

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 280 of 2020

Palan Chandra Naskar

Vs.

Bank of Maharashtra and others

For the petitioner : Mr. Srikanta Dutta,
Ms. Rituparna Sarkar Dutta

For the respondents : Mr. Saunavo Basu

Hearing concluded on : 19.11.2020

Judgment on : 04.12.2020

The Court:

1. The petitioner has been working as a clerk with the respondent no. 1-bank, Sevoke Road Branch, Siliguri and was deputed at the deposit counter of the said branch during the relevant period. As per the petitioner's version, the respondent no. 4 (Vikash Agarwal) approached the counter on February 23, 2008 to deposit an amount of Rs.8,500/- and handed over the requisite pay-in-slip along with the cash. The petitioner, after affixing the stamp 'Received' on the said slip and signing the petitioner's name, noticed that there was no 'scroll number' on the pay-in-slip, allegedly required for deposit of cash as per the norms of the bank. The petitioner returned the voucher to the

respondent no. 4, along with the entire amount of money, and requested respondent no. 4 to come back with the scroll number. Subsequently, respondent no. 4 did not return and left the bank, unnoticed by the petitioner. February 23, 2008 was a Saturday and, under the pressure of closing, the petitioner allegedly forgot the episode and did not report such irregularity to any superior authority.

2. On February 25, 2008, respondent no. 4 came to the bank and sought to withdraw Rs.7,000/-, which transaction was declined on the ground of 'insufficiency of balance', consequent to which respondent no. 4 reported the matter to the authorities, alleging that he had deposited Rs.8,500/- on February 23, 2008, which rendered the refusal invalid. Vikash also produced the counter foil of the pay-in-slip.
3. On February 27, 2008, the Assistant General Manager and Regional Head, Kolkata Region issued an office order of suspension against the petitioner vide letter No. AX9/ST/07-08/125/2008.
4. However, according to the petitioner, the respondent no. 4 realized his error thereafter, returned to the Sevoke Road Branch of the respondent no. 1-bank and submitted a letter admitting the actual circumstances. Vikash, allegedly, deposited the amount of Rs.8,500/- with the bank as well. A copy of the said letter, dated March 27, 2008, is annexed at page-49 of the writ petition.

5. On May 24, 2008, the respondent no. 3, that is, the Disciplinary Authority and Chief Manager, Regional Office, Kolkata issued a show-cause notice bearing Reference No. AX9/ST/BPS/2008, against which the petitioner made a representation to the Assistant General Manager, Bank of Maharashtra, Regional Office on August 6, 2008, denying the allegations made in the show-cause notice.
6. On February 10, 2009, the respondent no. 3 issued a charge-sheet (Reference No. AX9/CM/DM/2009/1) against the petitioner, to which the petitioner used a reply on April 23, 2009. On May 5, 2009, the petitioner allegedly sought permission from the Enquiry Officer to engage an advocate, to appear on his behalf in the enquiry proceeding, but was refused the same. The enquiry proceeding, the minutes of which were recorded, started on May 25, 2009 and on June 8, 2009 the Presenting Officer produced documents on behalf of the bank management to prove the charges against the petitioner.
7. Evidence was adduced, both oral and documentary, on behalf of both sides and ultimately, on May 20, 2010, the respondent no. 3 passed the final order (Reference No. AX9/ST/CM/DM/PCN/2010/3199), inter alia dismissing the petitioner from his service, primarily on the ground of gross misconduct.
8. The petitioner preferred on July 16, 2010, before the Appellate Authority, an appeal against the final order. The petitioner alleges that no hearing

was given to the petitioner in respect of such appeal. The petitioner moved a writ petition, bearing W.P. No. 20536(W) of 2011, which was subsequently withdrawn with the leave to file afresh on the self-same cause of action. Thereafter, the petitioner filed W.P. No. 37926(W) of 2013. A co-ordinate bench set aside the order of the Appellate Authority and directed the appeal to be heard afresh and to be disposed of by a reasoned order within four months from that date.

9. Thereafter, hearing of the appeal was conducted by the Authorities on March 21, 2015 and, vide Order dated March 31, 2015, the Appellate Authority upheld the order of the Disciplinary Authority, that is, the respondent no.3.
10. The order dated May 20, 2020 as well as the appellate order dated March 31, 2015 have been challenged in the present writ petition.
11. Learned counsel for the petitioner submits that relevant documents, including Exhibit-ME13 (the letter allegedly submitted by the respondent no.4) and the oral evidence of D.W.1, an employee of the bank itself who was on duty near the counter of the petitioner on the relevant date. It is argued that the sole witness of the bank (M.W.1) admitted that the respondent no. 5 accompanied Vikash when ME13 was submitted by the latter. The respondent no. 5 (D.W.2), in his evidence, corroborated the version of the petitioner. These factors,

according to the petitioner, were not considered at all in holding the petitioner guilty of an offence not committed by him.

- 12.** That apart, in spite of the fact that the allegations against the petitioner were 'disproved', as envisaged in the Indian Evidence Act, 1872, the authorities proceeded on the premise that those were, at best, 'not proved'.
- 13.** Moreover, it is argued that the impugned orders are 'non-speaking' in nature and, hence, ought to be set aside on that score as well.
- 14.** While controverting such arguments, learned counsel for the respondent-authorities argues that the petitioner has failed to prove any mala fides or arbitrariness on the part of the respondents. It was well within the bank's powers to take disciplinary action against the petitioner.
- 15.** It is further argued that the Disciplinary Authority took into consideration all the contentions raised by the petitioner and came to a conclusion upon taking into account all relevant circumstances.
- 16.** It is submitted that the petitioner has been a habitual defaulter, not merely in respect of allegations as to the misappropriation of Rs.8,500/- but also in respect of taking loans and delaying the repayment of those on several previous occasions. In fact, contrary to the rules of the bank, the petitioner failed to deposit title deeds

regarding his property against loan advanced to the petitioner by the bank.

17. It is argued that the entire conduct of the petitioner was considered by the authorities and detailed reasons provided in the orders impugned, before dismissing the petitioner from service. Placing several portions of the final order dated May 20, 2010, as well as the decision of the Appellate Authority, it is submitted that none of the orders was non-speaking; rather, it is reflected from the impugned orders that all the previous conducts of the petitioner were considered while passing the orders.
18. It is further submitted that the petitioner failed to justify his action in granting receipt for the amount of Rs. 8,500/- to the respondent no. 4 while failing to deposit such amount in the accounts of the respondent no.4. Moreover, the petitioner, admittedly, did not disclose the developments of February 23, 2008 to any of his superior authorities, either on the relevant date or subsequently. Only after the respondent no. 4 came to withdraw an amount, which was declined on the ground of insufficiency of balance, and the authorities sought for an explanation, did the petitioner set up his concocted defence.
19. It is further argued that the alleged letter written by the respondent no. 4 *ipso facto* does not prove the innocence of the petitioner.

- 20.** As such, it is argued that the authorities acted well within their jurisdiction in dismissing the petitioner upon a proper enquiry being held.
- 21.** Upon considering the submissions of the parties, it is revealed that, upon the matter being remanded by a co-ordinate bench of this court, the authorities gave a proper hearing to the petitioner. Moreover, the orders impugned in the present writ petition are well-reasoned and cannot, by any stretch of imagination, be considered to be non-speaking.
- 22.** That apart, the petitioner failed to explain his conduct in returning the cash amount of Rs.8,500/-, along with the receipt, to the respondent no.4 instead of depositing the same.
- 23.** If the discrepancy in accounts was never discovered, either at the behest of the respondent no. 4 or by the authorities on their own, it is doubtful as to whether the petitioner would have disclosed the incident to the authorities at all. Despite getting sufficient opportunity to do so, the petitioner chose not to give an explanation or report the matter to the authorities, until called upon to do so on the discrepancy in accounts coming to light due to Vikash's request of withdrawal of Rs.7,000/- being declined by the bank.
- 24.** Post-computerization of banks, the recording of deposits in accounts is not necessarily preceded by a deposit scroll being handed out. Even

prior to the era of digitization, the issuance of a deposit scroll and the recording of deposits were internal matters of the bank. There could not have been any justification in the petitioner issuing a receipt, along with the money itself, to respondent no. 4, requesting the latter to obtain the corresponding deposit scroll. Basic banking norms militate against such callousness on the part of a bank employee, more so in the case of an experienced bank employee like the petitioner.

- 25.** As far as the return of Rs.8,500/- to the customer is concerned, the explanation given by the petitioner is as lame as can be, since there could not have arisen any occasion for the money to be returned to the customer, even if no deposit scroll was issued. It was for the petitioner to do the needful in the event such an error occurred and not the duty of the customer to ensure compliance of such rules. Thus, the story of return of Rs.8,500/- to respondent no. 4 is not credible even to the most gullible, let alone a prudent person.
- 26.** As far as the evidence is concerned, the oral deposition of a colleague of the petitioner and a regular customer of the bank, other than the respondent no. 4, cannot be lent credence to override documentary evidence. Such oral evidence could at best be corroborative in nature, in support of a plausible explanation, if given by the petitioner. In view of the total absence of any plausible explanation coming from the

petitioner's end in the first place, there arises no question of 'corroboration'.

27. As regards the purported letter given by the respondent no. 4, the same merely indicates that the respondent no. 4 was 'returning' an amount of Rs. 8,500/- to the bank, which was cash which he got from the bank. The said document, by itself, is not proof enough of the attending circumstances for such return and cannot be co-related directly with the incident dated February 23, 2008. Although the said letter says that Vikash (respondent no.4) was mentally disturbed and could not understand "the right situation", such a blanket statement cannot lead to the conclusion which the petitioner offers by way of explanation. The petitioner failed to report the matter to anyone in the bank, let alone his superior officers, not only on the date of occurrence, but thereafter, before he was prodded to do so by the authorities. Moreover, the petitioner showed no inclination at any point of time to justify the patent discrepancy in the bank's transactions for the day, before being called upon to do so.

28. There might have been umpteen reasons for which Vikash wrote, or was compelled to write, the purported letter dated March 27, 2008. The discrepancy in the bank's accounts might well have been a tool to coax the respondent no. 4 into taking the responsibility for the same upon himself, by way of a veiled threat of legal action against Vikash for the

happenings of February 23, 2008. In any event, one cannot but resort to conjecture as to what impelled the respondent no. 4 to author the said letter, if he did so at all. That apart, the mere verbal statements of the defence witnesses in the disciplinary proceedings, regarding the petitioner having returned the amount to the respondent no. 4, does not find resonance in the documentary evidence, including the glaring inconsistency in the accounts of the bank. The gap between plausibility and the petitioner's explanation for having allegedly returned the amount of money to respondent no. 4 is wide enough to belie such explanation.

- 29.** That apart, although the previous actions of the petitioner did not have direct bearing on the incident of February 23, 2008, such past conduct was also part of the allegations against the petitioner in the show-cause notice. There appears to be utter absence of proper explanation for such conduct. As regards the habit of the petitioner to regularly default in repaying loans and in asking for loans in the first place, there was no answer, worth the name, from the petitioner.
- 30.** Regarding the flouting of the bank's rules regarding depositing title deeds against loans taken by the petitioner from the bank, the Disciplinary Authority specifically considered the fact that such title deeds were pre-mortgaged with some other bank, unerringly indicating towards the petitioner being guilty of suppressing material facts while

taking the loan from respondent no.1. Non-deposit of title deeds, though seemingly innocuous by itself, attains larger proportions while coupled with the fact that the intention of the petitioner behind such non-deposit was deliberate as the property was previously encumbered.

- 31.** In the present case, no case of victimization or patent mala fides and/or abuse of the process of law have been made out by the petitioner. The decision taken by the bank in its disciplinary capacity was a plausible one, in the facts of the case, and it would be against all settled law to disturb such decision merely by replacing the views of the court of the court with those of the Disciplinary Authority merely because another opinion was possible.
- 32.** The Indian Evidence Act, cited by the petitioner, need not be strictly followed in disciplinary proceedings. The principles of natural justice and the concepts of justice, equity and good conscience, which are yardsticks even in administrative law, were complied with by the authorities in expelling the petitioner. The petitioner had his opportunity of hearing and all relevant contentions were considered by the Disciplinary Authority and the Appellate Authority, both of which came to reasoned conclusions.
- 33.** Hence, the orders impugned herein do not warrant interference by this court in its writ jurisdiction. The court cannot usurp the jurisdiction of a fact-finding authority in its writ jurisdiction and enter into a *de novo*

appreciation of the evidence after the order of the Disciplinary Authority was confirmed by the Appellate Authority.

34. In the light of the above discussions, the writ petition fails. Accordingly, WPO No. 280 of 2020 is dismissed on contest, but without any order as to costs.
35. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)