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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of pronouncement: 11th May, 2018

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W.P.(C) 3863/2003 AND CM APPL.6632/2003

UMESH GARG

..... Petitioner

Through Mr. Dhiraj Philip, Mr. Robin David
and Mr. Febin Mathew, Advocates

versus

UNION BANK OF INDIA

..... Respondent

Through Mr. O.P. Gaggar, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGEMENT (ORAL)

C.HARI SHANKAR, J

1. These proceedings, in their essence, emanate from Memorandum dated 13th March, 2000, issued by the respondent-Bank to the petitioner, who was, at that time, working as a Head Cashier at the Okhla Branch of the said bank.

2. According to the Memorandum, the petitioner was guilty, in connivance with two other officials of the bank, namely Mr. T.D. Makhija and Mr. Sohan Lal, of causing considerable pecuniary loss to the Bank. The Memorandum alleges that a current account, in the

name of M/s Mahavir Book Depot, signed by the authorised signatory of the account holder Mr. Awadesh Kumar, who happens to be the son of the petitioner, was opened, and used for transfer of an amount of ₹53,000/-, from the account of M/s Jorgy International to the said account. This transfer, which is stated to have taken place on 21st July, 1998, is alleged to have been authorised by T.D. Makhija. Consequent on the said transfer, the Memorandum further alleges that Mr. Sohan Lal withdrew ₹53,000/- on 21st July, 1998, by entering a fictitious signature on the reverse of the cheque. Though, in such cases, the cheque was required to be cancelled by two officials, the Memorandum alleges that cancellation of the cheque was effected only by Mr. Makhija and that, despite the non compliance with the requirement of two officials authorising the cancellation, payment, against the cheque, was made by the petitioner. It is further alleged that the balance amount of ₹3,000/- was withdrawn, by the petitioner, from the said account of M/s. Mahavir Book Depot on 2nd November, 1998, and that this transaction, too, was authorised by Mr. Makhija. In order to regularise these transactions, it is alleged that the status of the debit transfer entry of ₹53,000/- dated 21st July, 1998, was changed after the end of the day by debiting the entry from the account of M/s Jorgy International, thereby ensuring that the balance in the said account remained constant.

3. The Memorandum dated 13th March, 2000, further alleged that, on 28th September, 1998, an amount of ₹3.8 lakhs was unauthorisedly transferred from the current account of M/s Computer Force India

Pvt. Ltd. to the aforementioned current account of M/s Mahavir Book Depot, of which one transfer debit entry was posted by Mr. Sohan Lal and three transfer debit entries were posted by Mr. Makhija, who authorised all the said transactions. From this, it is alleged that, using a cheque filed by the petitioner, from the account of M/s Mahavir Book Depot, Mr. Sohan Lal withdrew an amount of ₹3.8 lakhs on 28th September, 1998, and that, as in the case of the earlier withdrawal of ₹53,000/-, this withdrawal, too, was authorised only by Mr. Makhija, who cancelled, singly, the said cheque. The petitioner is alleged to have made cash payment of cheque to Sohan Lal, despite the fact that the cheque was, contrary to the procedural regulations, cancelled only by Mr. Makhija.

4. In these circumstances, the Memorandum alleged that the petitioner “connived with Mr. Sohan Lal and Mr. Makhija in the fraudulent transaction with a view to derive benefits for himself”, which amounted to gross misconduct prejudicial to the interest of the Bank, resulting in monetary loss to it. The petitioner was directed to submit his explanation, to the said allegations, within seven days of the receipt of the said Memorandum.

5. Consequent to receipt of the aforesaid Memorandum, dated 13th March, 2000, the petitioner wrote, on 28th March, 2000, to the disciplinary authority of the respondent-Bank, requesting that all relevant records, concerning the transactions referred to in the Memorandum, be made available to him, for verification, so that he

could respond thereto.

6. The respondent-Bank, wrote back, to the petitioner, on 22nd April, 2000, informing him that that his request for being made available all relevant records concerning the transactions, in which he has alleged to have participated and defalcated the bank of monies, could not be acceded to in the absence of any provision, authorising the same in the bipartite settlement governing the service conditions of the staff and employees of the respondent-Bank.

7. The petitioner, thereupon, addressed an undated reply, to the aforementioned Memorandum dated 13th March, 2000, in which primarily, it was sought to be alleged that he was innocent of the transactions in which his son might have participated and that the actual culprits, guilty of the alleged acts which had resulted in pecuniary loss to the bank, were T. D. Makhija and Sohan Lal. The petitioner sought to submit that he had no control over their computer operations and that, therefore, he could not be mulcted with any liability arising out of manipulation of the accounts. He also reiterated the fact that he had requested for being made available the relevant records, in the absence of an opportunity to inspect which, he was unable to offer a complete response.

8. Inquiry proceedings followed.

9. A reading of the said proceedings reveals that the documents

relied upon by the respondent, except documents No.2, 3, 4 and 6, were made available to the petitioner during the inquiry proceedings, with the further assurance that the documents at Serial no. 2, 3, 4 and 6, were available at the branch and would be provided to the petitioner at the time of inspection. The petitioner was, therefore, directed to complete verification of the documents and also submit his requirement of additional documents, if any.

10. In further inquiry proceedings, as many as eleven documents were filed by Mr. P.C. Sharma, Manager appearing as MW-1 before the Inquiry Officer, (hereinafter referred to as “10”) which were exhibited as Management Exhibits and marked as Ex. MEx-2 to MEx-12 in seriatim. The record of the inquiry reveals that copies of the said exhibits were also made available to the petitioner. The evidence that has come on record indicates that the documents MEx-2 and MEx-12 were in the handwriting of the petitioner and also indicates that, contrary to the applicable policy and procedure, he had, in fact, allowed payments against cheques which were cancelled only by Mr. T.D. Makhija. It further appears that, in fact, payment of ₹3.8 lakhs had been made and taken by the petitioner and that the cheques relating to the said amount was not cancelled or passed by the officials.

11. The inquiry proceedings resulted in “final findings” being returned, by the IO on 11th April, 2001, though no copy of the said findings is available on the record. Be that as it may, on the basis of

the said findings, the respondent-Bank held the petitioner guilty of gross misconduct and consequently, awarded him the penalty of compulsory retirement from service, w.e.f. 11th April, 2001.

12. The petitioner appealed against the said punishment to the appellate authority in the respondent-Bank. It was stated, in the said appeal, that the entire loss, alleged to have been suffered by the respondent-Bank as a result of the machinations of T.D. Makhija, Sohan Lal and the petitioner had, in fact, been recovered from Sohan Lal and T.D. Makhija, so that in the ultimate analysis, the bank had not suffered any financial loss. He further sought to plead that the current account of his son, which was used by T.D. Makhija and Sohan Lal, was not in his knowledge and that he had acted, all along, in the belief that the transactions reflected therein were genuine. He sought to contend that payment, against the said entries, through the said accounts of M/s. Mahavir Book Depot, were allowed by him in good faith, with complete trust in the bonafides of the accounts of his son, as per the request of Sohan Lal and T.D. Makhija. Given his unblemished record of service, the petitioner requested for a sympathetic consideration, and, consequently, for a lesser punishment.

13. *Vide* order dated 8th May, 2002, the appellate authority i.e. the General Manager (P) in the respondent-Bank, noting the fact that the inquiry proceedings had conclusively proved collusion, by the petitioner, with Sohan Lal in perpetrating a fraud of ₹23.38 lakhs,

observed that no extenuating/mitigating circumstance, warranting reduction of the penalty imposed on him, had been established by the petitioner. Consequently, the appellate authority opined that there was no reason to interfere with the punishment of compulsory retirement from service, awarded to the petitioner by the disciplinary authority.

14. The first challenge in this writ petition, preferred by the petitioner before this Court, is against the aforementioned decision of the respondent-Bank, to compulsorily retire him from service, and dismissal of his appeal, preferred thereagainst, by the appellate authority. The second limb of the challenge of the petitioner, in this writ petition, relates to recovery, of ₹58,000/-, effected by the respondent-Bank from the retiral benefits, which were granted to the petitioner.

15. Mr. Dhiraj Philip, learned counsel appearing for the petitioner, submits that, out of an amount of ₹1,55,309.48, which had initially been credited in his account towards the retiral benefits due to him, the respondent-Bank had, *suo motu*, withdrawn an amount of ₹58,000/-, without making the basis of such withdrawal, or the basis of computation of the said amount, known to the petitioner. He submits that his client, in fact, represented in this regard to the respondent-Bank, but to no avail. Accordingly, the petitioner prays that the said amount, allegedly illegally withdrawn from his account, be directed to be refunded to the petitioner. Mr. Philip, while candidly conceding that there is no specific prayer for interest contained in the

writ petition, submits that in law, if the impugned withdrawal, from the retiral benefits, of ₹58,000/-, by the respondent, is found by this Court to be unjustified, he would be entitled to refund of the said amount with interest. Mr. Philip would essentially contend that the conspiracy to defraud the bank was essentially between T.D. Makhija and Sohan Lal, and that his client was unnecessarily embroiled therein. He submits that, in law, even if it were to be assumed that his son's account had been used to siphon off amounts from the bank, he, in the absence of evidence of his personal complicity in the said acts, could not be taken to task therefor.

16. As regards withdrawal of ₹58,000/- from his retiral benefits, he submits that there is no basis made known, by the respondent, for such withdrawal and the only response, in the counter- affidavit of the respondent, in this regard, is that, out of the total amount of ₹23.38 lakhs, which the bank was alleged to have lost as a result of the fraudulent activities of Mr. Makhija, Mr. Sohan Lal and the petitioner, the bank had succeeded in recovering the balance from T.D. Makhija and Sohan Lal, and it was the remaining ₹58,000/- which had been recovered from the petitioner's retiral benefits. Learned counsel for the respondent submits that, given the fact that the petitioner had connived in causing pecuniary loss to the bank, he could not, very well, maintain any challenge against such recovery.

17. I have heard learned counsel at length and perused the record.

18. As regards the charges against the petitioner, which resulted in the awarding of the punishment of compulsory retirement, I am of the view that that no case for interference, at the hands of this Court, therewith, is made out. It is not for this Court to reassess the evidence, which has been examined by the Inquiry Officer, the disciplinary authority as well as the appellate authority. Of course, were the case one of no evidence, or of manifest perversity in the appreciation of the evidence, there could possibly be no embargo, on this Court, to re-examine the issue. In the present case, however, due procedure has obviously been followed, inasmuch as the documents were all made available to the petitioner and the evidence adduced by the Management-witness makes it clear that the petitioner had himself been instrumental in having the tainted monies withdrawn from the account of M/s. Mahavir Book Depot. There is no denial of the fact that M/s. Mahavir Book Depot was a firm of the petitioner's son Mr. Awadesh Kumar, or that the current account opening form of the said firm was filled in by the petitioner himself. Needless to say, it would be facile to suggest that the petitioner was totally innocent, and unaware, of the activities of his son, or that the withdrawals of amounts from the account of M/s. Mahavir Book Depot, in which the petitioner clearly played a major role, were all without his knowledge or involvement. It is trite that bank officials are required to maintain the highest degree of probity and integrity, as they are custodians of public monies. The law has been reiterated, in this regard by the Supreme Court, time and again, and it is needless to cite precedent in this regard.

19. I may note, here, that there is nothing on record to indicate that MW-1, who deposed as first witness on behalf of the respondent-Bank, was ever cross-examined, or that any request for such cross-examination was made by the petitioner. Mr. Philip frankly admits that the record does not indicate that any such request was made. If that be so, the evidence of MW-1 which has gone un-rebutted clearly establishes the charges against the petitioner.

20. In view of the concurrent findings by the Inquiry Officer, the disciplinary authority and the appellate authority, I find no reason to interfere with their decision that the charges against the petitioner, as contained in the Memorandum dated 13th March, 2000, stood established.

21. As regards the second limb of the petitioner's challenge, regarding the recovery of ₹58,000/- from the retiral benefits of the petitioner, I find substance in the grievance, of Mr. Philip, that the record does not indicate, particularly how the said amount was computed. Having said that, it cannot be denied that, in view of the fact that the connivance of the petitioner, with T.D. Makhija and Sohan Lal, in defrauding the bank of ₹23.38 lakhs, stands established, he cannot escape financial liability in that regard. Mr. Philip, however, points out that in his appeal before the appellate authority challenging such withdrawal, he had taken a specific ground that the entire amount of ₹23.38 lakhs stood, in fact recovered from Sohan Lal and T.D. Makhija and that, therefore, there was no justification for

effecting any further recovery from his retiral benefits. As regards the recovery, therefore, there are two contrasting versions, with the respondent contending that the amounts recovered from T.D. Makhija and Sohan Lal were short of the total loss suffered by the bank by ₹58,000/-, and the petitioner contending, *per contra*, that the entire loss suffered by the bank had, in fact been recovered from Sohan Lal and T.D. Makhija. Needless to say, this is a disputed issue of fact which, in the absence of any material which could clearly indicate one way or the other, this Court would, at this instance, be loath to enter into.

22. Having said that, in view of the specific stand, by the petitioner, that the amount stood recovered from Sohan Lal and T.D. Makhija, it would be appropriate, and in the interests of justice, in my view to permit the petitioner and the respondent to fight out this issue before the appellate authority i.e. the General Manager in the respondent-Bank, who would hear both the versions and come to a clear finding as to whether there was, in fact, an unjustified recovery of ₹58,000/- from the retiral benefits of the petitioner. While deciding this issue, the appellate authority would also have to examine the basis for recoveries from T.D. Makhija, Sohan Lal and the petitioner. The appellate authority is directed to communicate, to the petitioner, a speaking decision, on this aspect of the matter, after giving an opportunity to represent his case before him, within four weeks from today.

23. Needless to say, in case the petitioner is aggrieved by the decision of the appellate authority in this regard, he would have his legal remedies open to him. As such, it is not necessary for me to opine, at this stage, on the entitlement of the petitioner to interest, which issue is left open to be determined, if the need arises, at the appropriate stage.

24. This writ petition is, therefore disposed of, in the above terms.

25. There shall be no order as to costs.

MAY 11, 2018
Gayatri

C.HARI SHANKAR
(Judge)