09.12.2024.
Item No. 5.
Court No. 13
ap

(Assigned Matter)

F.M.A. No. 65 of 2020
With
I.A. No. CAN 2 of 2023

Allahabad Bank & Ors.
Versus
Abhijit Biswas

Mr. Om Narayan Rai, ld. Senior Advocate,
Mr. Shiv Mangal Singh.
...For the appellants.

Mr. Arabinda Chatterjee, ld. Senior Advocate,
Md. Majnu Sk.
...For the respondent.

Re: CAN 2 of 2023 (Substitution)

1. CAN 2 of 2023 is an application for substituting the name of the Indian Bank in place and stead of Allahabad Bank. By a Notification issued by the Reserve Bank of India, the Allahabad Bank has been merged into Indian Bank.

2. Let the name of Allahabad Bank be replaced in place and stead of Indian Bank in the cause title in the appeal.

3. The Registry of this Court shall carry out necessary amendments in this regard as expeditiously as possible.

4. In that view of the matter, CAN 2 of 2023 shall stand allowed and disposed of.

Re: F.M.A. No. 65 of 2020

5. The instant intra court appeal is directed against the judgment and order dated December 12, 2018

passed by a learned Single Judge of this Court in W.P. No. 22560 (w) of 2011.

6. In the said judgment, a punishment of compulsory retirement, imposed on the respondent, in departmental proceedings initiated against him, has been reduced by the Court to a minor penalty of reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting the petitioner's pension.

7. The appellant Bank is aggrieved by the same and hence, the instant intra court appeal.

FACTS OF THE CASE:

8. The disciplinary proceedings are instituted against the respondent, pursuant to a charge-sheet dated 29th June, 2006, issued by his Appointing Authority. At the relevant point of time, the petitioner was functioning as an Assistant Manager in Illashpur Branch of the appellant Bank as an Assistant Manager.

9. Prior thereto, there were disciplinary proceedings against the respondent which resulted in a minor penalty. The respondent submitted a reply to the said charge-sheet dated 1st July, 2006 which was not found satisfactory by the appellant.

10. The said proceedings, however, were not referred to in the present subject charge-sheet against the

respondent. The charges against the respondent are as follows:

"<u>*Article-I*</u>*.*
Sri Abhijit Biswas while working as Astt. Manager, Illaspur Branch for the period from 13.11.04 to 11.03.2006 created a fraudulent transfer credit entry of Rs.80,500/- in the SB A/c No. Pen/261 on 01.02.2006 in the name of Sri Ajay Kumar Samanta without any relative voucher. Thus Sri Abhijit Biswas defrauded the Bank to the tune of Rs.80,500/- through customer SB A/c No. 261. The customer withdrew Rs.80,000/- on 06.02.2006 from the credit balance of Rs..328822/-.

<u>*Article-II*</u>*.*
<u>*Sri Abhijit Biswas while working as Astt*</u>*. Manager, Illaspur Branch for the period from 13.11.2004 to 11.03.2006 has passed following 07 debit entries in course of daily Banking transactions on different dates.*

Sl No.	*Date on which entry accounted for*	*Account Number & name of the A/c holder*	*Posting status in respective SB A/c*	*Amount paid in cash Rs.*
1	*31.12.2005*	*A/c No. Pen 279 Aswini Kr. Guchhait*	*Not Posted*	*Rs.20,000/-*
2.	*17.01.2006*	*-do-*	*-do-*	*Rs.60,000/-*
3.	*11.02.2006*	*-do-*	*-do-*	*Rs.80,000/-*
4.	*24.12.2005*	*A/c No. Pen257 Arati Nanda*	*-do-*	*Rs.35,000/-*
5.	*01.10.2005*	*-do-*	*-do-*	*Rs.30,000/-*
6.	*03.12.2005*	*-do-*	*-do-*	*Rs.25,000/-*
7.	*29.10.2005*	*A/c No. 265 Paritran Khatua*	*-do-*	*Rs.30,000/-*

Sri Abhijit Biawas passed the above entries without debiting to the respective S/B account. Moreover, he passed 1st five debit entries with supporting voucher/withdrwals/cheques has scrolled and written Long Book himself. But vouchers have been removed after taking the payment by Sri Abhijit Biswas. The available vouchers of the last two above entries reveals that the signatures of the drawers are not same with the signature of the a/c opening card of the respective account holder. Thus Sri Abhijit Biswas by passing the above debit entries took the Bank's fund in a fraudulent manner, putting the interest of the Bank in to jeopardy.

<u>*Article-III*</u>*.*
Sri Abhijit Biswas while working as Asstt. Manager, Illaspur Branch for the period from 13.11.04 to 11.03.2006 committee irregularity in crediting a

fictitious entry of Rs.30,000/- on 01.08.2005 in his own O. D. account. Thus Sri Abhijit Biswas fraudulently credited the said entry for his personal gain.

Article – IV
Sri Abhijit Biswas while posted and functioning as Astt. Manager during the period of from 13.11.2004 to 11.03.2006 sanctioned a fresh KCC loan proposal in the absent of the Manager to Sri Kalipada Mondal on 11.01.2005 for his personal gain. The loan application is not filled in complete. Sri Abhijit Biswas has taken the full loan amount i.e. Rs.45,000/-- from Sri Kalipada Mondal by influencing his position over the borrower. The borrower has alleged that he has been forced to take the loan for the use of Sri Abhijit Biswas vide his letter dated 03.05.2006. Thus Sri Abhijit Biswas sanctioned the said loan to Sri Kalipada Mondal for his personal gain putting the image & interest of the Bank in to jeopardy.

The aforesaid acts of omission & commission committed by the said Sri Abhijit Biswas are in violation of Regulation 3(1) and 3(3) of Allabahad Bank Officer Employees' (conduct) Regulations, 1976 amounting to misconduct under Regulation 24 of the said Regulations."

11. The petitioner submitted his reply to the charge sheet which the bank found not be satisfactory.

12. Pursuant to the said charge-sheet, the Enquiry Officer and the Presenting Officer were appointed by the Disciplinary Authority.

13. The Enquiry Officer conducted the enquiry. Several witnesses were examined and several documents were exhibited to substantiate the charges against the respondent.

14. An enquiry report was prepared by the Enquiry Officer and submitted to the Disciplinary Authority. The Enquiry Officer found that Articles I, IV were proved. Article II was found partly proved. Article III was found not proved.

15. The enquiry report was furnished to the respondent, who submitted a representation against it to the Disciplinary Authority. The Disciplinary Authority considered the enquiry report and the representation of the respondent thereagainst and imposed the punishment of compulsory retirement on the respondent on 5th September, 2006. The period of suspension of the petitioner from 26th June, 2006 was not to be treated as a service and the respondent was found not entitled to any other sums except the subsisting allowance paid to him.

16. The respondent preferred an appeal before the Appellate Authority vide communication dated 26th October, 2006. The said appeal was rejected by an order dated 1st October, 2007 passed by the Appellate Authority-cum-General Manager of the Bank.

17. Having regard to the charges against the respondent, this Court is of the view that clear violation of the Rules of the Bank, in granting a loan under the KCC facility to a customer when the Manager was absent and the respondent was acting as Manager. The other charges against the respondent, namely, Article-I which was proved and Article-II which was partly proved, also lead to a conclusion that the respondent not only violate the banks rules but has borrowed money from the banks customers. There is clear conflict of interest in the conduct of the writ petitioner.

18. While it is true that there is no evidence of any direct gain made by the employee, the fictitious and unexplained credit entries in his overdraft loan account, appear to be correlated to the irregular debit entries in several accounts of the customers of the Bank.

19. The respondent, however, before the Disciplinary Authority and the Appellate Authority admitted that he had borrowed sums of money from the customers.

20. While it is true that there was no charge framed against the respondent with regard to taking illegal and unauthorized loans from bank customers, the aforesaid admission on the part of the respondent completes the chain of events of credits into the respondent's OD Account and corresponding debts in the accounts of the customers.

21. In the backdrop of the aforesaid and the subject charge-sheet dated 5th September, 2006 being the second disciplinary proceedings, this Court is of the clear view that the respondent was guilty of major penalty misconduct in Bank.

22. From the line of decisions in respect of similar or equally serious actions against the Bank employees that came to be tested before this Court and the Hon'ble Supreme Court of India, orders of dismissal from service have often been upheld.

23. The first case that comes to the mind of this Court is the case of ***Disciplinary Authority cum***

Regional Manager & Ors. Vs. Nikunja Bihari Patnaik reported in **(1996) 9 SCC 69.** In the said decision of the Hon'ble Supreme Court of India has held that any infraction or action in violation of Rules governing the business of the bank, could endanger the very functioning of the Bank itself. In the instant case, the Bank in question is a Public Sector Undertaking and holds public money in trust and faith. The actions of the respondent employee clearly had the effect of eroding such trust and faith of the public at large on the appellant Bank.

24. It is totally irrelevant as also held in the case of ***Nikunj Behari Patnaik's*** case (supra) as to whether the Bank has suffered any loss.

25. It is now well-settled that proof of actual loss for the misconduct of a Bank employee is not necessary to attract major penalty proceedings.

26. This Court is, therefore, unable to accept the arguments of Mr. Chatterjee, learned Senior Advocate appearing on behalf of the respondent employee that the proceedings, as against the respondent, attract only a minor penalty and not a major penalty.

27. The only ground on which a Court can interfere with a penalty imposed on an employee in departmental proceedings is proportionality.

28. In the decision of the Hon'ble Supreme Court of India in the case of ***B.C. Chaturvedi – Vs. – Union of India & Ors.*** reported in ***(1995) 6 Supreme Court***

Cases 749 particularly paragraph 18 thereof and more recent judgment in the case of ***Indian Oil Corporation Limited – Vs. – Rajendra D. Harmalkar*** reported in ***(2022) 17 Supreme Court Cases 361*** particularly paragraphs 13 and 21 thereof, the doctrine of proportionality has been explained and discussed.

29. A punishment imposed on an employee of a Bank is only interfered with when such punishment is either disproportionate to the charges proved against him or where such punishment shocks the conscience of the Court. In the instant case, this Court has no hesitation whatsoever to hold that the charges against the respondent were serious enough to impose the highest penalty of dismissal from service.

30. The respondent in addition to violating the Rules of the Bank in granting loan has sought to make fictitious entries in the accounts of the customers of the bank that clearly suggest that he borrowed money from customers and credited the same to his personal loan account with the Bank. The same has been admitted by him before the Disciplinary and Appellate Authorities.

31. While it is true that the charge of borrowing was not leveled against the respondent, the same confirms Article-I, which has been proved and Article-II which has been partly proved of making debit entries in the accounts of the customers without any corresponding

debit vouchers or sufficient records having been created towards such debit.

32. In the backdrop of the above and applying the decision with regard to the proportionality of punishment, inter alia, in the case of ***Indian Oil Corporation Limited*** (supra), this Court is of the clear view that the punishment imposed on the compulsory retirement far from shocking the conscience of this Court appears to be grossly insufficient and not commensurate to the guilt of the employee in respect of the charges against him.

33. This Court is, therefore, of the unequivocal view that the learned Single Judge has committed error in finding that the punishment of compulsory retirement is disproportionate or shocking to the conscience of any Court. Since the punishment has been imposed by the Bank having regard to the facts and circumstances of the case, this Court stops short of increasing the punishment to any higher penalty.

34. The Bank itself has not chosen to challenge the orders of the Disciplinary and Appellate Authorities, within their own hierarchy.

35. In view of the above, the orders of punishment of compulsory retirement imposed on the respondent vide orders of the Disciplinary Authority dated 5th September, 2006 and the Appellate Authority dated 1st October, 2007 are hereby confirmed. The impugned

judgment and order dated 12th December, 2018 shall stand set aside. The appeal is allowed.

36. There will be no order as to costs.

37. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(***Rajasekhar Mantha, J.***)

(***Ajay Kumar Gupta, J.***)