

GAHC010012062014



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/3368/2014

NILENDU DUTTA
S/O- LT. NIKHIL RANJAN DUTTA, R/O- RONGPUR, DIST.- CACHAR, PIN-
788009, ASSAM.

VERSUS

THE ASSAM GRAMIN VIKASH BANK and 3 ORS
REP. BY ITS CHAIRMAN, G.S. ROAD, BHANGAGARH, GHY- 5, ASSAM.

2:THE GENERAL MANAGER
ASSAM GRAMIN BIKASH BANK
HEAD OFFICE
G.S. ROAD
BHANGAGARH
GHY- 5
ASSAM.

3:THE REGIONAL MANAGER
ASSAM GRAMIN VIKASH BANK
REGIONAL OFFICE
AMBICAPATTY
SILCHAR- 788004
ASSAM.

4:THE BRANCH MANAGER
ASSAM GRAMIN VIKASH BANK
SILCHAR BRANCH
PREMTALA
SILCHAR- 788001
CACHAR
ASSAM

Advocate for the Petitioner : MR.G R DEV

Advocate for the Respondent : MR.S DUTTA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri KR Patagiri

Advocate for the respondents : Shri S. Dutta, Sr. Adv.
Ms. S. Mochahari

Date of hearing : **14.05.2024**
Date of Judgment : **14.05.2024**

JUDGMENT & ORDER

The initiation of a disciplinary proceeding which has culminated in an order of penalty of dismissal from service dated 30.12.2013 is the subject matter of challenge in this writ petition. The attempt of the petitioner to have his grievances redressed by approaching the appellate authority in the Bank had also not yielded any favorable result as his appeal was rejected on 03.04.2014. Thereafter, the present writ petition has been filed.

2. The facts, bereft of details are that the petitioner was appointed in the year 1991 as a Clerk-cum-Cashier in the erstwhile Cachar Gramin Vikas Bank which has subsequently merged and became the Assam Gramin Vikash Bank (hereinafter the Bank). In discharge of his duties, in connection with a misconduct on 25.07.2011, the petitioner was placed under suspension pending drawl on a departmental proceeding. The same was followed by a show-cause

notice dated 24.08.2011 which had three charges. All the three charges relate to misappropriation of Bank money of various amounts. The show-cause notice was replied to by the petitioner and thereafter a memorandum of charge was issued on 11.04.2012 which was also replied to by the petitioner denying the charges. On such denial, an enquiry was initiated. In the said inquiry, three numbers of witnesses were produced by the Bank and after submission of the enquiry report, the petitioner was issued a second show-cause notice on 12.09.2013 which he had replied. The respondent – Bank had thereafter issued another notice on 20.11.2013 on the proposed penalty which was also replied to by the petitioner, whereafter vide the impugned order dated 30.12.2013, the petitioner was inflicted with the penalty of dismissal from service. As indicated above, the departmental appeal was also rejected by the Appellate Authority vide order dated 03.04.2014.

3. I have heard Shri KR Patgiri, learned counsel for the petitioner whereas the respondent – Bank and its officers are represented by Shri S. Dutta, learned Senior Counsel assisted by Ms. S. Mochahari, learned counsel.

4. Shri Patgiri, learned counsel for the petitioner has contended that the enquiry suffers from procedural irregularities as no effective opportunity to cross-examine the witnesses were given to him. The request of the petitioner to have assistance from a legal practitioner was also rejected. Apart from the aforesaid grounds, the learned counsel has submitted that along with the petitioner, three other Officers of the Bank were also charged on the same allegations and in this regard, no common enquiry was held. By drawing the attention of this Court to the provisions of the Assam Gramin Vikas Bank Officers and Employees Service Regulations, 2010, more specifically Regulation 42 thereof, the learned counsel has submitted that a common enquiry is

prescribed when two officers in different grades or an officer and employee are involved jointly in an incident and the disciplinary proceedings are sought to be instituted. It is submitted that admittedly in the instant case, no such procedure was adopted and thereby entire proceeding against the petitioner would stand vitiated.

5. With regard to the merits of the allegations, it is submitted that the instruments in question (cheques) were issued by other officers which also bear their signatures and therefore, the petitioner cannot be held guilty of any misconduct. It is also submitted that the amount in question was refunded by the petitioner and therefore the respondent – Bank did not suffer any loss.

6. In support of his submission, the learned counsel for the petitioner has placed reliance upon the following case laws-

i. **(1998) 2 SCC 407 [Director General of Police and Ors. Vs. G. Dasayan]**

ii. **(2008) 2 SCC 74 [Akhilesh Kumar Singh Vs. State of Jharkhand and Ors.]**

iii. **2009 (2) GLT 1 [Amaresh Narayan Chowdhury Vs. United Bank of India]**

iv. **Order dated 26.08.2015 passed in WP(C)/595/2009 [Nipun Rajbongshi Vs. Union of India and Ors.]**

7. The case of **G. Dasayan** (supra) has been cited in support of the plea that different punishments cannot be inflicted on similarly situated delinquents. The case of **Akhilesh Kumar Singh** (supra) has also been cited on the same aspect.

8. In the case of ***Amaresh Narayan Chowdhury*** (supra), a Hon'ble Division Bench had interfered with the penalty of removal from service of the incumbent on the ground that for a different incumbent against whom there were serious charges which were graver than those against the petitioner, a lesser penalty was imposed and on that consideration, the matter was remanded back to the authorities.

9. The case of ***Nipun Rajbongshi*** (supra) has been cited wherein this Court had remanded the matter for fresh consideration on the matter of infliction of penalty by taking into consideration the lesser penalty imposed upon a co-delinquent.

10. *Per contra*, Shri Dutta, learned Senior Counsel for the respondent – Bank has submitted that the allegations against the petitioner who was an officer of the Bank are absolutely serious and grave as the same pertains to misappropriation of public money. It is submitted that such instance of misappropriation was not a solitary instance but on three different occasions there were misappropriation. By referring to the materials on record including the memorandum of charge, it is highlighted that on 14.02.2009 an amount of Rs.90,000/- was misappropriated; on 21.07.2009 an amount of Rs.96,332/- was misappropriated and on 19.11.2008 an amount of Rs.5,87,675/- was misappropriated. It is submitted that all these amounts which were in the form of cheques were deposited in the account of the petitioner maintained with the UCO Bank which was opened on 11.12.2008. It is submitted that so far as the cheque for the amount of Rs.5,87,675/- is concerned, though the same was issued on a prior date, the same was held back and deposited immediately on the very next date of opening of the account by the petitioner on 12.12.2008. In this connection, the copy of the concerned cheque which has been annexed in

this proceeding and was also proved in the enquiry has been referred to.

11. As regards the contention of the petitioner that no cross-examination of the witnesses were allowed, it is submitted on behalf of the Bank that the petitioner was indeed granted the opportunity to cross examine the witnesses. On the aspect of not allowing a legal practitioner to assist the petitioner, the learned Senior Counsel for the Bank has submitted that even the Bank was not represented by a legal practitioner and therefore there could not have been any vested right to have a legal practitioner representing the petitioner in a domestic enquiry. On the contention regarding Regulation 42, the learned Senior Counsel has submitted that it is only a discretion granted to the Bank which would be evident from use of expressions "may" and that cannot be a ground of challenge.

12. The learned Senior Counsel for the Bank lastly submits that the duties and the role to be played by a Bank employee should be of high standard in terms of integrity and good faith, as a Bank holds the public money in trust. It is also submitted that the allegation of misappropriation is a very serious allegation and the quantum of the amount involved may not even be a relevant factor.

13. In support of his submissions, Shri S. Dutta, learned Senior Counsel relies upon the following case laws-

- i. (2006) 6 SCC 187 [Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh]**
- ii. (2007) 15 SCC 775 [Narendra Nath Bhalla vs. State of Uttar Pradesh and Ors.]**
- iii. (2008) 8 SCC 92 [State Bank of India and Ors. vs. S.N. Goyal]**

iv. **(2020) 3 SCC 423 [State of Karnataka and Anr. Vs. N. Gangaraj]**

14. In the case of **H. Amaresh** (supra), the Hon'ble Supreme Court has referred and approved the earlier decision rendered in the case of **Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane** reported in **(2005) 3 SCC 254** by making the following observations:

"21. Coming to the question of quantum of punishment, this Court in Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane, (2005) 3 SCC 254 has held as under:-

"12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

15. In the case of **Narendra Nath Bhalla** (supra), the Hon'ble Supreme Court has laid down that mere repayment of the misappropriated amount would not absolve a delinquent of the charges.

16. In the case of **S.N. Goyal** (supra), the following observations have been made which would have relevance in the adjudication of the present case.

"41. At the relevant point of time the respondent was functioning as a Branch Manager. A bank survives on the trust of its clientele and

constituents. The position of the Manager a bank is a matter of great trust. The employees of the bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the bank. Any misappropriation, even temporary, of the funds of the bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."

17. In the case of **N. Gangaraj** (supra), the Hon'ble Supreme Court has reiterated the contours and scope of judiciary in disciplinary matters wherein such examination can be done only on the decision making process and not on the merits of the decision.
18. The rival submissions have been duly considered.
19. The contention of the petitioner regarding violation of the procedures in the enquiry is to be examined first. It is contended that the petitioner was not afforded an opportunity to cross examine the witnesses. The materials on record including the averments made by the petitioner himself in paragraph 10 would however show that cross examination was indeed done. With regard to the assistance by a legal practitioner, this Court is of the opinion that when the Bank was not represented by a legal practitioner, the delinquent petitioner cannot claim, as a matter of right to be given the said opportunity. What ultimately requires is whether any prejudice was caused to the petitioner in

defending himself in the enquiry and the materials on record do no suggest that any such prejudice was caused. The contention of the petitioner with regard to the Regulation 42 does not appear to come to the aid of the petitioner in any manner. Regulation 42 envisages a common enquiry. Even if a strict interpretation is given, the situation envisaged is only when two officers in different grades or one officer and one employee are involved in the same incident and in the instant case, the number of personnel involved is more than two. However, even overlooking that aspect of the matter, in the considered opinion of this Court, the aforesaid Regulation only facilitates holding of a common enquiry and will not by any manner bar holding of separate enquiry.

20. The allegation against the petitioner is of misappropriation of Bank money which without any manner of doubt is a grave and serious allegation. The petitioner, who was an officer of the Bank was dealing with public money and the doctrine of public trust would be wholly applicable. It has time and again been laid down by various judicial pronouncements that discharge of such duties are in the fiduciary capacity wherein utmost good faith is necessary. There are instances when imposition of penalty are interfered by Courts wherein the allegations are of acting beyond one capacity as a Bank employee or certain procedural irregularities. However, in cases where the allegations pertain to misappropriation, a strict approach is a mandatory requirement. There are no materials on record and neither is the case projected by the petitioner that the charges are without any basis. The defence tried to be projected that the petitioner did not have any role and it was the other officers who are involved, does not appear to be an acceptable defence inasmuch as, all the amounts mentioned above were credited in the personal account of the petitioner maintained with the UCO Bank. Though amounts were deposited on various

dates, namely, 19.11.2008, 14.02.2009 and 21.07.2009, the amounts were repaid only on 29.11.2010 and 01.12.2010. If the petitioner was actually not involved, such refund should have been made immediately on coming to know about the deposit in the personal account of the petitioner which was not done. The subsequent act of the petitioner to refund the amount after lapse of considerable time cannot absolve the petitioner of the charges leveled against him which is also the law laid down by the Hon'ble Supreme Court in the case of **S.N. Goyal** (supra).

21. The case laws referred to by the petitioner will not come to the aid of the petitioner inasmuch as, in the present case, it is culpability of the delinquent involved which has determined the penalty imposed and in the instant case, it is the petitioner who appears to have played the pivotal role in the misappropriation of the three amounts concerned which were credited to his personal account in the UCO Bank.

22. In view of the aforesaid discussions and by following the guidelines laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that no case for interference is made out as the penalty imposed appears to be reasonable and commensurate to the charge which have been proved and established in the departmental enquiry.

23. The writ petition accordingly stands dismissed.

24. Cost made easy.

JUDGE