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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 25th November, 2019**

\+ W.P.(C) 6521/2015 & CM APPL.11872/2015

RICH PAL SINGH ..... Petitioner

Through: Mr.Inderpal Khokhar, Mr.Gaurav Solanki, Advocates

versus

ASSTT. GENERAL MANAGER, SYNDICATE BANK ..... Respondent

Through: Mr.Rajesh Mahindru, Ms.Laxmi Kumari, Advocates along with Mr.Ashok Saxena, Senior Manager(HR), Syndicate Bank

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner has challenged the award of the Industrial Tribunal whereby his claim for reinstatement in service was dismissed.

2. The petitioner was working with the respondent Bank as an attender. In January, 2003, the petitioner was posted at the extension counter of the Bank at DTC Wazirpur Depot Extension Branch. On 27th May, 2003, shortage of Rs.600/- was found in two packets of Rs.100/- denomination whereupon the officials verified the entire cash kept in the double lock and further found shortage of Rs.700/- (seven notes in the packet of Rs.100 denomination). After counting the cash, the officials asked the petitioner to carry the entire cash in double lock when he hurriedly broke the packet in which there was shortage and he mixed his own loose cash of Rs.700/- to

make up the shortage. The respondent issued a charge sheet dated 05th April, 2004 to the petitioner. Relevant portion of the said charge sheet is reproduced hereunder:-

> *"That you have been working as attender at our CAO, New Delhi since 20.01.2004 and prior to this, you were working at our Azadpur branch and were entrusted to work at Wazirpur Depot Extn. Counter attached to Azadpur branch during the period between 01.01.2003 and 30.05.2003. While functioning in your position as such, the following circumstances appear against you:*
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> *On 27.05.2003, Currency Chest Asaf Ali Road, New Delhi, authorities informed the Wazirpur Depot EC official that while counting the cash remitted to them by the Extension Counter, a shortage of Rs.600/- in two packets of Rs.100/- denomination has been found. The EC officials verified the entire cash kept in the double lock and found shortage of Rs.700/- (7 pieces of notes in a packet of Rs.100/- denomination) thus the total shortage amounted to Rs.1300/- in the packets of Rs.100/- denomination. It is reported that when the staff members including you were questioned by the EC officials about the said shortage of cash, you confessed in presence of other staff members, having removed these notes from packets of Rs.100/- denomination. Subsequently you also reimbursed Rs.1300/- towards the said pilferage/shortage. Out of Rs.1300/- reimbursed by you, Rs.700/- was kept as loose cash alongwith the packets of Rs.100/- denomination, wherein the shortage was found at EC. After counting the cash, you were asked to carry the entire cash in the double lock, you hurriedly broke open the said packet in which there was a shortage and mixed ta your own the loose cash of Rs.700/-, kept with that packet to make the packet complete.*
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> *That you have availed the loan facilities from the Bank under Staff Loan Schemes and deliberately concealed your outside direct/indirect liabilities in order to avail the said facilities.*
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> *<u>The following lapses are attributed to you in the matter</u>:*
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> *(i) That you with dishonest intention resorted to pilferage of cash amounting to Rs.1300/- from packets of Rs.100/- denomination, tendered to you for making bundles. Subsequently you*

reimbursed the said amount and thereby derived pecuniary benefits for self temporarily.

(ii) That you have also destroyed evidence by unauthorizedly break opening the packet of Rs.100/- denomination in which shortage was found at EC and mixed the loose notes of Rs.700/- kept with the packet.

(iii) That you have not disclosed outside borrowings while availing loans from the Bank under various staff loan schemes.

It is alleged against you that you with dishonest intention resorted to pilfering of cash amounting to Rs.1300/- from cash packets of Rs.100/- denomination and misappropriated the same temporarily and failed to discharge your duties with utmost integrity/honesty thereby acted in a manner detrimental to the interest of the Bank. You also deliberately concealed your outside liabilities while availing loans from the Bank.

The above acts on your part are highly objectionable and amount to misconduct within the meaning of the Bipartite Settlement (Memorandum of Settlement) dated 10.04.2002. You are, therefore charged with the gross misconduct of 'doing acts prejudicial to the interest of the Bank' vide Clause 5(j) of the Bipartite Settlement (Memorandum of Settlement) dated 10.04.2002)."

3. The respondent Bank conducted an enquiry which resulted in the report dated 19th October, 2004 holding the petitioner guilty of gross misconduct. The Disciplinary Authority accepted the report of the enquiry and awarded punishment from dismissal of service to the petitioner. The petitioner raised an industrial dispute which was referred to the Industrial Tribunal.

4. On 13th April, 2011, the Industrial Tribunal framed the issues. Issue No.1 as to whether the enquiry conducted by the management was fair and just, was treated as a preliminary issue.

5. Vide order dated 17th August, 2011, the Industrial Tribunal decided Issue No.1 in favour of the claimant. The Industrial Tribunal held that the

enquiry was violative of principles of natural justice whereupon the bank sought an opportunity to prove misconduct of the claimant before the Industrial Tribunal which was allowed.

6. The Bank examined five witnesses to prove misconduct namely, Shankar Lal (MW-1), T.R. Rajgopal (MW-2), Indu Trikha (MW-3), Sudharshan (MW-4) and M.L. Sharma (MW-5). The petitioner appeared in the witness box as WW-1 and examined one witness namely, Subhash Chander (WW-2).

7. The Learned Tribunal held that the Bank duly proved the misconduct and the punishment of dismissal of service imposed on the petitioner does not warrant any interference. The conclusion of the Learned Tribunal is reproduced hereunder:-

> *"40. As noted above, the claimant pilfered cash amounting to Rs.1300.00 from packets of Rs.100 in denomination, destroyed evidence of pilferage of currency notes by way of unauthorizedly breaking open the packet of Rs.100 in denomination in which shortage was noted, mixed loose cash of Rs.700.00 kept with the packet and had not disclosed his outside borrowings while availing loan from the bank, under various staff loan schemes. <u>Misconduct like cheating, fraud and misappropriation of employers funds are grave one, justifying punishment of dismissal from service. Taking into account the gravity of misconduct committed by the claimant, I am of the considered opinion that the punishment imposed on the claimant does not require any interference by the Tribunal.</u>*
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> *xxx xxx xxx*
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> *51. In view of above discussion, <u>I am of the considered opinion that the claimant is not a person on whom the bank can depend upon. Banking business is conducted on trust and confidence. When an employee is found not to be trust worthy, his retention in service may affect business of the bank. Such an employee cannot be retained in service. Therefore punishment of dismissal is not to be interfered with by this Tribunal</u>. The claimant is not entitled to any relief not to*

talk to relief of reinstatement in service. His claim statement is liable to be dismissed. Accordingly, it is concluded that the action of the bank in dismissing the claimant from service is legal and justified. Claim statement is brushed aside. An award is passed in favour of the bank and against the claimant. It be sent to appropriate Govt. for publication."

(Emphasis supplied)

8. Learned counsel for the petitioner urged at the time of hearing that the inquiry was not conducted fairly; the respondent failed to prove the charge of misconduct by the petitioner before the learned Tribunal; the alleged confession was obtained forcibly; the testimony of the respondent's witness was not trustworthy; the petitioner had an unblemished record of 20 years of service and he was falsely implicated.

9. Learned counsel for the respondent urged at the time of hearing that the enquiry was conducted fairly. Without prejudice, it was submitted that respondent duly proved the charge against the petitioner before the Learned Tribunal. It was further submitted that the petitioner was terminated in 2005 and he raised the industrial dispute in 2011. It was further submitted that petitioners' misconduct resulted in loss of confidence. Reliance was placed on ***State Bank of Travancore v. Prem Singh,*** 2019 SCC OnLine Del 8258.

Discussion and Findings

10. The respondent examined five witnesses to prove the charge against the petitioner. MW-2, T.R. Rajgopal working as a Manager Incharge in the Bank Extension Counter at the relevant time deposed that the Currency Chest, Asaf Ali Road informed the Extension Counter on 27th May, 2003 that there was shortage of six currency notes of Rs.100/- denomination in the cash sent from the Extension Counter and the stamp of Extension Counter on the back and front of the packets was not matching. On that information,

the entire cash lying in the double lock of the Extension Counter was re-counted and shortage was found in seven notes of Rs.100/- denomination in one packet and the half stamp of the Extension Counter affixed on the back side of the packet was missing, whereupon MW-2 inquired from staff members and the claimant admitted his guilt before the staff members that he removed the notes from the packets and he was ready to pay that amount. The petitioner apologized for his conduct and assured that such conduct would not be repeated again. The petitioner paid shortfall of Rs.1,300/- (Rs.600/- found short in the Currency Chest and Rs.700/- found in the packet of Rs.100/- at the Extension Counter). The witness went to take keys of the double lock from this drawer. By the time he came with the keys, the petitioner mixed the loose cash of Rs.700/- in the packet of Rs.100/- in which the shortage was noted by breaking the docket and by putting a new docket on it and the petitioner also mixed the packets of cash. When the petitioner was questioned, he told that he had completed the packet in which there was shortfall. The petitioner destroyed the evidence by mixing the loose cash in the packet in which the shortage was found. MW-1 proved the note dated 29th May, 2003 which was signed by Bhure Lal, Indu Trikha, Sudharshan and Bhram Prakash. MW-1 further proved the documents Ex. MW-1/12, MW-1/13, MW-1/14 and MW-1/16.

11. MW-3, Indu Trikha was working as a Clerk at the Extension Counter and she deposed that upon receipt of the information of shortage of cash amount of Rs.600/- from the Currency Chest, the entire cash in the double lock of the Extension Counter was re-counted by her along with the Joint Custodian after which a shortage of Rs.700/- was noted. The petitioner orally admitted his guilt in front of all the staff members and reimbursed

amount of Rs.1,300/-. She deposed that the petitioner agreed to give a written confession on 28th May, 2003 but later did not do so. She admitted her signatures on the statement Ex.MW-1/13.

12. MW-4, Sudharshan re-affirmed the facts stated by MW-3. She deposed that the petitioner orally admitted his guilt in front of all the staff members and reimbursed a sum of Rs.1,300/-. She admitted her signatures on Ex.MW-1/9 and Ex.MW-1/12.

13. MW-1, M.L. Sharma was working as Manager, Azadpur Branch at the relevant time. He deposed that the petitioner had taken loans from various cooperative societies and had also availed staff advances/loans from the bank. While availing staff advance, he deliberately concealed information with respect to his liabilities with different cooperative societies in his loan application. He proved the relevant documents Ex.MW-1/20, Ex.MW-1/21, Ex.MW-1/22 and Ex.MW-1/23. He deposed that false information was furnished by the petitioner while availing the loan.

14. The petitioner appeared in the witness box and stated that MW-2, T.R. Rajgopal was not having cordial relation with him due to his low caste and was in the habit of calling him SC/ST and was biased against him and used to harass him in many ways. He deposed that he was made scapegoat in the incident dated 27th May, 2003 to save influential people. MW-2 asked the petitioner to reimburse Rs.1,300/- and give a written confession which he refused whereupon MW-2 and others assured him that he would be saved in case he gave the confession. The petitioner did not agree and was taken to the basement double lock where MW-2 informed Mr. Mittal that the petitioner has come whereupon Mr. Mittal grabbed him by the collar and pushed him forcefully and threatened him that if he does not give a

confession in writing, they will frame him. He deposed that the packets of notes and dockets were not given to him. He further deposed that the cash receipt from DTC Depot used to be kept inside sometimes without counting and any deficiency was to be reimbursed by DTC Officers and staff members.

15. The petitioner examined Subhash Chander as WW-2 who deposed that the petitioner was taken to the basement by T.R. Rajgopal and Mr. Mittal and he followed them. Mr. Mittal wanted a written confession from the petitioner that he had embezzled Rs.5,00,000/- and assured that nothing would happen. When the petitioner refused to confess, Rajgopal and Mr. Mittal started beating him. WW-2 questioned them as to why they were beating the petitioner upon which Mr. Mittal answered that that issue is of Wazirpur Depot Branch. WW-2 asked Mr. Mittal that when the issue arose out of another branch, they why the petitioner was being beaten. Thereafter, the petitioner went upstairs from the basement where he was again beaten by Mr. Mittal and T.R. Rajgopal.

16. The facts relating to the receipt of telephonic information from the Currency Chest, Asaf Ali Road on 27th May, 2003 concerning deficiency of currency notes have not been dispelled by the petitioner. The respondent has duly proved that the Currency Chest, Asaf Ali Road informed the shortage of Rs.600/- in packets of Rs.100/- denomination on 27th May, 2003 whereupon all the cash lying in the double lock was checked and shortage of Rs.700/- in the bundle of Rs.100/- denomination was noted and the half stamp of the Extension Counter affixed on the back side of the packet was also missing. The respondent has duly proved that the petitioner used to prepare, put, seal and rubber band on the docket in the cabin of the Cashier.

In the absence of the Cashier, the claimant used to remain alone while preparing the dockets and putting seal on the currency notes and he only had the opportunity to tamper with the packets of notes. The respondent has further proved that the petitioner use to go alone in the Strongroom (where the cash is kept) to collect stationary. The respondent further proved that claimant admitted his guilt and reimbursed Rs.1,300/- but later he attempted to destroy the evidence by mixing the seven notes of Rs.100/- in the packet. Indu Trikha (MW-4) and Sudharshan (MW-3) corroborated the evidence of the Branch Manager, Rajgopal (MW-2).

17. The claimant has made allegations against the Branch Manager Rajgopal. However, no animus has been attributed against Indu Trikha, Sudharshan, Bhure Lal and Bhram Prakash who all signed the note, Ex.MW1/9 relating to the incident. The learned Tribunal did not find any material to disbelieve the testimony of these witnesses.

18. The learned Tribunal rejected the averments of the petitioner that the complaint against him was motivated. The learned Tribunal held that the respondent has successfully proved the misconduct of the petitioner by the testimony of the five witnesses is consistent in all respects. The learned Tribunal further held that the respondent has successfully proved that the petitioner concealed his liabilities in application for seeking advance from bank on the strength of the application, Ex.MW-1/23. The learned Tribunal disbelieved the petitioner. The learned Tribunal rejected the testimony of WW-2, Subhash Chandra as false.

19. This Court is satisfied that the respondent has successfully proved the misconduct of the petitioner by examining five witnesses who are consistent in all respects. The testimony of all the witnesses of the petitioner is

accepted as true. On the other hand, the testimony of the respondent and his witness does not pass the test of judicial belief. The statement of Subhash that the petitioner was beaten by Mr. Mittal and T.R. Rajgopal is false as the petitioner himself has not made such allegation against any of them. The whole case of the petitioner is base based on falsehood and is hereby rejected. There is no merit whatsoever in the contentions urged by the respondent.

20. This Court agrees with the well reasoned findings of the Industrial Tribunal in the impugned award. This Court also agrees with the learned Tribunal that the punishment of removal from service imposed on the petitioner is commensurate with his misconduct. The penalty imposed on the petitioner does not warrant any interference. This petition is gross abuse and misuse of process of law.

21. This Court agrees with the learned Tribunal that the bank lost the confidence in the petitioner who cannot be retained in service. The law with respect to the loss of confidence is well-settled that the reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. Reference be made to ***State Bank of Travancore*** *(supra).*

22. The writ petition is dismissed. The pending application is disposed of.

J.R. MIDHA, J.

NOVEMBER 25, 2019
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