

THE HIGH COURT OF MEGHALAYA

WA (SH) No. 57 of 2009

Shri. Ramesh Kumar Roy,
S/o Shri. Ram Shobit Roy
Resident of Rajapakar Village,
Vaishali District, Bihar.

..... **Appellant.**

_ **Vrs** _

1. State Bank of India, represented by the
Deputy General Manager, State Bank of India
Zonal Office, Dhankheti, Shillong-1.
2. The Assistant General Manager,
(Appointing and Disciplinary Authority)
State Bank of India, Shillong Branch,
Shillong-1.

..... **Respondents**

BEFORE
HON'BLE MR JUSTICE T NANDAKUMAR SINGH, CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE SR SEN

Advocate for Appellant	:	Mr. N Mozika
Advocate for respondent	:	Mrs. T Yangi
Date of Hearing	:	30.08.13
Date of Judgment & Order	:	30.08.13.

JUDGMENT & ORDER (ORAL)

(T.N.K. Singh, Acting CJ)

Heard Mr. N Mozika, the learned counsel for the appellant/writ petitioner as well as Mrs. T Yangi, the learned counsel for respondent.

2. This writ appeal has been directed against the judgment & order dated 1.7.09 passed by the learned single Judge dismissing the WP(C) No. 311 (SH) 2004 filed by the present appellant/writ petitioner for

quashing the termination order dated 2.12.13 issued by the Assistant General Manager & Disciplinary Authority, SBI.

3. The appellant/writ petitioner was an employee of the SBI, Shillong in the capacity of Messenger and disciplinary proceedings had been initiated against him for the charges.

02. The Charges

(A) (i) A fictitious credit entry of Rs. 77000.00 dated 23.02.93 was made by you in the ledger sheet of Dormant Savings Bank account/No. H/10/95 of Shri Laxshmi Kant Rai inflating the balance from Rs. 64.40 to Rs. 77064.40. It transpired that the balance was inflated between 27/11/93 and 23/12/93 as the balancing of the ledger was agreed after taking the balance of Rs. 64.40 as on 26/11/93.

(ii) The inflated balance of Rs. 77064.00 in the SB account No. H/10/95 was authenticated by you under a forged initial.

(iii) An amount of Rs. 7000.00 was withdrawn by you on 23/12/93 from the above account by forging the signature of the account holder Shri Laxshmi Kant Rai. Further, you have withdrawn Rs. 65000.00 on 29/12/93 from the same account by forging the signature of the account holder.

B. A total amount of Rs. 27000.00 was withdrawn by you on three different dates as detailed below from the Savings Bank account No. H/12/59 of Smt. Kusum Devi and Raj Kumar Ray by forging the signature of Raj Kumar Ray. Incidentally, the account was introduced by you while opening.

<u>Date of Withdrawal</u>	<u>Amount</u>
27/10/93	Rs. 10000.00
04/11/93	Rs. 10000.00
27/11/93	Rs. 7000.00

03. You had also confessed vide your confessional statement with Shillong P.S. Case No. 9(i)94 u/s 4v68/420 IPC in the Court of Shri R.S. Kharshiing, Judicial Magistrate, 1st Class at Shillong that you had withdrawn Rs. 7000.00 on 23/12/93 and Rs. 65000.00 on 29/12/93 by forging the signature of account holder. You had also confessed that you had withdrawn another Rs. 27000.00 by forging the signature of the account holder.

04. In case, all or any of the above allegations is/are proved to be true, the same is/are likely to attract punishment as per para 521 (5) of Sastry Award retained and confirmed by Desai Award.

05. You are directed to show cause in writing as to why disciplinary proceedings should not be initiated against you for your above misconduct. Your written statement of defence should reach the undersigned within 15 (fifteen) days from the date of receipt of this memorandum, failing which it will be construed that you have nothing to say in your defence

and in such eventually, the Bank will be at liberty to take such actions against you as deemed fit.

06. Please return the duplicate copy of this memorandum, duly signed by you with date in token of your having received the original copy.

4. The present appellant also filed a written statement wherein categorically denying the charges leveled against him. After the departmental enquiry had been completed, the inquiry officer submitted the report that all the charges against the writ petitioner have been proved. Thereafter, the Assistant General Manager & Disciplinary Authority, SBI vide letter dated 2.07.03 directed the writ petitioner to submit his show cause statement to the proposed penalty for dismissal from service.

5. In response to the said letter of Assistant General Manager & Disciplinary Authority, SBI dated 2.07.03, the appellant/writ petitioner filed a representation dated 14.07.03 requesting the Assistant General Manager & Disciplinary Authority, SBI to furnish a copy of the Enquiry Report so as to enable him to file effective show cause statement.

6. It appears from record that, thereafter the Assistant General Manager & Disciplinary Authority, SBI vide letter dated 16.09.03 again directed the writ petitioner to show cause to the proposed penalty for dismissal from service and a copy of the Enquiry Report was also annexed to the said letter dated 16.09.03.

7. In response to the said show cause notice, the writ petitioner filed a show cause statement by contending the inter alia grounds :-

- i) The proposed punishment for dismissal from service is not sustainable on the basis of the Enquiry Report.
- ii) The Enquiry was not conducted in accordance to the due procedure of law, rules applicable and the principles of natural justice.
- iii) The witnesses examined have not supported the charges leveled against the writ petitioner and the writ

petitioner was blamed for the wrongs committed by others.

- iv) The writ petitioner was not given a chance of cross-examination of hand-writing expert before submitting the report.
- v) Copy of the confessional statement was also not furnished to the appellant/writ petitioner.
- vi) The Magistrate who had recorded the confessional statement was not examined in the Departmental Enquiry.

8. Assistant General Manager & Disciplinary Authority, SBI after considering the show cause statement dated 27.10.03 of the writ petitioner passed impugned termination order dated 2.12.03 terminating the appellant/writ petitioner from service.

9. The main grounds taken in the present Memo of appeal as well as in the writ petition being WP(C) No. 311 (SH) of 2004 for assailing the impugned termination order dated 2.12.03 are similar with the grounds taken by the appellant/writ petitioner in his show cause statement dated 27.10.03.

10. For deciding the main grounds taken in the present Memo of appeal, we have gone through the Enquiry Report dated 9.09.02 submitted by the Inquiry Officer and the termination order dated 2.12.03.

11. On bare perusal of the Enquiry Report dated 9.09.02, it is crystal clear that the Inquiry Officer had given heavy reliance on the opinion of the hand-writing expert for coming to the finding that the charges leveled against the appellant/writ petitioner have been proved. The only reason for not examining hand-writing expert in the Disciplinary Proceeding against the petitioner by the Inquiry Officer was that, examination of the hand-writing expert at Kolkata was not feasible.

In our considered view, these are not the plausible reasons for denying a chance of cross-examination of hand-writing expert to the appellant/writ petitioner.

12. Regarding the second ground that, non-furnishing of the copy of the confessional statement alleged to have been made by the appellant to the appellant and non-examination of the Magistrate who had recorded the confessional statement of the appellant/writ petitioner in the disciplinary proceeding had violated the principles of natural justice, we have perused the Enquiry Report dated 9.09.02. In the Enquiry Report, there is no finding that the learned Magistrate at the time of recording the confessional statements of the appellant had fulfilled all the requirements for recording the confessional statement under Section-164 CrPC. Under Section 164 CrPC, the Magistrate who recorded the confessional statement shall make a memorandum at the foot of the confessional statement that the confessional statement was voluntarily made and in the absence of such certificate it cannot be taken as the confessional statement recorded under Section-164 CrPC in the true sense of the terms. Therefore, in the absence of the finding by the Inquiry Officer in the Enquiry Report that confessional statement of the writ petitioner had been made voluntarily, we are unable to accept authenticity of the confessional statement.

13. Over and above, it appears from the record that the confessional statement of the appellant/writ petitioner was not made available to the writ petitioner.

14. On the other hand, Mrs. T Yangi, the learned counsel for the respondent contended that the finding of the Inquiry Officer should not be interfered with in this writ proceeding. However, it is a settled law that the writ Court is to see as to whether Departmental Enquiry was held in consonance with the principles of natural justice or the findings of the Inquiry Officer were on basis of legally acceptable evidences.

15. In the present case, we are of the considered view that, principles of natural justice was denied to the appellant/writ petitioner at the time of conducting the inquiry, therefore, we are inclined to interfere with the findings of the Enquiry Report dated 9.09.02. In the result, the termination order dated 2.12.03 as well as the judgment & order dated 1.07.09 passed in WP(C) No. 311 (SH) 2004 are to be interfered with. Accordingly, Enquiry Report dated 9.09.02, the termination order dated 2.12.03 and the judgment & order dated 1.07.09 in WP(C) No. 311 (SH) 2004 are also to be interfere with and hereby quashed.

16. Since the findings of the Department Enquiry are set aside on technical grounds, this Court is of the considered view that the Disciplinary Authority, if necessary, may hold a fresh Departmental Enquiry from the stage where the illegality had been cropped in i.e. from the stage of examination of prosecution witnesses.

17. In the instant case, this Court is not deciding anything for the arrear pay and allowances, it is left to the wisdom of the Disciplinary Authority.

18. For the foregoing reasons, this appeal is disposed of with a direction to the respondent authorities to reinstate the appellant/writ petitioner in service within 2(two) months from the date of receipt a certified copy of this judgment & order; and it is left to the wisdom of the Disciplinary Authority to take decision if the appellant is to be placed under suspension for staring the disciplinary proceeding de-novo.

19. The present appeal is allowed.

JUDGE

CHIEF JUSTICE (ACTING)

V.Lyndem