
(2005) 01 JH CK 0024

Jharkhand High Court

Case No: Writ Petition (S) No. 4347 of 2001

D. Baraik

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Jan. 27, 2005

Citation: (2006) 4 JCR 113

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: D. Jerath, S.N. Prasad and M. Tandon, for the Appellant; A.K. Mehta, A.K. yadav and D.K. Malityar, for the Respondent

Final Decision: Allowed

Judgement

Hari Shankar Prasad, J.

This writ application has been filed on behalf of the petitioner for quashing the decision of the Board of Directors of the respondent-Bihar State Financial Corporation, whereby an order of punishment by way of dismissal and recovery of amount has been passed by the Disciplinary Authority.

2. The petitioner was posted during the relevant time as Assistant Office Superintendent in the respondent-Bihar State Financial Corporation (in short the Corporation) in 1997 at Palamau Branch of the Corporation and he was served with charge sheet alleging that he has committed gross misconduct, serious irregularity and gross negligence in duty and responsibility and acted in the manner detrimental to the interest of the Corporation in discharge of his duties. The allegation was that during his posting at Palamau Branch at Daltonganj in 1997, while dealing with the loan file of M/s Sri Katha and Chemical Pvt. Ltd., Chandwa (earlier M/s Chandwa Wood Product) he, in connivance with the proprietor for wrongful gain ignoring the instructions issued by the head office of the Corporation and with malafide intention, handed over the draft to the person concerned instead of depositing the same in the State Bank of India, Chandwa Branch. The petitioner submitted his explanation and thereafter a departmental enquiry was conducted

and enquiry report was submitted stating that the charges have been proved against the petitioner. A show cause notice was issued and thereafter the Disciplinary Authority passed the order of punishment by way of dismissal from service. The petitioner did not prefer the appeal and this question was raised at the time of admission of this WPS and Court was of the view that similar other persons, against whom charges were also framed, enquiry was conducted, they were punished and they filed the appeal and in that appeal dismissal was reduced to the punishment of compulsory retirement and recovery of the loan sustained by the Corporation and Court felt that similar order passed in the appeal, hence it did not ask the petitioner to exhaust the statutory remedy of appeal.]

3. Mr. Dilip Jerath, learned Counsel appearing for the petitioner, assailed the order as being illegal, arbitrary and malafide and submitted that the respondents have issued charge sheet in respect of certain irregularities alleged to have been committed by the petitioner 10 years back with prior determination to punish the petitioner, which is evident from the fact that while issuing the charge sheet, the enquiry officer was appointed. The learned Counsel further submitted that petitioner has in fact not violated any specific instruction issued by the respondents. In fact the draft was issued in favour of State Bank of India and it was actually deposited in the account of SBI. It was also submitted that action of punishment" of termination is highly excessive and it is disproportionate to the charges levelled against the petitioner.

4. On the other hand, Mr. A.K. Mehta, learned Counsel for the respondents submitted that petitioner has admitted the charges levelled against him and he had violated the instructions given in the letter of the head office of the Corporation and the Enquiry Officer after considering the evidence and material on record, recorded the finding against the petitioner and that finding has been disputed by the petitioner in reply to the second show cause notice.

5. It appears from perusal of record that firm namely M/s Chandwa Wood Product was having loan facilities with the SBI, Chandwa Branch and a new company namely M/s Sri Katha and Chemicals (P) Ltd. came into the existence, who was allowed financial assistance by the respondent-Corporation. There was some proposal for sanction and disbursement of loan in favour of the company and the Board of Directors of the Corporation in its meeting dated 31.12.1986 sanctioned additional term loan with the following conditions:

(i) The Constitution of the Unit will have to be converted in two private, limited company from partnership.

(ii) The concern will have to clear off the over dues of the Corporation during the first release.

6. It further appears from perusal of records that consequently sanction letter was issued vide letter dated 11.2.1987 and two drafts were issued and sent to the Branch

Manager for disbursement with the following instructions.

(i) Proper verification of the books of accounts of the concern and creation of charge in favour of B.S.F.C. by the concern.

(ii) Adjustment of total over dues amount and balance upto Rs. 3.50 lacks to be paid to the State Bank of India Chandwa A/c, M/s Chandwa Wood Product.

7. It was alleged that the petitioner violated the instructions inasmuch as instead of depositing the draft with the SBI, the same was handed over to the person concerned.

8. In course of further argument, it was submitted on behalf of the petitioner that in respect of some other persons, who were also charge sheeted alongwith this petitioner, an order has been passed remitting back the matter to the appellate authority for passing fresh order on the quantum of punishment and there is an agreement that in the light of that very order passed in WP(S) No. 3367/2002 with WP (S) No. 4267/2002 on 13th November, 2003, similar order may be passed.

9. In that view of the matter, this writ application is allowed and the order passed by respondent-appellate authority is quashed and the matter is remitted back to the appellate authority for passing a fresh order on the quantum of punishment.