

LPA no. 419 of 2018 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA no. 419 of 2018 (O&M)

Date of Decision : 21.03.2018

Oriental Bank of Commerce and others

....Appellant(s)

Versus

Rajesh Kumar Sharma

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJBIR SEHRAWAT**

Present : Mr.Jagat Arora, Advocate for the appellants

MAHESH GROVER, J.(ORAL)

The appellants-Bank is in appeal against the judgment of the learned Single Judge dated 30.1.2018. The respondent as a writ petitioner challenged the order of the disciplinary authority dated 3.6.2015 as also the appellate authority's order dated 20.12.2014 besides impugning the charge-sheet dated 7.3.2014.

While working as Senior Manager he was served with the charge-sheet on 7.3.2014 on a complaint made by Vinod Kumar and Prabhjeet Singh alleging violation of secrecy of customer's account. For the purpose of ready reference, we extract the charges against the respondent hereinbelow:-

“Charge No.1:

He failed to maintain secrecy of customers' accounts and misused his official position to divulge the vital information of their accounts to the third parties as

detailed hereunder:-

1. One of our Customers Mr. Vinod Kumar vide his letter dated 13.8.2013 complained that Shri Rajesh Kumar Sharma has leaked/shared the information of his account in the nature of M/s Vinod Cloth Merchant with brother in law of Shri Vinod Kumar namely Shri Rajesh of M/s Shiva Flex. His above act is against the Bank's guidelines to maintain secrecy of customer's account. Shri Vinod Kumar further alleged vide his letter dated 11.10.2013 that Shri Rajesh Kmar Sharma has said that Shri Vinod Kumar would be sent to jail as the transactions worth crores of Rupees were being routed through his account. Thus Shri Rajesh Kumar Sharma had misused his official position and divulged the vital information of customer's accounts to the third party (Shri Rajesh). His this act of intimidation of Bank's customer is against the interest of the Bank.

2. Our another Customer Mr. Prabhjit Singh has alleged vide his complaint letter dated 21.9.2013 that Shri Rajesh Kumar Sharma is collecting and publishing his accounts statements and tarnishing his image.

Charge No.2

Shri Rajesh Kumar Sharma has passed on vital information pertaining to affairs of our Bank to his brother Shri Vimal Kumar, who has confessed in his

statement made before the Police Authorities that he is seeking information through RTI for the alleged irregularities in the Bank as informed to him by his brother Shri Rajesh Sharma. Shri Rajesh Sharma alongwith his brother Shri Vimal Kumar adversely affected the reputation of the Bank by making a number of pseudonymous complaints by using fictitious mail Ids. Some of the Ids which were used are [:obcpunjab@rediffmail.com](mailto:obcpunjab@rediffmail.com) and aggarwalarun-1966@rediffmail.com. The police investigation has established that the login activities of these Ids were done from the IP addresses assigned to Broadband connections on telephone numbers 0183-2426791 and 0183-5056642 which are in the names of Shri Rajesh Kumar Sharma and Shri Vimal Kumar respectively and are installed at their addresses.

By his above acts Shri Rajesh Kumar Sharma failed to discharge his duties with devotion and dilligence which is unbecoming of a Bank Officer and thus he voilated Regulation 4&3(1) of Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation 24 of the said Regulations constitute misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.”

The inquiry officer concluded against the

respondent and after going through the necessary procedures of serving show cause notice and considering the reply that ensued, the impugned orders were passed by the disciplinary authority which in appeal were approved. The writ Court which looked into the challenge to the impugned orders concluded that the preliminary investigation report of the inquiry officer Sh.R.K.Gupta and Smt. Poonam Sachdeva suffered from a grave fallacy as the non-examination of the complainants Sh. Vinod Kumar and Parabjeet Singh was fatal to the procedure. While accepting the writ petition, his reinstatement was ordered with all monetary consequences.

Impugning the said judgment, learned counsel for the appellants contends that non-examination of the complainants cannot be construed to be fatal as they are not bound to involve their customers in their inquiry proceedings and in this regard he has cited case tilted as S.C.Girotra vs. United Commercial Bank (UCO Bank) and others reported as 1995(3)SCC 212.

We have heard learned counsel for the appellants at some length and are of the opinion that the arguments raised before us deserve to be rejected. We would indeed have no quarrel with the proposition that in a given case it may not be essential to examine the complainant if the charge-sheet can be proved by other means such as production of documents and accounts statements etc. In the instant case the charge levelled against the delinquent employee was of breaching secrecy of customer's account in which eventuality there would be only two persons involved in the breach of privacy through a leak of information; one (delinquent who has breached the secrecy) and the second person who has received the information i.e complainants. Such a charge could not be effectively proved by examining

witness who were alien to the mis-conduct alleged. Therefore, learned Single Judge was right in holding that non-examination of these two complainants was fatal to the disciplinary proceedings against the respondent. There is nothing on record to suggest that the witnesses examined had such information about the breach of privacy of the account holder. We, therefore, do not find any reason to interfere with the findings recorded.

Hence, instant appeal is hereby dismissed. However, delay of 8 days in filing the appeal is hereby condoned.

(Mahesh Grover)
Judge

21.03.2018
rekha
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Rajbir Sehrawat)
Judge