

GAHC010011172015



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

Case No. : WP(C)/1844/2015

RAJA GOPAL DHAR
S/O SHRI BIMAL BHUSHAN DHAR, R/O FOREST TILLA COLONY,
LUMDING-782447, ASSAM

VERSUS

THE STATE BANK OF INDIA and 3 ORS,
REP. BY ITS CHIEF GENERAL MANAGER, SBI, LOCAL HEAD OFFICE, GHY-
6

2:THE DY. GENERAL MANAGER BandO
SBI
JORHAT ZONE
M.G.ROAD
JORHAT-01
ASSAM

3:THE GENERAL MANAGER NW-II
SBI
LOCAL HEAD OFFICE
GHY-6

4:THE REGIONAL MANAGER
REGION-I
SBI
M.G.ROAD
JORHAT-1
ASSA

Advocate for the Petitioner : MR.P BHOWMICK, MR.K R SARMA

Advocate for the Respondent : MS.M DASR-1 to 4, MR.G DAS(R-1 to 4),MR.B DAS(R-1 to 4),MR.L TALUKDAR(R-1 to 4)

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri P Bhowmick, Advocate.

For the Respondents : Shri L Talukdar, Advocate.

Date of Hearing : 22.08.2024.

Date of Judgment : 22.08.2024.

JUDGMENT & ORDER

The instant petition has been instituted under Article 226 of the Constitution of India challenging an order dated 30.08.2013 passed by the Appellate Authority of the respondent-State Bank of India whereby the penalty of "Reduction to lower stage in the time scale of pay by one stage for one year, with further directions that the officer will not earn increments to pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay" has been imposed. The initial penalty imposed by the disciplinary authority on 25.03.2013 was slightly modified by the Appellate Authority vide the aforesaid order dated 30.08.2013. The challenge is based on the aspect that there was no substantial charge against the petitioner and there was no evidence at all to implicate him with the charges.

- 2.** As per the facts projected, the petitioner, at that point of time, was serving

as the Assistant Manager of the respondent-Bank and was posted at the SBI, Titabor Branch. While in service, a show cause notice was issued to him on 21.06.2012 with 4 nos. of charges. The petitioner replied to the said show cause notice and being unsatisfied, an inquiry was initiated. Amongst the 4 charges, the Inquiry Officer came to a finding that Charge Nos. 1 and 2 were not proved and Charge Nos. 3 and 4 were proved. The disciplinary authority had, however, disagreed with the findings in Charge Nos. 1 and 2 and had accordingly, issued a notice to the petitioner on 23.01.2013. The same was replied to by the petitioner whereby he had stated that there was no reason to disagree with the findings so far as the Charge Nos. 1 and 2 are concerned. It was also stated that the findings of the Inquiry Officer so far as the Charge Nos. 3 and 4 are concerned, are not based on any evidence on records. Nonetheless, vide initial order of penalty dated 25.03.2013, the disciplinary authority had imposed the penalty of "Reduction to a lower stage in the time scale of pay by one stage for a period of one year, with further directions that the officer will not earn increments to pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increments of his pay" in terms of Rule No. 67 (f) of SBIOSR.

3. The aforesaid order was put to challenge in a departmental appeal and the Appellate Authority vide the order dated 30.08.2013 had, however, interfered with the penalty and had modified the same in the manner indicated above. The Appellate Authority, however, did not exonerate the petitioner. The petitioner had thereafter submitted a review which, however, was rejected vide an order dated 19.07.2014. It is the legality and correctness of the order of imposition of penalty which is the subject matter of challenge in this petition, as indicated

above.

4. I have heard Shri P Bhowmick, learned counsel for the petitioner. I have also heard Shri L Talukdar, learned counsel for the respondent-SBI, who has also produced the records of the disciplinary proceeding in two volumes.

5. Shri Bhowmick, learned counsel for the petitioner has submitted that though there are four numbers of charges, the Charge Nos. 2 and 4 are related to the Charge Nos. 1 and 3. It is submitted that the first charge is with regard to non-verification of a mobile number of a customer who had availed the facility of Mobile Banking service. He has submitted that admittedly, one Generator Operator involved with the Branch was given the charge of facilitating the customers to avail the said facility of Mobile Banking service and at that time, there was no requirement to have the same mobile number in the application form. In any case, it is the version of the petitioner that he neither had the expertise nor was trained to verify the mobile number and such verification was entrusted to another person who was trained for that purpose. He, accordingly submits that the first charge with which the second charge is intrinsically connected cannot be a charge at all so far as the petitioner is concerned. As regards, the third charge which is serious in nature relating to a surrendered ATM card, it transpires that the same was done by the same Generator Operator who was entrusted with the task of facilitating Mobile Banking service. It is also on record that the father of the said Generator Operator had returned the money. It is the specific case of the petitioner that the surrendered ATM card was not in his custody and was rather, in the custody of the Branch Manager and he did not have any role, whatsoever in the said fraudulent activity. It is

also averred that the question of negligence will not arise since the petitioner was not the custodian of surrendered ATMs, as noted above. The learned counsel submits that in view of the aforesaid facts and circumstances, the finding arrived at by the Inquiry Officer that two of the charges were proved itself is a perverse finding. He has submitted that the petitioner had explored the option of preferring departmental appeal in which, though the penalty was reduced, there was no exoneration and subsequently, the review has also been rejected on 19.07.2014. The learned counsel has submitted that under the State Bank of India Officers' Service Rules, 1992 (hereinafter referred to as the Rules of 1992), penalties have been prescribed in Rule 67 which includes other Minor Penalties. However, without exploring the same, the impugned penalty has been imposed which is otherwise shockingly disproportionate.

6. Shri Talukdar, learned counsel for the respondent-Bank has, however, submitted that there is no ground of challenge so far as the safeguards given to the delinquent petitioner is concerned. He submits that all the procedures laid down have been meticulously followed and the petitioner was given all the opportunities to safeguard his interest. The learned counsel submits that in the departmental inquiry, the Management had adduced evidence through four numbers of witnesses and the petitioner was given the assistance of a defence representative who had also cross-examined the witnesses. It is submitted that the findings arrived at by the Inquiry Officer was reasonable inasmuch as, out of the four numbers of charges, Charge Nos. 1 and 2 were held to be not proved which shows that the Inquiry Officer had proceeded in an unbiased manner. The learned counsel has also submitted that taking into consideration the unblemished service records of the petitioner, the Appellate Authority had

reduced the penalty and therefore, there is hardly any scope for further interference by this Court.

7. The rival contentions have been duly considered and the materials placed before this Court, including the records of the disciplinary proceeding have been carefully perused.

8. Though this Court in exercise of powers under Article 226 of the Constitution of India plays a secondary role and would not venture into the aspect of reassessing the evidence on record, since the principal ground of challenge is that there is no material and evidence to substantiate the charge, this Court has had a cursory glance into the nature of the charges *vis-a-vis* the evidence on record. The first charge is with regard to registering a mobile number of a customer who had applied for Mobile Banking service. The charge is that a different number was registered without checking the telephone number of the customer involved. This Court has seen that the aspect of Mobile Banking service was at a nascent stage and certain personnel were given training to enable the customer to avail such facility and amongst those personnel, there were two persons. The petitioner, who was the Assistant Manager, was not entrusted with the verification process. Though the charge is that a different mobile number was put in the concerned application, it is also the submission of the petitioner that at that point of time, it was not necessary to have only one mobile number in the application. The second allegation is intrinsically connected with the first allegation that the Mobile Banking service can be done in the Home Branch only and in that manner, negligence had been attributed to the petitioner. The Charge Nos. 3 and 4, though serious in nature

as it involve defalcation of an amount of Rs. 1,20,000/- of a customer by misuse of a surrendered ATM card, the allegation so far as the petitioner is concerned, is only being negligent in not destroying the surrendered ATM card. There is no allegation that the petitioner was involved at all in the fraudulent activity. The submission made on behalf of the petitioner is that he was neither the custodian of the surrendered ATM card nor was he aware of any such fraudulent activity. It is submitted that the petitioner was only an Assistant Manager and it is the Branch Manager who is the custodian of the surrendered ATM cards and any authority of destroying of such cards on its surrender is vested upon the Branch Manager. The Charge No. 4, as noted above, is not of immediately deactivating or destroying the ATM card and the discussion made above would also cover this allegation.

9. A perusal of the inquiry proceeding would also show that the customer in question whose mobile number had differed, there was no apparent mismatch of the specimen signature and it is only in the context of such specimen signature wherein the involvement of the petitioner would come as he was the Assistant Manager. It is also on record that on that particular date, the petitioner was alone handling all the activities of the Branch and therefore, the action taken by the petitioner has been termed to be *bona fide*. The charges which have been discussed above are trivial in nature. As noted above, the Charge Nos. 3 and 4 cannot be attributed to the petitioner as the allegation of misappropriation is admittedly not against the petitioner and the charge is only of being negligent in destroying the surrendered ATM card of one of the customers. This Court has already noted the defence of the petitioner that he was not the custodian of the surrendered ATM card. So far as the Charge Nos. 1

and 2 are concerned of not verifying the mobile number in the form of a customer who had applied for Mobile Banking service, the said charge, even on its face value, is trivial in nature for which imposition of the penalty in question appears to be disproportionate and harsh. The Appellate Authority while examining the appeal of the petitioner had taken into consideration the past service records of the petitioner and had reduced the penalty in the manner indicated above.

10. So far as the penalty is concerned, Rule 67 lays down the penalties which can be imposed in a disciplinary proceeding. Withholding of increments of pay with or without cumulative effect is a separate penalty which is under Rule 67(b) and reduction to a lower stage in time-scale of pay for a period without cumulative effect is a separate penalty under 67(e). It appears that by the impugned order, two penalties have been imposed upon the petitioner. The Appellate Authority while interfering with the original order of penalty dated 25.03.2013 has modified the aspect of cumulative effect so far as withholding of increments is concerned. The penalty is of the year of 2013 and as on today, the same has spent its force. However, the aspect concerning reduction to a lower stage in the time-scale of pay by one stage of one year would have a cascading effect.

11. Under the facts and circumstances aforesaid, this Court is of the opinion that the penalty imposed be restricted only to withholding of increments for the period in question without cumulative effect and the first part of the penalty of reduction to lower stage in the time-scale of pay by one stage for one year stands interfered with. Consequently, it is directed that the proper fitment be

given to the petitioner in his present posting and the same would not have any adverse effect so far as his future service benefits are concerned.

12. The writ petition accordingly stands allowed in the manner indicated above.

13. The original records are returned back to Shri Talukdar, learned counsel for the respondent-Bank.

JUDGE

Comparing Assistant