IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12629 of 2005

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Rakesh Kumar son of Sri Basistha Narain Singh, r/o Villagte Piro PS Guraul Districtr Vaishali

... ... Petitioner

Versus

1. Canara Bank through its Chaierman cum Managing Director Head Office 112 J.C.Road Bangalore
2. General Manager Canara Bank Head Office 112 J.C.Road Bangalore
3. Deputy General manager Canara Bank Circle office Exhibition Road Patna
4. Branch Manager, Canara Bank Purnia Branch Purtnea

... ... Respondents

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Appearance :

For the Petitioner : Mr.Ajay
Mr. Krishna Chanda
Mr. Rakesh Kumar Ranjan
For the Respondent/s : Mr. Onkar Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 18-10-2019

Heard learned counsel for the petitioner and the learned Counsel appearing for the respondent Bank.

The petitioner who was working as a Clerk in the respondent bank has been charged with some alleged misappropriation of funds deposited by the customers on three different occasions. The charge memo is dated 21.4.2004.

Substance of the allegation is divided into two charges. Charge No. 1 alleges that an amount of Rs. 18000/- was deposited by one customer namely Rajendra Prasad Singh in his account on 12.3.2003. Having made such deposit he issued a cheque in favour of Life Insurance Corporation of India which was dishonoured on 18.3.2003 due to insufficiency of funds. The said depositor was sent advice of dishnour on account of insufficiency of fund. He thus came to know that due to non credit of amount of Rs. 18000/-, i.e., the cash deposited on 12.3.2003, cheque issued in favour of Life Insurance Corporation stood dishonoured. The petitioner was alleged to be the receiving cashier on 12.3.2003 and therefore charge memo was issued to him that though cash deposit was received on 12.3.2003 the same were not accounted for in the accounts of the bank till 24.3.2003. The customer namely Rajendra Prasad Singh had made his complaint on 22.4.2003.

It is submitted by petitioner’s counsel that the complaint has been lodged by a substantial delay on 22.4.2003 though dishonour of the cheque had occurred on 23.3.2003 itself. Though the amount of deposit was credited on 24.3.2003, the charge alleges that after the complaint dated 22.4.2003 the amount was accounted for by the petitioner on 24.3.2003. The charge to this extent is perverse as the admitted position from the charge is that the amount was accounted for on 24.3.2003 and thereafter the complaint was lodged on 22.4.2003. This shows preconceived notion with which the authorities proceeded against the petitioner.

Defence of the petitioner in respect of this charge is that by manipulating the date of deposit mentioned in the paying-in-slip/ counterfoil, the petitioner has been falsely implicated in this case. The manipulations have been done by the depositor only after the dishonour of cheque issued in favour of Life Insurance Corporation. To cover up the dishonour, the account holder has deposited the amount thereafter on 24.3.2003 and by making manipulations in the pay slip as well as counterfoil had wrongly antedated the deposit to be of 12.3.2003. The charges are therefore unsustainable.

Counsel appearing for the bank submits that the paying-in-slip as well as counterfoil were produced in the enquiry as management exhibits. Even in the instant proceeding the same have been brought on record as Annexures R/2 and R/3. Bare perusal of the same would show that the counterfoil issued by the petitioner, who was the only receiving cashier on that date functioning in the bank, shows the date of receipt to be 12.3.2003.

Counsel for the bank further submits that the discrepancy in the charge memo which has been alleged is immaterial. At best it is an example of some mistake in stating the facts which are immaterial as the date of credit in the account and the date of lodging complaint have not been wrongly stated. The manner in which the fact regarding the deposit being made after complaint has been mentioned is not detrimental to the charges, which otherwise has been proved in the enquiry on the basis of management exhibits and witnesses who have appeared in proof of the charge. The allegation of the petitioner regarding manipulation in the paying-in-slip and counterfoil are far fetched. From perusal of the counterfoil it is apparent that the same does not have any manipulation as there is only one date mentioned thereon i.e. 12.3.2003. The counterfoil itself fully substantiates the allegations that though the amount was received by issuance of counterfoil on 12.3.2003, the date of deposit has been mentioned as 24.3.2003 in the paying-in-slip available in the bank records, on which date the amount has actually been accounted for by the petitioner.

As regard Charge, I this court would observe that the paying in slip unequivocally mentions the date of accounting for of the amount of Rs. 18000/- as 24.3.2003. On the basis of date mentioned in the paying in slip it cannot be presumed that the cash was actually received at the counter on that date itself more so in view of the fact that the counterfoil issued by the petitioner (Annexure R/3) clearly mentions an earlier date of receiving of the cash as 12.3.2003. It is apparent that after receiving cash Rs. 18000/- on 12.3.2003, petitioner has credited the amount of the customer by actually depositing the same on 24.3.2003. The manipulations alleged by the petitioner against the account holder therefore appears to be clearly unfounded.

As regard the complaint being delayed, this Court would observe that entire documents right from the counterfoil, paying in slip as well as advice of dishonour are on record. It is only after the advice of dishonour reached the customer that he came to complain to the authorities. The delay is not shocking or inordinate and appears to be normal conduct of any person in the circumstances. The alleged predisposition of the authorities on the basis of manner in which the Charge No. I has been described in the charge memo is also far fetched as dates have rightly been mentioned therein and on the basis of charge

No. I as framed the same were clear to comprehend and provide adequate opportunity to the petitioner of responding to the same.

The petitioner has been allowed adequate opportunity in the proceedings also. The procedural requirement by issuance of charge memo, opportunity for filing written statement for defence, opportunity of second show cause have all been provided to the petitioner. In the circumstances this Court does not find any reason to interfere with the findings in respect of Charge No. I

The charge memo however contains another charge i.e. Charge No. II. This charge is comprising of two different transactions. One of the transactions is deposit of an amount of Rs. 25000/- on 24.3.2003 by Shah Jahan husband of Nushrat Jahan in her account. In respect of the amount of deposit of Rs. 25000/- it is alleged that the same was not credited to her account. On account of non credit of amount of Rs. 25000/- in the S/B Account No. 8815 said Nushratjahan was unable to make withdrawal from her account. It is in these circumstances that complaint has been made against the bank. Once again the charge is that since the petitioner was the receiving cashier on that date the petitioner cannot escape the liability for non credit of the amount of Rs. 25000/-. The other deposit which is part of Charge II is an amount of Rs. 5000/- deposited on 12.45.2003 but the same was not credited in the account of the depositor namely Dilip Bahadur who was the account holder of S/B Account No. 9251.

In respect of alleged non credit of Nushrat Jahan, Counsel for the petitioner points out from the enquiry report that Nushrat Jahan as well her husband Shah Jahan who is said to have made the deposit appeared in the proceedings but did not recognise the chargesheeted employee as the receiving cashier to whom he had handed over the deposit on 24.3.2003. This fact has specifically been taken note of in the enquiry report by the Enquiry Officer at page 53. This Court would reproduce the findings of the Enquiry Officer in this regard:-

> "During the enquiry MW5 and MW6 did not recognise the CSE as Receipt Cashier but in the complaint lodged with the District Consumer Forum the party has mentioned the name of Sri Rakesh Kumar as receipt cashier"

Referring to these findings in the enquiry report, it is submitted that the petitioner has been named in the complaint only as an afterthought. Unless the allegationist who has named the petitioner supports the allegations in the proceeding, the allegations cannot be relied upon to visit the petitioner with penal consequences. The allegationist after naming the petitioner has not recognised him as the receiving cashier and therefore the petitioner could not have been held liable for the non credit of deposit of Rs. 25000/- on 24.3.2003. This submission of the petitioner is correct on the basis of records of enquiry.

In so far as the second allegation of non credit of Rs. 5000/- in the account of allegationist Dilip Bahadur pursuant to his alleged deposit on 12.4.2003 findings of the Enquiry Officer cannot be sustained even on the standards of preponderance of probability. Dilip Bahadur (allegationist) had chosen not to appear in the enquiry in support of the allegations, let alone identify the petitioner as receiving cashier. The records of the bank which as per bank's case are supportive of the fact of receiving being given by the petitioner have also not been subjected to any expert examination to ascertain whether the two paying-in-slip i.e., receipt/counterfoil of the deposit of Rs. 25000/- and Rs. 5000/- were issued by the petitioner. The findings in respect of Charge II in the opinion of this Court are therefore clearly unsustainable for want of any evidence in support of the same before the Enquiry Officer.

The aforesaid discrepancies alleged by the petitioner were also raised in appeal before the Appellate Authority. The Appellate Authority has also proceeded to dispose of the appeal affirming the findings in the enquiry. The appellate authority order affirming the findings against the petitioner in respect of Charge No. II are also thus unsustainable.

This Court would hold that the findings in respect of Charge No. II are without any basis. In both charges the allegationist has either not identified the petitioner as the receiving cashier or refused to appear in the proceedings to identify the petitioner as receiving cashier. Receiving attributed to the petitioner based on records in the bank have also not been subject to any expert opinion to ascertain whether the petitioner has actually signed on the receiving. There is no statement of any officials of the bank identifying signature of the petitioner. Merely because the Bank Guard has supported the fact of one of the depositor visiting the petitioner on that date and taking assistance of the Bank Guard to fill up the paying-in-slip it cannot be concluded that the deposits were actually handed over to the petitioner and that the petitioner had accepted the same.

The findings in respect of Charge No. II are clearly a finding based on no evidence. In so far as the conclusion of the Disciplinary Authority in respect of charge II, this Court would set aside the same. The order of the Disciplinary Authority as well as Appellate Authority in the order dated 27.1.2005 and 19.8.2005 respectively are hereby quashed, in so far as charge no. II is concerned.

As a result of quashing of the proceedings in respect of second charge the matter is remanded to the Disciplinary Authority to reconsider quantum of punishment. The Disciplinary Authority should proceed to reconsider quantum of punishment expeditiously, without undue delay and preferably within three months from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

SNkumar/- **(Madhuresh Prasad, J.)**

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