

The Disciplinary ... vs Nikunja Bihari Patnaik on 15 April, 1996

Equivalent citations: JT 1996 (4), 457 1996 SCALE (3)711, AIRONLINE 1996 SC 984

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, M.K Mukherjee

PETITIONER:

THE DISCIPLINARY AUTHORITY-CUMREGIONAL MANAGER AND ORS.

Vs.

RESPONDENT:

NIKUNJA BIHARI PATNAIK

DATE OF JUDGMENT: 15/04/1996

BENCH:

JEEVAN REDDY, B.P. (J)

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JEEVAN REDDY, B.P. (J)

MUKHERJEE M.K. (J)

CITATION:

JT 1996 (4) 457 1996 SCALE (3)711

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY,J.

Leave granted.

The respondent was an officer in Scale-I in the service of the Central Bank of India. While he was working as the Branch Manager, Paradeep Branch, he was suspended pending enquiry on November 21, 1988. On January 16, 1989, ten charges were communicated to him. He denied all of them. An Enquiry Officer was appointed who reported, after holding a due enquiry, that Charges Nos.1, 6, 8 and 9 were established fully while Charges Nos.2,3,5,7 and 10 were established partially.

Charge No.4 was held not established. On the basis of the said report, the appropriate authority dismissed the respondent from service. The appeal preferred by the respondent was dismissed whereupon he approached the Orissa High Court by way of a writ petition. The High Court has allowed the writ petition holding that the charges held established against the respondent represent errors of judgment but not "misconduct". The High Court opined that though the respondent was guilty of doing many acts beyond his authority, it was not established that it was done with any ulterior motive or for any extraneous consideration. Since the Enquiry Officer has not found that the Bank has actually incurred any loss on account of the said acts of the respondent, the High Court held, the charge of misconduct is not established. Accordingly, the writ petition was allowed, the order of punishment imposed upon the respondent was set aside and the respondent was directed to be reinstated in service with all consequential benefits. The charges framed against the respondent are the following:

"(1) The Petitioner took charge of the Branch from 29.9.86. At the time of taking over charges there were number of overdrafts accounts.

Instead of taking care for adjustment of such advances by constant follow up, he continued to extend the facility unauthorisedly and without any delegated powers even exceeding the outstanding balance as on 29.9.86 as a result bank's interest is likely to be jeopardized.

(2) The petitioner allowed clean overdrafts to several parties without any delegated authority and much beyond his discretionary powers, violating Central Office guidelines as a result he has exposed the bank to severe financial risk.

(3) The petitioner allowed drawings in cash credit a/cs much beyond the sanctioned limits and or enhanced the existing limits in gross violation of his discretionary powers. As such, there is every likelihood that the bank's interest may be at stake.

(4) The petitioner sanctioned number of fresh cash credit limits to different parties much beyond his lending powers in violation of bank's norms and guidelines without proper documents and in some cases without any documents.

(5) The petitioner sanctioned a number of Term Loans directly without observing the bank's rules and guidelines.

(6) The petitioner unauthorisedly issued Bank Guarantee on behalf of different parties without intimation to R.O. The guarantees were issued and signed by himself as Br.Manager though on behalf of the Bank. While acting so he had not taken counter guarantee in some cases.

(7) While allowing unauthorisedly advances/TOD/other loans, the petitioner had not taken proper documents. Most of the documents taken were blank, undated, unstamped. Thus he had not safeguarded the interest of the Bank.

(8) The petitioner though made number of unauthorized irregular advances, allowed clean overdrafts, he had not submitted any Control Returns to the Regional Office inspite of letters/reminders.

(9) The petitioner allowed clean overdraft in number of accounts even after Regional Office's specific instructions to stop such practices and stop allowing further overdrafts. As such willfully he violated instructions of higher authorities which was an act of insubordination.

(10) In number of borrowal accounts, the petitioner had not done proper follow up and had not taken due care either for renewal of documents or for obtaining balance confirmation. As a result, in number of borrowal a/cs the documents were allowed to go time barred, putting the interest of the bank at jeopardy. Even in proper time he had not submitted the STF to Regional Office for taking legal action against such defaulters."

In support of Charge No.1 as many as fifteen instances were cited. While it is not necessary to refer to all those instances, it is sufficient to mention that in all these cases it has been found that the respondent acted beyond his authority in allowing the overdrafts or in passing the cheques, as the case may be. In some cases, the Bank was benefited by the acts of the respondent while in some other cases, the concerned amounts became sticky or irrecoverable. Charge No.2 relates to temporary overdrawals allowed by the respondent beyond his authority to different parties. A number of instances were cited and held established. The Enquiry Officer held the charge proved. He also found that in some cases the Bank stood to gain while in some other cases the concerned advances had become sticky. Similarly, in respect of Charge No.3, number of instances were cited. It was held that in many cases the respondent allowed drawings/enhanced limits in excess of the sanctioned limits in violation of his discretionary powers. Charges Nos.5,6 and 7 speak of the respondent acting beyond his authority. Charge No.8 says that inspite of reminders, the respondent failed to send "Control Returns" to the Regional Office. This charge was held fully established. Charge No.9 is to the effect that the respondent allowed number of accounts and clean overdrafts even after receiving the instructions of the Regional Office to stop such practice. The Enquiry Officer found that the respondent had indeed flouted the orders of the Regional Manager and committed an act of disobedience of lawful orders. The substance of Charge No.10 is that for want of proper follow up action, a number of borrower accounts have become time-barred and the prospects of the recovery of bank's dues have become bleak. Fifteen instances were cited in support of this charge.

It may be remembered that Charges Nos.1,6,8, and 9 were held to have been established in full while the remaining charges [except charge No.4] were held to be established in part. It is indeed a matter of surprise that inspite of the aforesaid findings, the High Court came to the opinion that it is not a case of misconduct. Regulation 24 of the Central Bank of India Officer Employees' (Displine and Appeal) Regulations, 1976 defines the acts of misconduct in the following words:

"24. Acts of misconduct: A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Central Bank of India

Officer Employees'(Discipline and Appeal) Regulations, 1976."

Regulation 3 of the said Regulations may also be noticed:

"3(1). Every officer employee shall, at all times take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations. (3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. (4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him, Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far

beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterize them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No.9, which has been held established in full is to the effect that inspite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No.8, which has also been established in full is to the effect that inspite of reminders, the respondent did not submit "Control Returns"

to the Regional Office. We fail to understand how could all this be characterized as errors of judgment and not as misconduct as defined by the regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

We must mention that Sri V.A.Mohta, learned counsel For the respondent, stated fairly before us that it is not possible for him to sustain the reasoning and approach of the High Court in this case. His only submission was that having regard to the age of the respondent [37 years] and the facts and circumstances of the case, this Court may substitute the punishment awarded to the respondent by a lesser punishment. The learned counsel suggested that any punishment other than dismissal may be imposed by this Court. We considered this request with the care it deserves, but we regret that we are unable to accede to it. Learned counsel for the Bank, Sri V.R.Reddy, Additional Solicitor General, also stated, on instructions of the Bank, that it is not possible for the Bank to accommodate the respondent in its service in view of his conduct.

The appeal is accordingly allowed and the judgment of the High Court is set aside. There shall be no order as to costs.