
(2017) 04 JH CK 0083

JHARKHAND HIGH COURT

Case No: 580 of 2012

Roshan Lal Choudhary

APPELLANT

Vs

Nirmala Devi & Ors.

RESPONDENT

Date of Decision: April 21, 2017

Hon'ble Judges: Pramath Patnai

Bench: SINGLE BENCH

Advocate: A. Allam, Priya Shreshtha, Anoop Kumar Mehta, Amit Kr. Sinha, Nikhil Ranjan

Judgement

1. In the accompanied writ application the petitioner has inter alia prayed for quashing order as contained in two Memos dated 31.08.2010 at Annexures 5 and 6, whereby the petitioner has been awarded punishment of compulsory retirement with superannuation benefits and for quashing order of appellate authority dated 30.08.2011 whereby the order passed by the disciplinary authority has been confirmed and further prayer has been made for reinstatement of the petitioner with all consequential benefits.

2. The facts, in brief, is that the petitioner was appointed as sub-staff in Canara Bank in the year 1990. While continuing as such an allegation was made against the petitioner that on 15.04.2009, on instruction of Manager of Canara Bank, Currency Chest Branch, he along with one V.N.K. Tirkey, Clerk went to TRF Extension Counter, Jamshedpur for remittance of cash of Rs. 5 lacs and purported to have delivered to Sri Baishakhoo Kumbhar, Clerk, who was working in cash counter on that day, and against delivery of cash submitted acknowledgement. But, as per the procedure, when branch advice for receiving such cash was not received even after one and half month, the Manager Canara Bank, Currency Chest Branch contacted over telephone the TRF Extension Counter, who informed that no such cash was received by them on 15.04.2009. In the backdrop of these facts, an F.I.R was lodged by Manager, Canara Bank, Currency Chest Branch against to Sri Baishakhoo Kumbhar, Clerk and others. Besides, a departmental proceeding was also initiated against the petitioner, which culminated into passing of

impugned order of compulsory retirement, which has been confirmed in appeal.

3. Learned senior counsel for the petitioner submitted that petitioner cannot be punished for such fault, as he was only the sub-staff carrying the cash chest (box) with other clerk and delivered the money from currency chest to TRF Extension Office at Bistupur, hence, the petitioner had nothing to do with the matter. It has been submitted that in the departmental enquiry not a single witness has said anything against the petitioner and whatever was said in the FIR, has been reiterated in the evidence.

Learned senior counsel for the petitioner submitted that even the enquiry officer in its report has observed that it is a unique case for him wherein five employees have been charge-sheeted for the same charge of embezzlement of amount of Rs. 5 lac.

Uniqueness in the sense that an employee who himself has been chargesheeted in this case has been brought as the management witness. It has further been submitted that though surprisingly there is nothing against the petitioner in enquiry report and even after observation of the enquiry officer that if any person is responsible that may be Baisakhoo Kumbhar but, no second show cause notice was issued by the disciplinary authority before inflicting punishment order, hence, the impugned order is vulnerable. In support of this submission, learned counsel for the petitioner referred to the decision rendered in the case of S.N. Narula Vs. Union of India & Ors as reported in (2011) 4 SCC 591; in the case of Punjab National Bank & Ors Vs. K.K. Verma as reported in (2010) 13 SCC 494 and the decision rendered in the case of Jasmer Singh Vs. State of Haryana & Anr as reported in (2015) 4 SCC 458.

4. Assailing the submissions advanced by learned senior counsel for the petitioner, it has been submitted by learned counsel appearing for the respondents-Bank that in the enquiry the petitioner was represented by defence representative of his choice and he was extended with reasonable opportunity to defend his case and copy of enquiry report was also supplied to the petitioner to submit his reply. Based on the evidence surfaced in the enquiry, it was established that the petitioner is guilty of the charges as enumerated in the charge-sheet. Accordingly, the disciplinary authority passed the order of compulsory retirement.

Further, in appeal, the petitioner was afforded with personal hearing and submissions advanced by petitioner was recorded and then final order was passed whereby his appeal was rejected.

On the merit of the case, learned counsel for the respondent submitted that it is admitted fact that cash was delivered by petitioner along with other clerk and the acknowledgment was found suspicious, hence, the circumstantial evidence in support of other

corroborative evidence was so strong which has made the involvement of petitioner in the matter so probable the factum of which cannot be lost sight of. Learned counsel for the respondent further submitted that co-delinquent has also been awarded the same punishment of compulsory retirement, hence, the impugned order of punishment is not assailable on the ground of disparity.

5. During course of argument, learned counsel for the respondent referred to the decision rendered in the case of Avinash Sadashiv Bhosale (Dead) through LRS. Vs. Union of India & Ors as reported in (2012) 13 SCC 142 and the decision rendered in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya as reported in (2011) 4 SCC 584.

6. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the impugned order of compulsory retirement issued vide two Memos dated 31.08.2010 at Annexures 5 and 6 and appellate order dated 30.08.2011, do not warrant interference by this Court for the following facts, reasons and judicial pronouncements:

(i). On perusal of record, it appears that for the alleged misconduct, a thorough enquiry was conducted and after following the principles of natural justice and service condition of the Bank impugned order has been passed. In the enquiry, the petitioner was also held guilty and the copy of enquiry report was forwarded to petitioner vide letter dated 3.6.2010 and accordingly the petitioner submitted his defence and only thereafter, the impugned order of compulsory retirement has been passed. Subsequently, the petitioner preferred appeal, in which also the petitioner was given personal hearing and after that the appeal preferred by the petitioner was rejected. Hence, at no point of time there is any violation of principles of natural justice.

(ii). In the case at hand, it is a case where the Bank has fully lost its confidence on the petitioner and it is established principles of law that once the employer lost confidence on its employee, the order of removal/termination or compulsory retirement, as is in this case, must be immune from challenge as for discharging the office of trust the highest standard of honesty and integrity is required. View of this Court gets fortified by the decision rendered in the case of State Bank of Bikaner and Jaipur vs. Nemo Chand Nalwaya as reported in AIR 2011 SC 1931, wherein the Hon"ble Apex hold that Courts while interfering in the punishment imposed by the disciplinary authority shall also consider the fact of loss of confidence in employee.

(iii). So far as quantum of punishment is concerned, in view of the fact that since the banking sector is based on trust and faith, which safeguards the trust of both the customer and banker, in view of the discussions made herein above, in the case wherein the basic fabric of trust has been upset, the punishment awarded needs no interference on the ground of doctrine of proportionality. Furthermore, the co-delinquent, the clerk who was accompanying with the petitioner has also been awarded with the same punishment, hence, the impugned punishment needs no interference on the ground of doctrine of parity.

7. Viewed thus, the case at hand does not present special features warranting any interference by the Court in limited exercise of its powers of judicial review. In such a fact situation, I am of the considered opinion that impugned orders does not call for any interference by this Court.

8. Accordingly, the writ petition, sans merits, is dismissed.