IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15491 of 2004

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Vijay Prasad, son of Late Satya Nand Sah, r/o Sachidanand Singh Colony, at & PO Kurthaul, PS Parsa Bazar, District Patna

... ... Petitioner

Versus

1. The Allahabad Bank, 2 Netaji Subhash Road, Kolkata 700001 through its Managing Director
2. The Deputy General Manager, Allahabad Bank Regional Office, 2nd Floor Paras Complex, Circular Road, Ranchi
3. The Assistant General Manager, Allahabad Bank, Budh Marg, Pagtna 800001
4. The Branch Manager, Allahabad Bank, Phulwarisharif, Patna

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi
		Mr. Himanshu Kumar Akela
For the Bank	:	Mr. Shambhu Nath
		Mr. Neeraj Raj

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 06-09-2019

Heard learned counsel for the petitioner as well as learned counsel respresenting the bank.

The petitioner, a clerk cum cashier in the respondent bank, has been visited with an order of punishment by the disciplinary authority on 31.1.2003. Dismissal under the said order has been assailed by the petitioner before the appellate authority. Appeal of the petitioner against the order of dismissal has also been rejected on 28.6.2004. It is these two orders which are impugned in the instant writ proceedings.

Factual background leading to the order of dismissal is that the petitioner was served with a charge memo by the authorities on 30.3.2002. The charge memo is in relation to a period when the petitioner was posted as Clerk cum cashier in Kurthol branch of the respondent bank. The allegation against the petitioner have broadly been enumerated into four charges. Various acts of misappropriation of the funds available in the branch are attributed to the petitioner in connivance with the Branch Manager of the bank. Specific instances have been given whereby the petitioner in connivance with the Branch Manager has misappropriated the amounts by making out drafts in the name of fictitious account holders and by making payments without any cheque or vouchers.

Proceedings were thereafter conducted before the enquiry officer. Enquiry concluded by submission of enquiry report which is dated 19.7.2003. Article I of the charge memo has been held to be partly proved. The remaining three articles of the charge memo have been held to be proved. Upon submission of enquiry report a second show cause notice dated 31.10.2003 was issued to the petitioner by Assistant General Manager -cum-disciplinary authority. The petitioner responded to the same on 30.1.2004. Upon consideration of petitioner's response to the second shoe cause the petitioner has been visited with the order of punishment dismissing him from service.

Against the punishment order the petitioner has preferred a memo of appeal before the Deputy General Manager of the bank who is the appellate authority. The appellate authority by order dated 28.6.2004 has upheld the order issued by the disciplinary authority and rejected the petitioner's appeal.

It is in the aforesaid procedural background that the writ petition has been filed. The submission advanced by petitioner's counsel are that charge memo which has been issued alleging violation of Clause 19.5(j) is not maintainable inasmuch as the said clause is not attracted in the case of the petitioner having regard to the nature of allegation which do not entail any actual financial loss. Petitioner;'s Counsel submits that there is no allegation that the various transaction alleged against the petitioner was done for extraneous consideration and as such Clause 19.5(j) would not be attracted and charge memo alleging violation of clause 19.5(j) of the bipartite settlement of 1966 is therefore not maintainable. Clause 19.5(j) reads as follows:-

> "By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

> (j) doing any prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve bank in serious loss."

Since submissions have been made regarding allegations not coming within the purview of Clause 19.5, the clause has been taken note of.

From bare reading of Clause 19.5(j) this Court would find that it is more than obvious that actual financial loss is not a condition precedent for invoking clause 19.5(j) of the bipartite settlement. Merely for the fact that acts are negligent and likely to involve the bank in financial loss, as per clause 19.5(j) is sufficient to attract the said provision. Submission to this extent therefore are incorrect in view of bare perusal of clause 19.5(j). Allegations which have been proved in the enquiry shows that amounts have been withdrawn by debiting others accounts without permission of account holders and without any cheque or vouchers. In the circumstances, to presume that there was no financial loss would be wholly incorrect.

The other submissions advanced by the petitioner's Counsel through out the course of enquiry and today in course of argument is that irregularity has been conducted in alleged inspection of the branch after the petitioner had already been transferred from the branch. The findings in the inspection that there was no proper recording/maintenance or balancing at the Kurthol branch and that such lapse is in violation of the guidelines issued by the head office, is an issue for which responsibility could be fastened on the officer and the Branch Manager not the petitioner. The fact of inspection is also disputed by saying that it was not properly done.

It has also been submitted by the petitioner before the enquiry officer that at the relevant point of time the branch was being administered by the Branch Manager and just one more staff, i.e. the petitioner, who worked as clerk-cum-cashier. The shortage of staff gave rise to a situation where there may have been certain bonafide lapse, for which the proceedings would not be maintainable against the petitioner. It was due to pressure of the work and under the dictates of the Branch Manager to overcome the shortage of staff that the petitioner has acted. It was under these circumstances that he could not adhere to the job card. Adherence to the procedure would have hindered and caused difficulty in entertaining the customers. This was the practice in the Branch, as per the case of the petitioner, since prior to the petitioner's posting in the branch. Norms had to be overlooked in view of the limited availability of staff strength.

It is also submitted by the petitioner's counsel that in the proceeding the petitioner had raised specific ground regarding non supply of requisite documents and on that score grave prejudice has been caused to the petitioner in meeting the charges before the enquiry officer.

The proceedings before the Enquiry Officer had commenced on 29.7.2002 itself. Petitioner’s defence assistant was approved only on 27.5.2003. In the circumstances, it is submitted on behalf of petitioner that it cannot be said that adequate opportunity was granted to the defence assistant since such assistance was approved to the petitioner at the end of the proceeding just four days before it concluded. It is on these grounds that the petitioner's counsel submits that the proceedings stands vitiated for non compliance with fairness and procedure. It is also submitted that the documentary evidence which had been provided by the management was not duly submitted by any witness in the enquiry.

Learned Counsel for the bank has appeared and made his submissions in support of the action taken against the petitioner. He would submit that relevant proceeding in the enquiry commenced only after defence assistant of the petitioner was approved on 27.5.2003. Prior thereto merely dates were given in the enquiry and it is only after approval of defence assistant that management witness no. 1 was examined in the proceeding. Documentary evidence has been duly submitted by the management witness no. 1. The documents requested by the petitioner on 28.5.2003 contained a list of 14 documents. Seven out of the same have been supplied to the petitioner. It is submitted that the petitioner has further requested for documents which as per the charges do not exist. Specific reference is made to the request made by petitioner for vouchers for an amount of Rs. 2 Lakh, Rs. 50 thousand and Rs. 50 thousand on 20.4.98, 15.4.98 and 13.4.98 respectively. Since the very allegation is that without any such vouchers the amounts have been withdrawn, question of supplying such vouchers does not arise and was humanly impossible.

The petitioner has been given all relevant documents. In respect of the other eight documents which have not been supplied, the petitioner has never raised the issue of their relevance with reference to any allegation. Merely requesting for document without mentioning relevance of the same need not be complied by the authorities. It is only if non supply of any document was to cause any prejudice to petitioner's defence that issue of non supply could be raised. In the facts of the instant case non supply of these documents would not invalidate the proceedings.

In the circumstances the allegation of non supply of document caused no prejudice to the petitioner. It is also submitted with reference to the records that other documents which were in existence were shown to the petitioner in the inspection which was permitted to him.

Further, this Court would find that the authorities have provided adequate opportunity to the petitioner. Reference is made to typed copy of proceeding submitted by the petitioner's counsel in course of hearing on record of this case in respect of the proceeding from 27.5.2003 to 31.5.2003. Management witness no. 1 who has appeared in support of the charges was examined only after approving the petitioner's defence assistant, and in his presence. Signature of the defence assistant is also to be found in the photo copy of records of the proceedings which have been placed in the instant writ proceeding by supplementary affidavit filed on behalf of the petitioner at Annexure 16. The initials of the petitioner's defence assistant namely R.S.Saini are to be found at the end of the proceeding dated 27.3.2003. The irresistible conclusion from the bare perusal of the proceeding dated 27.5.2003 is that the defence assistant of the petitioner was present in the enquiry with effect from, at least 27.5.2003. The relevant documents and the management witness has been examined only thereafter. Approval of Defence Assistant on 27.05.2003 has not caused any prejudice to the petitioner in the enquiry.

The petitioner being a bank employee was required to maintain high degree of integrity and discharged his duties strictly in conformity with the prescribed norms. By processing transaction without proper voucher or cheque or by resorting to debiting of fictitious accounts, large sums of money has been misappropriated from the funds in the branch. The plea regarding shortage of staff cannot be taken to sustain such conduct of the petitioner, which is clearly in violation of clause 19.5(j) of the bipartite settlement. In this connection, reliance has rightly been placed by Counsel for the respondent bank upon the case of United Commercial Bank vs. P.C.Kakkar reported in (2003) 4 SCC 364. In view of such conduct of the petitioner, no leniency can be shown as the bank deals with public money and such action erodes and severely damages the financial discipline which is required to be maintained by the employee serving in the bank. The Branch Manager with whom the petitioner is alleged to have connived has also been visited with same punishment of dismissal from service. His dismissal has been challenged in the writ petition. CWJC No.

10640 of 2007 filed by the Branch Manager has been dismissed by this court and the LPA arising therefrom vide LPA No. 1789 of 2016 has also met the same fate. The issue in respect of the Branch Manager has thus been upheld on the same set of charges.

By raising issues of such prevalent practice in the branch and shortage of staff the petitioner cannot justify the gross negligence and reckless functioning and misappropriation of bank funds.

Counsel for the respondent Bank has rightly relied upon decision of apex court in the case of Union of India vs. P. Gunasekaran reported in (2015) 2 SCC 610. This Court would find that requisite and fair procedure has been observed by the authorities in the departmental proceeding and adequate opportunity has been given to the petitioner. The scope of judicial review is merely for examining correctness of the decision making process and not to the decision itself. Charges have been proved in the enquiry against the petitioner on the basis of materials supported by management witnesses. The petitioner was allowed to cross-examine management witness and requisite procedure after submission of enquiry report has also been followed by the authorities. In the circumstances writ petition under Article 226 does not make out any case for interference.

Having considered the rival submissions, the writ petition is dismissed.

(Madhuresh Prasad, J)

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