

C.W.J.C. No. 798 of 1998 (R)

In the matter of an application under Article 226 of the Constitution of India

Jitendra Bahadur Singh Petitioner

Versus

1. The Hazaribagh Kshetriya Gramin Bank through its Chairman, Hazaribagh
2. The Chairman, Hazaribagh Kshetriya Gramin Bank
3. The Board of Directors, Hazaribagh Kshetriya Gramin Bank, Hazaribagh

... Respondents

For the Petitioners : M/s Rajendra Krishna, Amit Sinha, D.K. Dubey
Nita Krishna, Advocates

For the Respondent : M/s M.M. Pal,Sr. Advocate, Mahua Palit,Advocate

PRESENT

HON'BLE MR. JUSTICE ALOK SINGH

C.A.V. on: 13.09.2012

Pronounced on: 28/09.2012

Alok Singh, J.: Petitioner while working as Manager of Mishrol Branch of Hazaribagh Kshetriya Gramin Bank, was served with memorandum of charges dated 18.08.1992 (Annexure- 1 to the writ petition), calling the explanation from the petitioner on 18 different charges mentioned therein. Petitioner had submitted his explanation/reply to the memorandum of charges on 10.09.1992 (Annexure- 2). Having considered the explanation/reply to the memorandum of charges, Respondent No. 2, vide order dated 15.12.1992 was pleased to appoint Shri A.N. Prasad as enquiry officer to hold the enquiry against the petitioner- Branch Manager.

Enquiry Officer has submitted his enquiry report dated 10.05.1994, to the Respondent No.2- Chairman of the Bank. Enquiry Officer clearly observes that charge Nos. 1, 3, 5, 6, 7, 8, 9, 11 and 12 are not at all proved, however, charge Nos. 13 and 14 seem to be partially proved. Against charge No. 4, Enquiry Officer holds that petitioner did not identify the impostor as borrower/saving bank account holder, however, has identified correct borrower/saving bank account holder, but, is negligent for not attesting the photograph then and there.

Thereafter, Respondent No. 2 has issued second memorandum of charges dated 27.06.1994, to the petitioner along with the enquiry report mentioning therein that he does not agree with the enquiry officer that charge Nos. 1, 3, 5, 6, 7, 8, 9, 11 and 12 are not proved. Respondent No. 2 has opined that all the charges are proved against the petitioner and asked the

petitioner to submit his explanation/reply to the second memorandum of charges dated 27.06.1994. Petitioner has submitted his explanation to the second memorandum of charges dated 23.08.1994.

Respondent No. 2, vide order dated 27.09.1994 was pleased to dismiss the petitioner from service on account of charge Nos. 7, 11, 12, 13, 15 and was further pleased to impose the penalty of stoppage of one increment for charge Nos. 2, 3, 5 and was further pleased to reprimand the petitioner for the charge Nos. 4, 6, 9 10, 17 and was further pleased to degradation of increment by ten scales for charge Nos. 14 and 16.

Feeling aggrieved, petitioner had preferred a departmental appeal, which was also dismissed.

I have heard learned counsel for the parties and have carefully perused the record.

I have carefully perused all the 18 charges levelled against the petitioner, which are pertaining to the period with effect from 30.12.1985 to 14.06.1991. All the charges are pertaining to not following the prescribed procedure or not taking prior permission from the higher officers, before purchasing the cheques in their name. Neither enquiry officer nor disciplinary authority had observed that either the Bank or the customer of the Bank had ever suffered any financial loss or business or name of the Bank had resulted in bad repute.

Charge Nos. 1, 7, 9, 10, 11, 12 are pertaining to withdrawal or payment from the saving bank account of the different customers of the Bank, without caring to compare their signature on the cheques/withdrawal slip with the specimen signature. Neither the customers nor the Bank had suffered any loss for such withdrawal/payment; no such customer had stated before the enquiry officer that he had ever suffered any financial loss.

Charge Nos. 2, 3, 4, 5 are pertaining to irregular sanction of the loan of Rs. 5,000, 5055 and 3480 respectively. Main allegations against the petitioner were that he was negligent in attesting the photograph and preparing the loan document. There was absolutely no allegation that either loan was given to incompetent borrower or to the impostor.

Rest of the charges are pertaining to purchase and collection of the cheques without getting approval from the head office or without informing the head office. There is absolutely no charge or evidence that petitioner has ever embezzled any amount or has committed financial irregularity causing

financial loss to the Bank or any customer of the Bank or business of the Bank has suffered adversely.

In the case of *Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bank & Ors.*, reported in (2003) 9 SCC 480, petitioner- Kailash Nath Gupta was removed from the service without there being any charge of misappropriation or fraud on the charges of irregularity and misconduct which had not resulted in any financial loss. Hon'ble Apex Court was pleased to hold that punishment of removal was shocking.

Hon'ble Apex Court, in the case of *B.C. Chaturvedi Vs. Union of India & Ors.*, reported in (1995) 6 SCC 749, in paragraph-18, has observed as under: -

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

In the present case, as indicated hereinabove, neither there is any charge of fraud or misappropriation nor of embezzlement, therefore, dismissal of the petitioner from the service on account of charge Nos. 7, 11, 12, 13, 15 seems to be shocking, same way, degradation in increment by ten scales for the charge Nos. 14 and 16 also seem to be shocking and disproportionate to the alleged irregularity.

In the opinion of this Court, major punishment of dismissal or removal should be awarded only when a delinquent Bank officer was habitual non-performer, thereby causing financial loss to the Bank or is guilty of fraud or misappropriation.

In the present case, as observed hereinabove, there is no charge of fraud, embezzlement or misappropriation and neither the Bank nor the customer has suffered any financial loss, therefore, order of dismissal and degradation of ten scales seems to be disproportionate to the alleged charges

of irregularity, therefore, do not sustain in the eyes of law. Since the petitioner is facing charges right from 1992 and 20 years have passed, therefore, no useful purpose would be served to remand the matter to the competent authority to consider the quantum of punishment afresh.

Therefore, in the opinion of this Court, interest of justice will be served, if for the charge Nos. 7, 11, 12, 13, 14, 15, 16, punishment of stoppage of one increment is imposed against the petitioner.

Consequently, present petition is allowed. Order of dismissal and degradation of ten scales is hereby quashed. Petitioner shall be reinstated in the service with all consequential benefits, however, shall be paid 50% salary for the period, he was not allowed to work because of dismissal. Order of punishment of dismissal and degradation of ten scales is hereby substituted with the punishment of stoppage of one increment.

(Alok Singh, J.)

Jharkhand High Court, Ranchi

Dated: 28/09/2012

Manish/N.A.F.R.