IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 636 of 2018
In
Civil Writ Jurisdiction Case No.15832 of 2013

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Rajendra Kumar Sinha S/o Late Nagendra Chandra Sinha, Resident of Village- Hayatola, Ward No. 16, P.S.- Banka Sadar, District- Banka.

... ... Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, New Secretariat, Patna.
2. Inspector General of Registration, Department of Registration, Excise and Prohibition, New Secretar
3. Assistant Inspector General of Registration, Bihar, New Secretariat, Patna.
4. District Sub Registrar, Registration, Department of Registration, Excise and Prohibition, Banka.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. Sanjeet Kumar Singh, AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2023

The appeal is from the judgment of the learned Single Judge refusing to neither interfere with the findings in the disciplinary inquiry initiated against the writ petitioner nor offer any mitigation with respect to the penalty imposed. The writ petitioner/appellant was imposed with the penalty of dismissal by order dated 18.11.2011 of the Inspector General of Registration, Bihar, Patna, (Annexure-1), and the appeal filed also stood dismissed by order dated 21.06.2013 by the Secretary, Registration, Excise and Prohibition Department, (Annexure-2).

2. Three charges were levelled against the appellant with respect to the defalcation of Rs. 26,22,065/- of the Department. The defalcation was detected in an audit conducted and there was a team of officers appointed to verify the defect noticed. The first charge levelled against the appellant was that he failed to produce the Treasury challans for the period 2002 to 2006; of which he was the custodian, as the Head Clerk. The second charge was that the defalcation had occurred between 2002 and 2006 in about fifty-eight days, out of which, entries on thirty-one days were made by the appellant; which entries though spoke of remittances having been made in the Treasury, there was no corresponding credit found in the Bank. The third charge was with respect to making entries in the accounts register without proper verification of the accounts and failure to properly maintain the register during the period between 2002 to 2006.

3. The petitioner was working as a Head Clerk in the Sub-District Registry Office, Banka and the petitioner was In-Charge of the accounts register as also the custodian of the Treasury challans. One Jagannath Sah and Ganesh Mandal were entrusted with the duty of preparing

challans for deposit of the registration fee and stamp fee collected in the District Registry Office, Banka on a day-to-day basis. After making due entries in the remittance register, they also acted as messengers, who make the remittance and produce the acknowledgment of such remittances by way of challans, counter-signed by the Treasury and deposit confirmed by the Bank, which evidences the remittances having been properly made. The remittance register was to be produced before the Treasury and after getting the approval and signature of the competent officer, the cash was to be deposited in the bank through a challan. When the challans are produced before the delinquent employee, the appellant herein, corresponding entries are to be made in the cash-book register based on the office copy of the Treasury challan duly stamped by the bank, as well as the entries made in the Treasury challans and remittance register.

4. An audit team was deputed from the office of the Accountant General, Bihar, who detected huge defalcation of Rs. 26,22,065/-. A detailed report was made pursuant to which an inspecting team of two members comprising the Deputy Inspector General of Registration and the Assistant Inspector General of Registration was constituted to hold an

inquiry.

5. In the course of the inquiry, directions were issued for production of the remittance register, the accounts register and the Treasury challans for the aforesaid periods. It was found in the inquiry that on thirty-six occasions, the money was not deposited in the bank. The two employees referred to earlier, Jagannath Sah and Ganesh Mandal were entrusted with the remittance register and the responsibility of depositing the cash in the bank after obtaining challan from the Treasury during different periods; respectively 16.10.2002 to 29.11.2002 and 30.12.2002 to 10.02.2006. On certain dates, there was endorsement of the Treasury but the stamp of the bank was missing and out of fifty-eight days, on thirty-one days the entries were made in the accounts register by the appellant and the balance twenty-seven days by another. These were the days on which there was no corresponding deposit of cash made in the bank though entries were made in the remittance register and the accounts registers.

6. What comes out from the above is that at the time of remittance with the Registration Department, entries are made in the remittance register, which register is carried to the Treasury for counter-signature and based on the Treasury

challans, deposit is made in the bank.

7. The entries made in the accounts register are based on the deposit made in the bank; when the Treasury challans with the signature and seal of the bank evidencing deposit of cash are brought before the appellant herein. The appellant, who had custody of the challans failed to produce it when the same were called for, by the inquiry team. The absence of the challans with respect to the corresponding entries made in the remittance register and accounts register as also the absence of deposit in cash, made with the bank gave rise to the allegation. The two clerks, who were entrusted with the job of remittance and deposit in the bank after issuance of challan by the Treasury and the appellant, who has the responsibility to verify the challans before entries were made in the accounts register were equally involved in the defalcation.

8. The departmental inquiry, found the appellant guilty of the allegations and the disciplinary authority imposed the punishment of dismissal. The learned counsel for the appellant before us argued that, in fact, there is no finding that the appellant has misappropriated any amounts. It is also pointed out that the appellant is not the final authority and every entry made in the accounts register is counter-signed by his

superior, the Sub-Registrar. The appellant was examined as a prosecution witness in the criminal trial against Jagannath Shah and Ganesh Mandal. The Registrar, who was examined in the criminal trial as another prosecution witness, has also deposed before the criminal court that the Sub-Registrar is the controlling authority of the appellant, who has also counter-signed the various entries made by the appellant. In the totality of the above circumstances, the contention of the appellant's counsel is that the punishment of dismissal is harsh insofar as the same having taken the bread and butter out of the mouth of the appellant and pushed him virtually to the streets. The gravity of the offence is not as much as warranting a dismissal.

9. The learned counsel for the appellant did not raise any contention against the disciplinary proceedings nor did he challenge the finding of guilt; to which the appellant concedes. The prayer is only for mitigation insofar as setting aside the order of dismissal and imposing a lesser punishment.

10. Though the appellant has not challenged the inquiry proceedings or the finding of guilt, we have to notice, for completeness, that the learned Single Judge had found that there was no procedural irregularity alleged by the

petitioner against the inquiry conducted. Considering the entirety of the circumstances, it was found that the petitioner cannot be absolved from the guilt of defalcation, since he had made wrong entries in the accounts register and he also failed to produce the challans, which he did not produce before the inquiry team.

11. Relying on ***B.C. Chaturvedi v. Union of India*****, AIR 1996 SC 484,** it was held that there was no reason to interfere with the findings of the Inquiry Officer as affirmed by the disciplinary authority. Judicial review is not an appeal from the decision but a review of the manner in which the decision is reached. The petitioner had received fair treatment at the inquiry and the petitioner having been found guilty; which also is based on sufficient material produced before the Inquiry Officer and without consideration of any irrelevant material; there was no scope for interference to the findings of guilt.

12. We are in perfect agreement with the aforesaid findings. Even applying the doctrine of proportionality as held applicable to departmental proceedings in ***Moni Shankar v. Union of India*****, (2008) 3 SCC 484**, there is no reason to interfere with the findings at the inquiry. Neither was any relevant piece of evidence eschewed from consideration nor

was any irrelevant material reckoned. The standard of proof as applicable to domestic inquiries; the preponderance of probability stood satisfied. Whether the punishment imposed was proportionate to the gravity of offence was also considered by the learned Single Judge.

13. The contention of the learned counsel for the appellant is that, at the worst the appellant was only responsible for an inadvertent mistake in making wrong entries in the books of accounts, for which the extreme penalty of dismissal could not have been imposed. The learned Single Judge found that though there was no direct link of the petitioner established, in the defalcation proper out of the thirty-one entries made by the petitioner, in ten entries the counterfoil of the bank showing the deposit of cash was not available. The petitioner was holding a position of trust and he should have acted with diligence and not negligently. The mere fact that there was no direct evidence linking him to the defalcation, cannot lead to the finding that the petitioner's misconduct was not serious enough to warrant dismissal.

14. The learned Single Judge also relied on the decision of the Hon'ble Supreme Court in ***Disciplinary Authority-cum-Regional Manager and Others vs. Nikuja***

Bihari Patnaik, (*1996) 9 SCC 69.** As has been found in ***Nikuja Bihari Patnaik (supra) in the present case also, the defalcation was not of a solitary incident. It occurred over a period of time and involved a large number of transactions putting the total defalcated amount at more than Rs. Twenty-Six lakhs. As has been rightly observed by the learned Single Judge, the appellant was in a fiduciary capacity and he was the custodian of the accounts register as also the challans which are produced by the clerks. The challans which should have evidenced the deposit of the cash in the bank, by way of the signature of the bank official, who accepted the money and the seal of the bank, were missing when they were called for. The appellant's contention is that, since, the record room in the Sub-Registry office is over-crowded, it was misplaced; quite untenable. The plea of heavy workload also cannot absolve the appellant from the rigour of the gross misconduct alleged and proved.

15. We are unable to countenance the said defense set up by the appellant, especially, in the context of the defalcation uncovered under his watch. The appellant admittedly was the custodian of the accounts register and the challans produced by the clerks, who deposit the money in the bank. The entries in the accounts register of deposits made in

the bank also had to be based on the challans, counter-signed and sealed, at the bank and by its officials. The entries made without proper challans of deposit in bank, which challans were also not produced cannot be considered to be a mere negligent act, especially, when under the subject transactions there was no corresponding deposit made in the bank. The petitioner cannot wriggle out of the responsibility insofar as the entries made in the accounts register, which are not supported by properly signed and sealed bank challans.

16. As has been held by the learned Single Judge, it would have been very difficult to directly link the appellant with the defalcation. The cash was received at the Sub-Registry office and taken for deposit to the bank, by the two clerks. Unless it is established that the appellant received such cash; which is almost impossible, there could be no direct link found. It would be in such circumstance, that the appellant was examined as a witness and not arrayed as an accused in the criminal case. It is trite that the consideration in a criminal case and that in a disciplinary inquiry differs insofar as the standard of proof is required. While in a disciplinary inquiry, what is required is the preponderance of probabilities, in a criminal trial the guilt has to be proved beyond reasonable doubt. In the

totality of the circumstances of the misconduct alleged and the evidence before the Inquiry Officer, as discussed by us herein above, we cannot absolve the petitioner from the liability nor can the omissions be treated as an inadvertent mistake or a mere negligence on the part of the appellant.

17. The next contention raised by the appellant's counsel is that the Registrar, who was examined in the criminal trial deposed that the Sub-Registrar counter-signed the entries made in the accounts register. At the outset, we have to notice that the deposition of the Registrar before the criminal court was even after the appeal from the order of dismissal, in the present case. The Registrar was not examined at the inquiry; which the appellant could have sought. In any event, it is evident from the accounts register that there was a counter-signature by the Sub-Registrar. However, the responsibility of verification of the challan and the entries to be made in the accounts register is that of the appellant. The Sub-Registrar, if at all, can be accused of a supervisory lapse; but that does not absolve the appellant from discharging his duties diligently and with due care and caution.

18. We find absolutely no reason to interfere with the punishment labelling it as grossly harsh and it cannot

be termed as disproportionate to the gravity of the misconduct; which involved defalcation of more than twenty-six lakhs.

19. We reject the appeal leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Aditya/-

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