

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC NO.1572 of 2002

(In the matter of application under Articles 226 and 227 of the Constitution of India).

**Sarat Chandra Sahoo (since ... Petitioners
dead) and others**

-versus-

**Central Bank of India and ... Opposite Parties
others**

**For Petitioners : Mrs. P.P. Mohanty,
Advocate**

**For Opposite Parties : Mr. S. Sarangi, Sr.
Advocate along with Mr.
S.K. Sarangi, Advocate**

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :25.02.2025

DATE OF JUDGMENT:28.02.2025

G. Satapathy, J.

1. Originally, the petitioner-Sarat Chandra Sahoo who being died during the pendency of the writ petition was substituted by the petitioners as his legal heirs, by filing this writ petition had prayed to quash Annexures-14 and 16 and, consequently, to issue a direction to the OP to consider his case to reinstate and pass such other orders granting relief to him.



By Annexure-14, the Assistant General Manager(AGM), Central Bank of India by way of an order passed on 28.08.2000 awarded the deceased-petitioner with penalty of "discharge from service", which was confirmed by an order dated 07.11.2001 passed by the appellate authority under Annexure-16.

2. The facts in precise are that the petitioner-Sarat Chandra Sahoo-cum-Charge Sheeted Officer(CSE), who had filed this writ petition had died during the pendency of the writ petition and substituted by his legal heirs. The deceased-petitioner (CSE) while working as Head Cashier in Central Bank of India, OSFC Extensive Counter, Mahatab Road, Cuttack was found to have misappropriated a sum of Rs.4,10,000/- on two dates in June 1999, but the amount misappropriated was later on adjusted by him. The deceased-petitioner (CSE) was further alleged that without any authorization, he meddled with the cash register and inserted entries to match the missing amount and had accordingly altered the final cash balance for subsequent days in order to conceal his irregularities.



2.1. On the basis of above allegation, one memo was issued on 05.07.1999 suspending the deceased-petitioner (CSE) for embezzlement of bank cash by committing misconduct. Similarly, another memo was issued against the deceased-petitioner(CSE) on 07.09.1999 for embezzling a sum of Rs.2,50,000/- on 16.06.1999 through HSS Account No.1585, but subsequently, the said amount was made good after manipulating the final cash book balance of the extension counter. However, again on 26.06.1999, a sum of Rs.1,60,000/- was alleged to have been embezzled by the deceased-petitioner (CSE) in the same fashion.

2.2. The deceased-petitioner (CSE), however, responded to aforesaid two memos by denying the charges stating therein that due to work pressure and shortage of staff, the aforesaid mistake was committed, but notwithstanding to such explanation, the authority finding such explanation to be unsatisfactory, issued a charge-sheet against the deceased-petitioner (CSE). The deceased-petitioner (CSE), however, pleaded not guilty to the charge and the matter was enquired into, but the deceased-petitioner (CSE) was found guilty of the two



charges and the Disciplinary Authority passed the impugned penalty of "discharge from service" against the deceased-petitioner (CSE), which was confirmed in the appeal by the Appellate Authority. The deceased-petitioner (CSE) being aggrieved with such findings had filed this writ petition, but unfortunately, he died during the pendency of the writ petition and was substituted by his legal heirs.

3. In the course of hearing of the writ petition, Ms. Pragyan Paramita Mohanty, learned counsel for the petitioners has submitted that the deceased-petitioner (CSE) was of course found to be guilty of the charge, but in fact, he had not committed any misconduct, rather the aforesaid allegation was being not established against the deceased-petitioner (CSE) and, therefore, the penalty of "discharge from service" as imposed on the deceased-petitioner (CSE) may kindly be set aside. It is further submitted by the learned counsel for the petitioners that since the bank has not suffered any loss on account of the said amount of embezzlement, the punishment of "discharge from service" as imposed against the deceased-petitioner (CSE) is shockingly disproportionate



and is liable to be interfered with. Ms. Mohanty has, however, submitted that the amount so claimed to have been embezzled having been deposited by the deceased-petitioner (CSE) and the same having been done without any *mensrea*, the imposition of penalty of “discharge from service” is quite excessive and harsh on the family members of the deceased-petitioner (CSE). Accordingly, Ms. Mohanty has prayed to allow the writ petition by quashing Annexures-14 and 16.

3.1. On the other hand, Mr. Santanu Sarangi, learned Senior Counsel appearing along with Mr. S.K. Sarangi, learned counsel for the Bank has submitted that not only the charge against the deceased-petitioner (CSE) was found established, but also the charge leveled against him was grave and the deceased-petitioner (CSE) having been found to have embezzled the property of the bank does not deserve any leniency. It is, however, argued by Mr. Sarangi that the employee of the bank should not only maintain highest degree of integrity and honesty, but also is required to discharge the duty with dedication and devotion, but in this case, the deceased-petitioner (CSE) being the employee of the bank was



supposed to maintain such standard, as he was the Head Cashier dealing with the cash of the bank, but he had utterly failed to discharge his duty with utmost honesty and integrity with due diligence and, therefore, the order of "discharge from service" as imposed on the deceased-petitioner (CSE) does not require any interference. Accordingly, Mr. Sarangi has prayed to dismiss the writ petition.

4. In this writ petition, since the penalty imposed against the deceased-petitioner (CSE) is assailed, but such penalty has the foundation in the charge-sheet, which is very much required to be considered while assessing the gravity of the charge to impose just penalty commensurate to the misconduct. This Court, accordingly, considers it useful to refer to the charge-sheet, which discloses that the deceased-petitioner (CSE) was working as Head Cashier at OSFC, Extension Counter, Mahatab Road branch, Central Bank of India, Cuttack at the relevant time and, accordingly, the deceased-petitioner (CSE) was charged for embezzling cash of the bank to the tune of



Rs.2,50,000/- on 16.06.1999 and Rs.1,60,000/- on 26.06.1999. The charge-sheet also discloses allegation against the deceased-petitioner (CSE) that he adjusted the amount of Rs.2,50,000/- on 25.06.1999 and Rs.1,60,000/- on 03.07.1999. The aforesaid charges were stood established against the deceased-petitioner (CSE) since Annexure-A/3 to the counter affidavit contains the letter of the deceased-petitioner (CSE) addressed to the Branch Manager, Central Bank of India, wherein the deceased-petitioner (CSE) had admitted his misconduct.

5. Further, in the enquiry report as enclosed under Annexure-10, the Enquiring Officer had not only taken into account the allegation, but also had found sufficient material to held the deceased-petitioner (CSE) as guilty of the charges and this Court has not found anything contrary to the findings of the enquiry report, which was subsequently not only verified by the Disciplinary Authority, but also further scrutinized in the appeal by the Appellate Authority. The scope of judicial review against the order passed in the departmental



proceeding is very limited and the Courts while exercising their powers of judicial review over such matters do not sit as the Appellate Authority. Decision qua the nature and quantum is the prerogative of the Disciplinary Authority, but the function of the Court is only to decide as to whether the quantum of punishment is shockingly disproportionate or commensurate to the misconduct. It is only in exceptional circumstance where it is found that the punishment/penalty awarded by the Disciplinary Authority/Employer on the employee is wholly disproportionate and that too, to an extent that it shakes its conscience, then the Court steps in and interferes. Further, if the finding recorded by the Disciplinary Authority is arrived at without or no evidence, the Court can step in and interfere because in that event, there would be serious prejudice to the delinquent employee, which should be interfered with.

6. It is by now well settled that the Constitutional Courts in exercise of powers under Articles 226 and 227 of the Constitution of India can



interfere in the matter of the disciplinary proceeding, if the enquiry is not held by a Competent Authority or the enquiry is not being conducted according to the procedure established by law or there is violation of principle of natural justice in conducting the enquiry or the Disciplinary Authorities have allowed themselves to be influenced by irrelevant and extraneous consideration or the conclusion arrived at by the Disciplinary Authority on the very face of it is so wholly arbitrary and capricious that no reasonable person could have ever arrived at such conclusion or the Disciplinary Authority had erroneously failed to admit any admissible material evidence or the Disciplinary Authority had erroneously admitted inadmissible evidence or lastly, if the finding of fact is based on no evidence. The aforesaid contingencies as stated to interfere with the order passed in the disciplinary proceeding are not at all available to the deceased-petitioner (CSE) and, thereby, the findings of the Disciplinary Authority cannot be questioned in this writ petition.



7. Be that as it may, in coming to the plea of violation of principle of natural justice as raised by the deceased petitioner-employee(CSE), it appears that such plea has been set up by the petitioners for the CSE not being permitted to be defined by a lawyer, but fact remains that a lawyer can only be engaged by the chargesheeted employee only with the permission of the management, which is in terms of the provision of 19.12 of the bipartite settlement and the same is not disputed by the petitioners, however, the deceased-employee(CSE) vide his letter dated 12.10.1999 under Annexure-4 had requested the authority/management to permit him to be defended by a lawyer, which request was in fact turned down by the authority/management on 09.11.1999 under Annexure-5, but the deceased-employee(CSE) did not challenge such refusal, rather he participated in the domestic enquiry by cross-examining the witnesses in departmental enquiry. Further, the deceased-employee(CSE) was asked vide Annexure-1(b) to submit his explanation as to why disciplinary action should not be initiated against him, to which the deceased-employee(CSE) replied by giving explanation



under Annexure-2. Additionally, it is found from Annexure-10 that the deceased-employee(CSE) cross examined all the eight witnesses examined in the departmental enquiry and the charge leveled against him was found established by the Enquiring Officer. Further, the deceased-employee (CSE) was served with the copy of enquiry report to submit his representation and accordingly, the deceased-employee (CSE) by Annexure-11 had submitted his representation. In addition, the deceased-employee (CSE) was served with a show cause vide Annexure-12 on the proposed punishment “discharge from service” and the deceased-employee (CSE) had in fact given his reply to such proposed punishment under Annexure-13. The aforesaid exercise of procedure clearly establishes that there was no violation of principle of natural justice, while conducting departmental enquiry against the deceased-employee (CSE), against whom the major penalty of “discharge from service” was imposed by the Disciplinary Authority. In the aforesaid sequence of events, it cannot be said that the principle of natural justice has been violated by not permitting the deceased-employee (CSE) to be defended by a lawyer, especially



when he had not only participated in the departmental enquiry by cross-examining the witnesses, but also had not challenged the action of authority in refusing permission to him to engage a lawyer for his defence. Hence, such contention advanced on behalf of the petitioners merits no consideration.

8. Right now, the only question to be seen in this case is whether the punishment imposed against the deceased-petitioner (CSE) was shockingly disproportionate, but in a case like this, where the person is an employee dealing with the cash of the bank, he is required to maintain not only the highest degree of integrity, honesty, devotion and diligence, but also has to act in such a manner which is not unbecoming of a bank officer/employee. Good conduct and discipline are really important traits of a good employee, but if either of the same is lost, the employer would definitely lose confidence on its employee. Trust is such a quality which once lost cannot be revived again. In this case, the deceased-petitioner(CSE) was dealing with cash of the bank and



his role was to accept cash from the customers and account for it, but in this case, not only did the deceased-petitioner(CSE) misappropriate the deposits of the customers, but also committed such misappropriation for a temporary period by manipulating the registers and documents and, thereby, has misconducted in performing his duties and himself was directly involved in misappropriation and, therefore, the punishment "from discharge of service" as imposed on the deceased-petitioner(CSE) is not shockingly disproportionate, but appears to be commensurate to his misconduct. Further, it is not in dispute that the employee who was found guilty and penalized had in fact expired in the meantime and, therefore, in such situation, there is hardly any necessity to interfere with the penalty and there being no material to indicate as to how the family members of the deceased-petitioner(CSE) are suffering from such penalty, this Court does not consider it proper to interfere with the penalty imposed on the deceased-



petitioner(CSE), especially when it is not shockingly disproportionate.

9. In the result, the writ petition being devoid of merit stands dismissed on contest, but in the circumstance, there is no order as to costs.

**(G. Satapathy)
Judge**

*Orissa High Court, Cuttack,
Dated the 28th day of February, 2025/Subhasmita*

Signature Not Verified

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Signed by: SUBHASMITA SASMAL
Designation: Jr. Stenographer
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OJC No.1572 of 2002

Page 14 of 14