

(1995) 04 CAL CK 0021

Calcutta High Court

Case No: C.O. 9942 (W) of 1982

Ranabir Sengupta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** April 18, 1995**Citation:** (1996) 1 ILR (Cal) 513**Hon'ble Judges:** Basudeva Panigrahi, J**Bench:** Single Bench**Advocate:** Mihir Chakraborty, for the Appellant; Udayan Sen and Subir Sanyal, for the Respondent**Final Decision:** Dismissed

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### Judgement

Basudeva Panigrahi, J.

This writ petition is directed against an order passed by the Regional Manager, United Bank of India, Calcutta South Region where-under he refused to grant salary to the Petitioner apart from the subsistence allowance given to him during the period of suspension.

2. The Petitioner had alleged, inter alia, in the application that he was posted at Jodhpur Park Branch of the United Bank of India or about December 22, 1983 as Head Cashier in which post he was subsequently confirmed in the year 1984. The main function of the Petitioner was to remain incharge of the Cash Department. The principal duty of the Petitioner was to take out cash from the Strong Room, carry the same to the Head Cashier's cubicle and disburse the same to customers of the Bank and also to receive cash from them. On September 24, 1990 the Petitioner reported for duty and had withdrawn a large amount of cash from the Strong Room and had kept the same in his cubicles and locked himself in. When he noticed that the armed guard was absent at the relevant time and a huge crowd gathered at the cash counter he felt insecure and left a message to the Branch Manager for immediate deputation of an armed guard. The Teller Cashier was allegedly absent from duty. Therefore, he made a request to the Branch Manager for deputing a substitute of

the Teller Cashier enabling him to disburse the cash. The Teller Cashier was, eventually, deputed to assist the Petitioner but after an inordinate delay. Thus, the customers naturally were impatient and pressurized the Branch Manager for immediate disbursement of cash. These all happened in quick succession and finally at 10.45 A.M. the Branch Manager passed an order asking the Petitioner to explain why he suspended the disbursement of cash. Such an order is allegedly made with mischievous and evil design only to put the writ Petitioner in an inconvenient position. So, he received the order under protest. Following the said order another order No. 76/90 was communicated to him at 10.55 A.M. Whereunder he was asked to hand over the charge of cash to one Sri Sukamal Pal, Deputy Manager. This also he received under protest. He had no other option but to hand over the cash to Sri Sukamal Pal under the Branch Manager's order. The activities of the Petitioner was taken as insubordination and accordingly the authorities had placed the Petitioner under suspension and a disciplinary proceeding was ordered to be drawn up against him. During the pendency of the disciplinary proceeding the Petitioner was allowed subsistence allowance as per the provision of West Bengal Payment of Subsistence Allowance Act, 1969.

3. The said order is attached to the writ petition as Annexure "D". The Petitioner was communicated the charges framed by the disciplinary authority which is Ext. "FT" and was asked for submitting his written statement of defence. Pursuant to the communication of the charges it is stated that the Petitioner had already submitted his written statement of defence.

4. After submission of written statement of defence the disciplinary authority appointed Deputy Manager, Jodhpur Park Branch as the Enquiring Officer. During continuance of the enquiry proceeding the Petitioner allegedly submitted a letter which is extracted hereunder:

With reference to your letter No. Ro/Cal-S/ADMN/ 13527/90 dated 26.10.90 on the basis of which an enquiry is in progress, preceded by an order placing me under suspension, I would fervently request your good offices to reconcile the whole affairs.

It may be, that due to some misunderstandings, there arose certain undesired and unfortunate situation at Jodhpur Park Branch from which the whole episode has stemmed up.

I would therefore appeal to you to put an end to the whole matter for good even considering the charges as proved on the basis of my assurance for effort of a reasonably better and unhindered understanding and co-operation hoping not to recur it.

5. The disciplinary authority on a close reading of the import of the letter construed it unconditional and unqualified admission of charges by the Petitioner, discharged him from the charges. He begged apology from the authority and assured them for

effort of a reasonably better and unhindered understanding and cooperation hoping not to recur it. Therefore, the disciplinary authority disallowed the claim of full salary during the period of suspension and merely discharged after having concluded the disciplinary proceeding. When the authorities denied to grant, the full salary to the Petitioner during the period of suspension, the writ Petitioner approached this Court by filling the writ petition for the following relief♦s:

(a) A writ in the nature of certiorari directing the Respondents to certify and transit the records of the instant case particularly relating to the decision not to pay your Petitioner the balance pay and allowances during the suspension period so that conscionable justice may be done by quashing the said decision as contained in Annexures "M", "Q" and "S" ;

(b) A writ in the nature "of mandamus do issue commanding the Respondents -

i) to act fairly, equitably, and justly ;

ii) to withdraw, cancel and rescind the decision not to pay to the Petitioner his balance arrear of full pay and allowances during the suspension period less the amount already received by way of subsistence allowance, as contained in Annexures "M", "Q" and "S" ;

iii) to forthwith pay to your Petitioner the balance arrear full pay and allowances during the suspended period less the subsistence allowance already received by him.

(c) A Rule NISI in terms of prayers (a) and (b) hereinabove;

(d) A mandatory order of injunction directing the Respondents to release to your Petitioner his balance arrear pay and allowances for the suspension period less the amount already received by him forthwith ;

(e) To make the Rule absolute in case the Respondents fail or neglect to give an adequate return thereto ;

(f) Costs incidental to this application ;

(g) Any other writ and/or orders and/or directions as to your Lordships may deem fit and proper.

6. The Respondents in their affidavit-in-opposition have pleaded that though the Petitioner as Head Cashier was duty bound to disburse the cash to the customers had failed to discharge his duties as a result of which there was a stalemate in the business of the Bank. This incident had taken place on the preceding day of Puja Vacation on September 24, 1990. There was an unusual rush of the customers as the Bank was scheduled to be closed for six days. Therefore, the customers on being approached the Branch Manager, the latter asked the Petitioner to disburse the cash to the customers. The Petitioner on some pretext or other avoided to discharge

his duties as a sequel of which the Branch Manager was obliged to entrust to the deputy Manager to take charge of cash from the Petitioner. The Branch Manager was further constrained to bring to the notice of the Deputy Regional Manager about the delinquency of the Petitioner. Accordingly pending framing of charges the Petitioner was placed under suspension. Simultaneously charges have been framed on the following grounds:

I) Willful insubordination and disobedience and lawful and reasonable orders of the superior;

II) doing an act prejudicial to the interest of the bank.

Following the writ Petitioner submitting his written statement of defence enquiry officer was appointed for holding an enquiry about the alleged delinquency of the Petitioner. During the pendency of enquiry the Petitioner however, approached to the disciplinary authority with a letter assuring them that such incident in future shall not recur. He also made an unqualified statement that even considering the charges proved, he will assure of a reasonably better and unhindered understanding and co-operation hoping not to recur it. On such representation and assurance having been considered by the Respondent No. 2, the latter revoked the suspension and discharged the Petitioner from the charges but imposed the punishment under the provision of 19.6(e) of the Bipartite Settlement directing that the Petitioner shall not be paid the salary besides the subsistence allowance. It is claimed by the Respondents that the disciplinary authority has unfettered and unbridled powers to disallow the salary to a delinquent officer if he is found guilty. Therefore, their main stand is that since the Petitioner has unconditionally admitted to have committed the lapses, the disciplinary authority was well within its bound to impose the penalty by disallowing the salary to the Petitioner.

7. Mr. Mihir Chakraborty, the Learned Counsel for the Petitioner, strongly urged in course of hearing that the disciplinary authority has committed a manifest error in disallowing the salary of the writ Petitioner while exonerated him of the charges. It is further argued that the Petitioner was placed under suspension on irrelevant and impertinent charges and for which the Petitioner had filed his show cause and the matter did not come to an end for a pretty long time. When such prolongation of the enquiry affected bread and butter of the Petitioner, he found no other way then to approach the authorities for culmination of the proceeding. Therefore, he addressed the letter to the authorities assuring them not to recur the same incident even considering the charges are said to be proved.

8. Mr. Chakraborty argued with vehemence that such letter can never be construed to be an unequivocal admission of guilt by the Petitioner. At the best, it may amount to assurance having been given by the Petitioner to the authorities that such unfortunate incident may not recur in future. The authorities therefore, where incompetent to deny the salary of the Petitioner while they exonerated him from the

charges. The Learned Counsel made an inexorable plea that while the charges against the Petitioner were dropped and at the same time to claim that the delinquent had not been exonerated cannot co-exist. If the charges were dropped it would only lead to an inference of exoneration of the guilt.

9. It was argued inter alia, by Mr. Chakraborty that since the Petitioner was discharged from the proceeding it should not have been proper for the disciplinary authority to deny full salary as indicated in para.34 of the 3rd Supplement to Guidelines for Staff Administer Administration. It is extracted here below for the purpose of better appreciation of the contention of the Petitioner:

If the enquiry results in exoneration of a suspended employee he is not only entitled to reinstatement but also "the full pay and allowances for the suspended period less the amount of subsistence allowance received by him.

10. The Learned Counsel for the Respondent, Mr. Sen submitted that the Petitioner acted in such a derogative manner which compelled the Respondents for initiation of a departmental proceeding. It is urged that on the date of the incident, though there was huge rush the Petitioner had want only avoided to discharge his duties leading to such a situation that the customers were compelled to approach the Branch Manager for an alternative arrangement. Such situation was quite unbecoming and indecent on the part of a senior employee of the Bank. The behavior of the Petitioner can only be termed as an act prejudicial to the interest of the Bank. Therefore on the report of the Branch Manager the Respondent No. 2 finding no other alternative but to initiate the proceeding against the Petitioner. During continuance of the proceeding when the Petitioner apprehended that the findings of the enquiry might adversely affect his interest approached him for early disposal of the same. On the assurance that the same act may not be recurred in future the Petitioner prayed for dropping of the proceeding. Thus, the disciplinary authority taking a sympathetic attitude on the Petitioner allowed the charges to be dropped holding that he shall not be entitled to the salary over and above the subsistence allowance already paid.

11. The fundamental question that arises in this case is whether the letter issued by the Petitioner to the Respondent No. 2 is an unconditional and unqualified admission of guilt. If it can be interpreted in the affirmative the writ petition is bound to fail. On the contrary ; if it is found that it was conditional subject to the proof of charge framed against the Petitioner, the letter issued by Respondent No. 2, annexure "M" would be quashed.

12. The Learned Counsel for the Petitioner cited a decision in AIR 1977 S.G.S. 712 but on a serious cogitation it appears the said decision shall not be applicable in this case. The principle enunciated above-mentioned decision cannot be stretched to the present case.

13. The Respondent No. 2 has raised another contention that when an employee would be found guilty of gross misconduct may::

(a) ♦.

(b) ....

(e) have his misconduct condoned and been merely discharged.

The Learned Counsel indicated that mere use of word "discharge" shall not absolve the Petitioner from the punishment. In this case, the act of the Petitioner had prejudicially affected the interest of the Bank. The disciplinary authority was well within its limitation to disallow the salary of the writ Petitioner over and above the suspension allowance. The argument seems to be very attractive and well-founded.

14. At the first blush from the contents of the letter purported to have been submitted by the writ Petitioner to the Respondent No. 2 vide annexure "L" it would appear to be conditional and would depend on the proof of the alleged charge against him. But on a closer reading of the same, one will get an unmistakable impression that the said admission is unequivocal and unconditional. The word "even" conveys the meaning "precisely" or "exactly". Therefore, if the above meaning is imported then it leads to an impression that the writ Petitioner made unqualified statement admitting his lapses with a view for early finalisation of the proceeding. Even accepting the contention of the writ Petitioner that the issuance of the letter by the Respondent No. 2 should not be treated lawful, then the Petitioner shall be relegated to the position as he was on September 27, 1991, thereby he would be required to face departmental enquiry.

15. Considering the case from any angle it does not appear that the authorities had committed any illegality in rejecting the prayer of the Petitioner for the full salary during the period of suspension.

16. In the result, I do not find any merit in the writ petition and is, accordingly, dismissed. But in the circumstances, the parties are directed to bear their own costs.