

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5861 OF 2007

STATE BANK OF BIKANER & JAIPUR

Appellant (s)

VERSUS

NEMI CHAND NALWAYA

Respondent(s)

(With prayer for interim relief and office report)

Date: 01/03/2011 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. Anil Kumar Sangal, Adv.
Ms. Sneha Kalita, Adv.
Mr. D.P. Mohanty, Adv.

For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.
Ms. Priyanka Mathur Sardana, Adv.
Ms. A. Sumathi, Adv.

UPON hearing counsel the Court made the following
O R D E R

In terms of the signed reportable order, the appeal is allowed and the judgment of the High Court is set aside. The Court upholds the finding of guilt recorded by the disciplinary authority, but modify the punishment from 'dismissal' to 'compulsory retirement'. There is therefore no question of grant of any back-wages.

( Ravi P. Verma ) ( M.S. Negi )
Court Master Court Master
[Signed reportable order is placed on the file]
Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5861 OF 2007

STATE BANK OF BIKANER & JAIPUR

.....APPELLANT

Versus

NEMI CHAND NALWAYA

.....RESPONDENT

O R D E R

The respondent was employed as a clerk in the Kalindri branch of the appellant Bank. He was issued a charge-sheet dated 30.8.1988. The two charges against him were:

(i) On 14.10.1987, you disclosed the balance of SB Account No.1025 of Shri Dharamchand Nathaji lying in in-operative account to an unidentified person posing himself as the said account holder though the person was not having even Pass Book of that account. This disclosure of secrecy led a fraudulent withdrawal of Rs.6,000/- from the said account thereby putting the bank into loss.

(ii) On 14.10.1987, you have advised Shri I.M. Rawal, the counter clerk handling Savings Banks ledgers to transfer the balance lying in account number 1025 in the name of Shri Dharam Chand Nathaji from in-operative Savings Bank ledger to that of operative ledgers without first obtaining the permission of the Branch Manager which is a pre-requirement in all such cases. It is further alleged that you have collected the withdrawal form purported to have been signed by the depositor, handed over the same to Shri I.M. Rawal, the counter clerk, obtained token and after it was passed for payment by the Branch Manager, obtained payment from paying cashier Shri S.R. Meghwal. The real depositor has subsequently complained that the signature on withdrawal form was forged and the matter is now under police investigation."

The charge-sheet followed a preliminary enquiry by one H. S. Sharma, an officer of the appellant bank, in which the respondent broadly admitted the facts constituting the subject matter of the two charges.

2. A joint inquiry was held in respect of the charges against the respondent and two others namely I.M. Rawal and S.R. Meghwal. Several witnesses were examined. The Inquiry Officer submitted a report dated 12.6.1989 holding that both the charges against the respondent were proved. He also held that the charges against I.M. Rawal and S.R. Meghwal were also proved. The disciplinary authority considered the inquiry report. He was of the view that on the material placed in the inquiry, the respondent was not guilty of the first charge. He, however, concurred with Inquiry Officer in regard to the finding of guilt recorded in respect of the second charge. He, therefore, issued a show cause notice dated 23.6.1990 proposing to impose the punishment of dismissal in regard to the second charge.

After considering the respondents' reply, the disciplinary authority, by order dated 1.8.1990, imposed the punishment of dismissal. The matter rested there for several years.

3. In the meanwhile, on the basis of a complaint by the Branch Manager, a charge-sheet was filed before the Chief Judicial Magistrate, Sirohi, in regard to the allegations which were the subject matter of the departmental enquiry. The criminal court acquitted the respondent by judgment dated 7.7.1994, holding that charges were not proved beyond doubt. Thereafter, he filed a writ petition (WP No.5761/1994) challenging his dismissal, on the ground that he was acquitted in the criminal case. The said writ petition was disposed of by a brief order dated 26.5.1997 observing that he may avail the remedy of appeal and the appellate authority may consider the explanation for delay in submitting the appeal.

4. The respondent filed an appeal before the Appellate Authority, with an application for condonation of delay. The appellate authority, by order dated 7.10.1997, dismissed the application for condonation of delay and consequently dismissed the appeal.

5. The respondent challenged the order of the appellate authority in WP No.450/1998. A learned Single Judge of the Rajasthan High Court dismissed the writ petition on the ground that the appellate authority had not committed any error in dismissing the appeal on the ground of delay. The respondent filed a special appeal and the division bench of the High Court allowed the appeal by the impugned judgment dated 4.4.2006. The pendency of the criminal case was accepted as sufficient explanation regarding delay. The division bench held that the non-filing of the appeal by the respondent in time was due to a

bona fide impression that he could do so after the disposal of the criminal proceedings. With reference to merits, the division bench held that no wilful or fraudulent conduct with intention to cause loss to the appellant Bank, nor misappropriation by the respondent, was made out. The division bench was of the view that the case was not one where respondent had acted in wilful dereliction of duty; and that in an increasing customer-friendly atmosphere in the Bank, the respondent had acted bona fide and allowed the person considered by him to be a valued customer to operate on the account not realising that such person was impersonating the account holder. The High Court was of the view that in such circumstances, the question of loss of confidence would not arise and the punishment of dismissal was grossly disproportionate to the misconduct. Therefore, it set aside the order of dismissal and directed reinstatement with full backwages and consequential benefits. The said order is challenged in this appeal by special leave.

6. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in

disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6) SCC 749, Union of India vs. G. Gunayuthan - 1997 (7) SCC 463, and Bank of India vs. Degala Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil - 2001 (1) SCC 416).

7. When a court is considering whether punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank can not be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

8. Several witnesses were examined to prove the charge. One of them was H.S. Sharma who conducted the preliminary inquiry and to whom the respondent had made a

statement broadly admitting the facts which constituted the subject matter of the second charge. I.M. Rawal, who was the cashier and I.C. Ojha, the officiating Branch Manager were also examined. Based upon their evidence, the Inquiry Officer found the respondent to be guilty of the second charge and that has been accepted by the disciplinary authority. The High Court has interfered with the said

finding without expressly holding that the said finding of guilt was erroneous. The High Court has proceeded as if it was sitting in appeal over the departmental inquiry and interfered with the finding on a vague assumption that the respondent must have acted bonafide in an "increasing customer friendly atmosphere". There was no justification for the division bench to interfere with the finding of guilt.

9. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

10. We are, therefore, of the view that the High Court was not justified in quashing the punishment and directing reinstatement with backwages and consequential benefits. In fact, the order of the High Court directing back wages amounts to rewarding a person who has been found guilty of a misconduct.

11. However having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement.

12. We, accordingly, allow the appeal and set aside the judgment of the High Court. We uphold the finding of guilt recorded by the disciplinary authority, but modify the punishment from 'dismissal' to 'compulsory retirement'. There is therefore no question of grant of any back-wages.

.....J.  
( R.V. RAVEENDRAN )

New Delhi; .....J.  
March 01, 2011. ( A.K. PATNAIK )