSY loan a/cs to his SB a/c 5806 jointly with wife Nitu Raj in addition to other suspicious transaction in the said SB a/c. which are fraudulent in nature.

Debit and credit vouchers for the aforesaid two transactions for Rs. 1.00 lacs dated 25.04.06 and Rs. 80000/- dated 10.08.06 were prepared and signed by Shri Bashisth Kumar, Branch Manager only and entire amount for Rs. 1.80 lacs were withdrawn from SB a/c 5806 by self drawal cheques on different dates under his signature. Thus instead of giving credit of Bank loan amount to each individual borrowers (9 a/cs) by way of direct cash disbursement to borrowers (No SB a/c opened in favour of borrowers) or by way of pay order to suppliers, Mr. Bashisth Kumar had by way of fraudulent means mis-appropriated Bank's fund to the extent for Rs. 1.80 lacs in the instant case depriving borrowers benefits of SGSY loans under proverty alleviation scheme of govt.

There were cash disbursements in respect of other SGSY loan a/cs @ Rs. 20000/- per borrower in respect of 47 borrowals. In case of illiterate borrowers, cash disbursements were made under 'thumb impression' without verification and without authorization of LTI/RTI

The disciplinary proceeding was initiated, the petitioner participated in the enquiry, the charge no.1 was not proved against the petitioner whereas charge nos. 2, 3 & 4 have been proved, the findings with respect to charge nos. 2, 3 & 4 are as follows:-by officials passing the instruments for payment and in all cases payment were made by Mr. Bashisth Kumar, Branch Manager. Such cash disbursement of SGSY loans coincided with cash deposit in his SB a/c 5806.

Borrowers were sanctioned Bank loan for 'Bidi Making' activity and no such activities were noticed. All cash deposit vouchers for the loan a/cs were prepared and signed by Mr. Bashistha Kumar without any acknowledgment by borrowers.

Mr. Bashistha Kumar had sanctioned KVIC SSI composite term loans in respect of 6 accounts for Rs. 30.00 lacs and disbursements were made in cash though limit in respect of 3 accounts yet to functional. Credit appraisal in assessing requirement of loan is not done properly. Internal auditors during audit on 12.01.07 reported serious irregularities in credit appraisal and monitoring of these a/cs. Equitable mortgage of properties crated at Chapra Branch. Branch yet to complete inspection of properties mortgaged. Subsidy from KVIC is received in respect of one account only though claimed in all cases."

The disciplinary proceeding was initiated, the petitioner participated in the enquiry, the charge no.1 was not proved against the petitioner whereas charge nos. 2, 3 & 4 have been proved, the findings with respect to charge nos. 2, 3 & 4 are as follows:-

"Allegation No.2

I, therefore, hold that Allegation No.2 stands proved to the extent that the CSO committed grave and serious irregularities in disbursement of 9 IRDP loans by giving credit of the loan proceeds to his own S.B. account notwithstanding what the defence witnesses have revealed before the Inquiry and notwithstanding the confirmation of the borrowers that they have received the full amount of loan and that they have no grievance or complain against the Branch or Shri Bashisth Kumar (CSO) in the matter of sanction and disbursement of loans. However, the allegation of fraud is not substantiated.

Allegation No.3

Allegation No.3 stands proved in respect of 14 SGSY loan accounts.

Allegation No.4

The contention of the CSO is not acceptable. All the four borrowers came to the branch on 29.04.2006. All of them deposited Rs. 5000=00 each in their loan accounts. None of them authenticated or acknowledged the deposit. The CSO prepared and posted these *vouchers and he (CSO) also did not sign any of the internal vouchers. This is unusual.*

I, therefore, hold that Allegation No.4 stands proved to the extent that- "All cash deposit vouchers four the loan a/cs were prepared and posted by Shri Bashisth Kumar without any acknowledgment by borrowers." However, non-existence of 'Bidi Making' activities in general, as alleged, stands not proved."

Thereafter, the petitioner was served with enquiry report in turn has filed his explanation, which was not found satisfactory, inflicted the punishment which stood affirmed by the appellate authority.

Learned counsel for the petitioner submits that the enquiry officer did not record finding that he failed to discharge duty with utmost honesty or integrity beyond doubt but, the fact remains that with respect to financial transaction of granting loan, the findings has been recorded that certain amount, which was given to the illiterate borrower, came back to his account which is nothing but, a very serious matter and such person cannot be allowed to continue in the Bank.

So far the punishment is concerned, it cannot be said it is disproportionate. In such a situation, under the judicial review, this Court would not like to interfere with the punishment. This Court does not find any merit in the present writ application and the same is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2018
Transmission Date	NA