

Ashok Kumar Pandey Vs. State of U.P. and ors

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Court : Allahabad

Decided On : Mar-18-2011

Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

Acts : Indian Penal Code (IPC) - Sections 467, 468, 471, 420 and 409; Discipline and Appeal Rules; Gram Panchayats under development schemes; Constitution of India.- Artical 226; Purvanchal Gramin Bank (Bank and Employees) Service Regulations, 2005 - Regulation 17, 47 and 19, Rule 47, 48 and 49

Appeal No. : Civil Misc. Writ Petition No.45138 of 2008

Appellant : Ashok Kumar Pandey

Respondent : State of U.P. and ors

Advocate for Pet/Ap. : Shri. K.N. Tripathi

Judgement :

1. We have heard Shri K.N. Tripathi, Sr. Advocate assisted by Shri Ramesh Rai for the petitioner. Shri Amrish Sahai appears for the respondent-bank.

2. The petitioner was appointed as Officer Grade-I, in the erstwhile Basti Gramin Bank in the year 1983. He was promoted as Officer Grade-II in 1997 w.e.f. 13.9.2005. The bank has become joint venture of Union of India, State of U.P. and State Bank of India, and is now named as Purvanchal Gramin Bank. The petitioner's service conditions are governed by Purvanchal Gramin Bank (Bank and Employees) Service Regulations, 2005. By this writ petition the petitioner is

challenging the order dated 31.12.2007 passed by the Chairman as disciplinary authority imposing punishment upon the petitioner of reduction of rank from Officer Scale-II to Officer Scale-I, at its first stage, and imposing penalty of Rs.1 lac as token money. He has also challenged the order of the Board of Directors/ appellate authority dated 6.5.2008, confirming the punishment.

3. It is stated that when the petitioner was posted as Branch Manager of Naugarh Branch, some financial irregularities committed by Shri Durga Prasad Misra, an officer attached to the branch of the bank came to the knowledge of the petitioner. He reported the irregularities to the Regional Manager, IVth Region of the bank by his letter dated 8.2.2005. An enquiry was conducted by the Regional Manager, IVth Region of the bank, on the allegations of financial irregularities made by the petitioner. A first information report was lodged against Shri Durga Prasad Misra, Parmatma Prasad, Krishna Dutta Shukla and Hemant Kumar. Shri Durga Prasad Misra was found to have transmitted the money in the account of these three persons at Chilhia Branch of the Bank from where the amount was withdrawn and misappropriated. A first information report registering Case Crime No.274 of 2005, was lodged on 13.3.2005 under Sections 467, 468, 471, 420 and 409 IPC P.S. Naugarh, Distt. Siddharth Nagar.

4. Prior to the registration of first information report an enquiry was also conducted by a three member committee consisting of Shri Vaizan Ahmed, Shri Rakesh Kumar Dwivedi & Shri B.N. Dubey. In their report dated 1.3.2005 they found involvement of Shri Durga Prasad Misra. The petitioner as the Branch Manager of the branch of the bank was placed under suspension pending further investigation by the Chairman of the bank on 2.3.2005. He was served with the chargesheet on 22.3.2006, after one year of the suspension levelling 10 charges. The Articles of Charges imputed allegations of transfer of Rs.1,69,368/- to the account of Shri Parmatma Prasad at Chilhia Branch. This amount was returned by the Mithwal Branch to the Naogarh Branch of which the petitioner was the Branch Manager, for providing list of the Gram Panchayats to which the amount was to be transferred. The charge No.2 related to transfer of Rs.1,61,000/- to the account of Shri Parmatma Prasad in Chilhia Branch on 20.3.2004 from Current Account No.30120, from where the amount was withdrawn. He was not entitled to receive

the amount. The money belonged to the accounts of Gram Panchayat of Belhwa branch, and was returned to the government. The charge No.3 related to transfer of Rs.2,34,042/- to the account of Shri Parmatma Prasad at Chilhia Branch and withdrawals made by him after the amount was deposited on 13.4.2004. This amount belonged to various Gram Panchayats and was the balance on the amount to be transferred by the head office. Charge No.4 related to transfer of Rs.1,30,000/- to Chilhia Branch by a credit voucher, where it was deposited on 8.7.2004 and withdrawn by the account holder. This amount was transferred by the authorisation of the charged officer on 5.7.2004. The 5th charge related to transfer of Rs.35,910/- unauthorisedly on 20.8.2004 by the charged officer to Chilhia Branch, deposited in the Account No.363 and was withdrawn on various dates. Charge No.6 related to transfer of Rs.28,69,133/- by making double payment in the current account of Naugarh Branch maintained by the State Bank of India on 6.10.2004. It was alleged that taking benefit of this double payment the charged officer on 18.10.2004, unauthorisedly appropriated the money in the cash at bank account. Firstly this amount was parked in the miscellaneous account and thereafter it was transferred to the account of the saving account of Shri Hemant Kumar at Chilhia Branch on 18.12.2004 from where the amount of Rs.4,15,000/- was withdrawn on various dates.

5. Charge No.7 related to misappropriation of Rs.5000/- by firstly appropriating the amount on 19.10.2004 in cash at bank of the branch and thereafter transfer of this amount in the saving bank account No.5701 of Shri Krishna Dutt Shukla, whereas this amount was not concerned with the account holder. Charge No.8 related to fraudulent misappropriation of Rs.94,500/- from out of the Gram Shiksha Nidhi of Rs.25,11,676/- transferred by the Asstt. Finance and Account Officer, Sarv Shiksha Abhiyan, Siddharth Nagar on 27.10.2004. By transferring this amount to various branches an excess amount of Rs.94,500/- transferred by the Asstt. Finance and Accounts Officer, by mistake. It was fraudulently transferred to the Saving Account No.5701 of Shri Krishna Dutt Shukla, whereas this amount was to be returned to the Asstt. Finance and Accounts Officer.

6. Charge No.9 related to instructions written on the information sent to the Chilhia Branch at the time of transfer of Rs.1,69,368/- on 7.10.2003 with instructions to

deposit the amount in SB 363 Shri Parmatma Prasad Misra, whereas no such information was written on the carbon copy retained by the branch and in this manner a false information was found to be recorded on the instructions sent to deposit the amount to the Chilhia Branch. The 10 th and the last charge related to the non-reconciliation of the cash at bank account of Naugarh Branch in June, 1998. These accounts were confirmed to be re-conciliated upto 8.11.2004, whereas actually on that date the accounts were not re-conciliated. An outside computer agency engaged for reconciliation also did not make the reconciliation chart, available to the head office.

7. The petitioner replied to the chargesheet and participated in the departmental enquiry. The enquiry officer considered the defence of the petitioner and the documents on the basis of which charges were sought to be proved. He considered the defence of the petitioner, that these irregularities were committed by Shri Durga Prasad Misra, the officer attached to the bank. The petitioner stated that he had infact tried to save huge money from misappropriation. Apart from the petitioner there were two officers and two clerks/ accountants. Whenever the officers and clerks were on leave, the petitioner was required to take service of Shri Durga Prasad Misra. The petitioner fell into fraudulent designs and activities of Shri Durga Prasad Misra. The enquiry officer also considered the defence of the petitioner that Shri Durga Prasad Misra had influenced upon the administrative officers of the bank. The non-bailable warrants issued against him were not made effective for about 5 years. The petitioner's signatures were obtained by Shri Durga Prasad Misra by playing fraud upon him. Shri Misra was instrumental in getting the saving accounts open at Chilhia Branch, and transferring the amount from the Naugarh Branch to Chilhia Branch. Shri Misra was the beneficiary of the fraudulent transfers.

8. The enquiry officer found the petitioner responsible for fraudulently transferring the amount to Chilhia Branch. He found all the charges to be fully proved against the petitioner. The enquiry officer did not agree with the defence of the petitioner that he was made to sign vouchers on the fraud played by Shri Durga Prasad Misra. The petitioner as the Branch Manager was fully responsible for these transfers; writing false instructions on the memos to Chilhia Branch, and for not

submitting the reconciliation chart.

9. The petitioner was served with a copy of the enquiry report. He submitted a reply to it stating that embezzlement was facilitated at least at four stages in the transaction; namely, planning of embezzlement, preparation of false documents and vouchers, false entries of these documents in the records of the bank and in getting the vouchers and memos to be fraudulently signed by the officers. In charge Nos.1 to 8 the petitioner was not involved in the first, second and third stage of embezzlement. He cannot be held responsible for preparing false vouchers and for posting of these vouchers in the ledgers. He was involved fraudulently in the fourth stage of the embezzlement in which his signatures were obtained by playing fraud upon him. The author of the first three stages was Shri Durga Prasad Misra. The enquiry officer did not make any comments on the conduct of Shri Durga Prasad Misra.

10. The petitioner further stated in his reply dated 27.8.2007 to the enquiry report served on him along with letter dated 6.8.2007, that the forged vouchers, and memo were prepared in the handwriting of Shri Durga Prasad Misra. Shri Misra had first recorded the name of Chetia Branch and thereafter by overwriting he changes the name of branch Chetia, to Chilhia and also the abbreviation SC to SB. As the Branch Manager of the branch the petitioner was required to only verify these entries. The petitioner was neither responsible for making these entries and transfers nor had benefited from the transfer of the money. The petitioner was in no way connected, nor any such connection was established between him and the account holders, who were ultimate beneficiaries. Shri Durga Prasad Misra was arrested and detained in jail. While considering his bail application, the Sessions Judge, Siddharth Nagar had observed that he has prepared several forged credit advices and vouchers and after taking superior officers of the bank in his confidence, got their signatures over them and committed embezzlement of huge amount of Rs.42.25 lacs. The petitioner submitted that these observations clearly establish that Shri Durga Prasad Misra was responsible for the fraud. It is only after the petitioner fell victim to the fraudulent activities of Shri Misra that he came to know about his past. The petitioner stated in his reply that he has served the bank with utmost devotion and duty. He has not been involved in any irresponsible

activity or for causing any financial loss to the bank, and prayed to be exonerated from the charges.

11. The disciplinary authority considered the defence of the petitioner, on each charge, and the findings of the enquiry officer. He found that the petitioner was given full opportunity to defend himself in the departmental enquiry serving the principle of natural justice. The petitioner as Branch Manager was responsible for the financial transactions and operations of the bank and cannot take benefit of the past deeds of Shri Durga Prasad Misra. An opportunity was given to the petitioner to make a representation within 15 days against the proposed punishment of reversion from the Officer Grade-II to Officer Grade-I, to the initial scale and for recovery of Rs.1 lac in token towards loss caused to the bank. The petitioner gave his representation to the proposed punishment on 12.11.2007. The disciplinary authority considered the petitioners explanation, and found that the defence submitted by the petitioner relates only to the conduct and the activities of Shri D.P. Misra and to have signed the vouchers and memos, believing upon Shri D.P. Misra. The disciplinary authority found that the petitioner holding the responsible post of Branch Manager could not have ignored his responsibilities. The petitioner did not use his common sense and acted wholly irresponsibly. The disciplinary authority observed that the petitioner admitted in the oral enquiry before him, that he was aware of the conduct of Shri Misra and that since the petitioner had committed gross negligence in performance of his duties, in signing the vouchers and memos on account of which the bank suffered loss, his explanation could not be believed. He was thus liable to be punished in violation of Regulation 17 and 19 of the Service Regulations o 2001.

12. The Board of Directors considered the petitioners departmental appeal. By the order of the Chairman of the Bank dated 6.5.2008 the petitioner was informed that he Board of Directors discussed the agenda in detail and found that the petitioner has in exercise of his duties committed gross negligence on account of which such a big fraud at Naugarh Branch was made possible. By his conduct the petitioner has also caused loss to the image of the bank and thus punishment awarded is proper and appropriate.

13. Shri K.N. Tripathi, learned counsel for the petitioner submits that the entire fraud was masterminded and played by Shri Durga Prasad Misra. Shri Misra was attached as an officer in the bank. He had prepared the vouchers and misled the petitioner to sign them. The transfer was made to the accounts to Chilhia Branch from where the amount was withdrawn by the accounts opened by Shri Durga Prasad in the names of various persons. He submits that the enquiry officer has not taken into consideration that the petitioner as the Branch Manager of the bank was not responsible to prepare the vouchers and to make entries in the ledger. At the most the petitioner could be found guilty of negligence in verifying the vouchers and ledgers for which the major penalty was wholly disproportionate. Shri Tripathi submits that the conclusions drawn by the enquiry officer are contrary to the charges leveled against the petitioner. The disciplinary authority was prejudiced against the petitioner, as the petitioner was President of the Officers Association and had agitated the matters of the welfare of the members of the association on their behalf.

14. It is submitted that in the same episode two other bank employees were charged. One of them namely Ram Bharose was punished for withholding of only two increments and penalty of token money of Rs.25,000/-, whereas the petitioner has been inflicted with punishment of reduction in rank and fine of Rs.1 lac. He submits that the appellant authority has not given any reasons in dismissing the appeal. The decision of the appellant authority is alleged to be violative of Regulation 47 of the Purvanchal Gramin Bank Officers and Employees Service Regulations, 2005. Rule 47, 48 and 49 of these Rules provide as follows:-

"47. Right to appeal (i) An officer or employee shall have right of appeal against any order passed under these Regulations which injuriously affects his interest;

(ii) The appeal shall be preferred to the Appellate Authority mentioned in Regulation 48 within 45 days of the date of receipt of the order appealed against. The Appellate Authority shall consider the appeal and pass suitable order preferably within a period of 6 months.

48. Appellate authorities An appeal shall lie- (i) to the Board where Chairman of Committee or Director is the Competent Authority.

(ii) to the Chairman where any other office is the Competent Authority.

49. Requirement of an appeal Every appeal shall comply with the following requirements:

(a) It shall be in writing and couched in polite and respectful language and shall be free from unnecessary padding or superfluous verbiage.

(b) it shall contain all material statements and arguments relief on and shall be complete itself,

(c) it shall specify the relief desired,

(d) it shall not be addressed to Directors personally."

15. Shri K.N. Tripathi submits that the appellate authority is under duty to give reasons while affirming the order of disciplinary authority. In *Chairman Disciplinary Authority Rani Laxmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney & Ors.*, (2009) 4 SCC 240 the Supreme Court held that though the order of affirmation need not contain elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In *State of Bikaner and Jaipr v. Prabhu Dayal Grover*, (1995) 6 SCC 279 it was held that the appellate authority must disclose application of mind. Some reasons, atleast in brief disclose the application of mind. In *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594 it was observed in para 36 that the appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. This observation, it was held, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

16. Learned counsel appearing for the bank submits that the petitioner was grossly negligent in performing his duties as Branch Manager. He was fully responsible for

all the bank operations. He cannot take shelter behind the allegations of fraud and misrepresentation by Shri Durga Prasad Misra. All the ten charges were proved against him. It is not necessary for the bank to prove all the stages of embezzlement alleged by the petitioner. Even if the petitioner did not prepare the vouchers and memos, he was responsible for the transaction, as he was the competent authority, who had signed the vouchers and memos. The petitioner was given full and adequate opportunity to defend himself. He was given opportunity both by the enquiry officer as well as the disciplinary authority. His reply was considered by the disciplinary authority and that the Board of Directors as appellate authority under the Discipline and Appeal Rules had discussed the matter. The appellate authority's report and that the reasoned decision of the Board was communicated to the petitioner. The appellate authority's decision communicated to the petitioner demonstrates the application of mind. The Board of Directors of the bank had affirmed the decision of the disciplinary authority.

17. We have considered the respective submissions and find that it is not denied that on account of the financial irregularities, in the branch, a large amount of money was siphoned off unauthorisedly to Chilhia Branch of the bank from where it was withdrawn by the account holders, who were not the owners and were not entitled to the amount. Various amounts, which were to be transferred to the Gram Panchayats under development schemes were fraudulently diverted and transferred unauthorisedly to Chilhia Branch. Forged vouchers were prepared and entries were made in the bank records. The petitioner admittedly signed on these vouchers and memos for transfer of amount to Chilhia Branch. Even if he did not prepare the vouchers and memos and did not make the posting in the ledgers himself, as a Branch Manager he was ultimately responsible for all the financial transactions of the bank. The petitioner cannot take shelter behind and find excuse in misdeeds of Shri Durga Prasad Misra, working under the supervision of the petitioner. The petitioner had relied upon the documents prepared by him to authorise the transfers. As head of the branch the petitioner could not have avoided the responsibility of the fraud and consequential embezzlement. The petitioner also did not submit the reconciliatory chart of the transactions prepared by the agency engaged from outside. He did not furnish full and complete information to the Head Office. The petitioner was given all the relevant documents and was

given full opportunity to defend himself in departmental enquiry. He was given the copy of the enquiry report and thereafter proposed with the punishment. His reply was considered before he was found guilty and held responsible for the financial loss and the loss of reputation of the bank.

18. The appeal was to be decided by the Board of Directors of the Bank, as the competent authority under Regulation 48. The Board of Directors of the bank was required to consider the appeal and pass suitable orders preferably within a period of six months. Regulation 47 provides for right to appeal and Regulation 48 provides for appellate authority. Where the Board of Directors is the appellate authority, it is required to consider the appeal by discussion in a meeting and to take a decision by majority. The Board had considered the matter at Item No.4 its meeting. There is no pleading or argument alleging that the record was not available or the Board of Directors has not discussed the matter. The communication of the decision of the Board on the appeal of the petitioner by the Chairman of the bank by his letter dated 6.5.2010 clearly states that on detailed discussion on the agenda the Board of Directors felt that the delinquent officer has completely neglected in discharging the responsibilities of his office and has committed gross negligence on account of which such a big fraud was made possible at Naugarh Branch. The conduct of the officer resulted into loss to the bank and its image, and taking that into account the punishment imposed by the disciplinary authority is appropriate. The decision of the Board communicated to the petitioner is quoted as below:-

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19. Where the orders of punishment, as in the present case, are passed by the Chairman as disciplinary authority, the appellate authority under Regulation 48 (i) is the Board. The Board is required to consider the grounds of appeal along with record. When a matter is to be decided by discussion in a meeting, the resolution

in the meeting is not required to give reasons. The reasons are contained in the discussion and the decision. Unless rules so require, such reasons are not to be separately given by the Board. The Chairman, as the Presiding Officer of the Board of Directors has only to authenticate the decision. The authentication of the decision, verifies that the matter was discussed before a decision was arrived at. The resolution in such case is not required to contain or to give separate reasons. In the present case the Chairman of the Board in the order communicating the decision of the Board of Directors has clearly referred to the discussion taken by the Board of Directors. The Chairman intimated that after detailed discussions the Board of Directors came to conclusion that the petitioner as charged officer had neglected in discharging his responsibilities for which such a large scale fraud could be committed in the Nagaur Branch. The decision of the Board of Directors of the Bank communicated to the petitioner also takes into consideration the proportionality of the punishment. It is recorded that the Board of Directors did not find punishment to be disproportionate to the charges. The communication of the decision of the Board did serve the requirements of disclosing application of mind and the reasons both to the consideration of the matter on merits and the quantum of punishment, in proportion to the charges. In the circumstances, we do not find that the decision of the Board of Directors as appellate authority has violated the principle of law laid down in *Chairman Disciplinary Authority Rani Laxmi Bai Kshetriya Gramin Bank (Supra)*. The order of the Chairman not only disclosed the application of mind by the members of the Board of Directors in the Board meeting, it also gave reasons on account of which Board of Directors arrived at conclusion to dismiss the appeal.

20. The order of the disciplinary authority and the appellate order do not suffer from any such error, which may call for interference of the Court under Art.226 of the Constitution of India. In our opinion the punishment awarded, on the proof of the charges of gross negligence in performance of duties by the petitioner and consequential loss to the bank is not disproportionate.

21. The writ petition is dismissed.