IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT
Mr. Justice Hasan Foez Siddique, Chief Justice
Mr. Justice M. Enayetur Rahim
Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.4035 OF 2018
(From the Judgment and order dated 16.07.2018 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T Appeal No. 283 of 2016 and A.A.T Appeal No. 337 of 2016)

MD. ABUL KASHEM, EX-OFFICER CASH, SONALI BANK LIMITED, DHAKA ..... PETITIONER

=VERSUS=

SONALI BANK LIMITED REPRESENTED BY THE CHAIRMAN, BOARD OF DIRECTORS, SONALI BANK LIMITED & OTHERS ..... RESPONDENTS

For the Petitioner : Mr. A.F Abdur Rahman, Senior Advocate instructed by Mr. Haridas Paul, A.O.R

For Respondent No.04 : Mr. Sheikh Mohammad Zakir Hossain, Advocate Instructed by Mr. Md. Norul Islam Chowdhury, Advocate-on-Record

Respondent Nos. 01- 03 : Not represented

DATE OF HEARING & JUDGMENT : THE 06TH FEBRUARY, 2023

JUDGMENT

Jahangir Hossain, J:- This Civil petition for leave to appeal is directed against the judgment and order dated 16.07.2018 passed by the Administrative Appellate Tribunal, Dhaka in A.A.T Appeal No.283 of 2016 and A.A.T Appeal No.337 of 2016 reversing the judgment and order dated 24.08.2016 passed by the Administrative Tribunal No.02, Dhaka in A.T Case No.45 of 2014 [New], arisen out of 123 of 2012

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[Old] allowing the A.A.T. Appeal No.283 of 2016 and dismissing A.A.T Appeal No.337 of 2016.

Facts, relevant for disposal of this Civil Petition for Leave to Appeal, in brief, are that the petitioner Md. Abul Kashem was appointed on 13.01.1981as Assistant Cashier in the service of Sonali Bank Limited and for his excellence service record, he was lastly promoted to the post of Officer Cash on 31.12.1996. While he was serving at Chandragonj Branch, Laxmipur, the opposite party No. 05, [herein as respondent No.04] the Assistant General Manager, Discipline and Appellate Division, Sonali Bank Limited, Dhaka framed charge on 14.06.2011 against him under Rule 39(1)(b)&(e) of Sonali Bank Karmachari Chakuri Probidhanmala, 1995 proposing penalty of dismissal from service on the allegation, inter alia, that the petitioner, while serving at Chandragong Branch, went to Laxmipur Sadar Branch and misappropriated Tk.11,158/-having drawn the same from the bank in the name of relation of some pensioners. A show cause notice was served upon him to explain in writing within 10 working days as to why he would not be dismissed from service or any other penalty to be imposed upon him. The petitioner replied in writing on 10.07.2011 within 10[ten] working days stating that the allegation brought against him was not true but was vague, unspecified and violation of natural justice and prayed for personal hearing. The authority without considering his reply and hearing him properly most illegally started a departmental proceeding against him and appointed an Enquiry

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Officer to inquire into the matter but the same was not proceeded in accordance with the provision of law. The petitioner was not given full opportunity to defend the charge brought against him. The Enquiry Officer submitted perversive findings on 13.11.2011 showing the petitioner guilty and on the basis of which the respondent No. 04 most illegally and arbitrarily issued the 2nd show cause notice on 11.12.2011 proposing to impose major penalty of dismissal from service. The petitioner also was asked to submit its reply as to why the proposed penalty should not be imposed upon him. But the respondent No.04 most illegally and arbitrarily passed the final order on 11.01.2012 and dismissed the petitioner from service under 39(1)(b)&(e) of the Probidhanmala, 1995.

Being aggrieved by and dissatisfied with the aforesaid order, the petitioner preferred departmental appeal before the opposite party No.01, the Chairman, Board of Directors, [herein as respondent No. 01] Sonali Bank Limited on 08.02.2012 but the same was rejected on 13.05.2012.

Against which the petitioner filed A.T Case No. 45 of 2014 [new] arisen out of 123 of 2012 [old] before the Administrative Tribunal No. 02, Dhaka under section 4(2) of the Administrative Tribunal Act, 1980. Upon hearing both the parties, the Administrative Tribunal No. 02, Dhaka allowed the same in part modifying the penalty of dismissal from service to the previous post of Assistant Cashier by its judgment and order dated 24.08.2016.

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Feeling aggrieved by and dissatisfied with the aforesaid judgment, the petitioner filed A.A.T Appeal No. 337 of 2016 before the Administrative Appellate Tribunal, Dhaka under section 6 of the Administrative Tribunal Act, 1980 while the Sonali Bank Limited preferred A.A.T Appeal No. 283 of 2016 before the aforesaid Tribunal. Both the appeals were heard analogously by the Appellate Tribunal. The Administrative Appellate Tribunal allowed the A.A.T Appeal No. 283 of 2016 filed by the Sonali Bank dismissing the A.A.T Appeal No. 337 of 2016 filed by the petitioner and thereby setting aside the judgment and order of the member of the Administrative Tribunal by its judgment and order dated 16.07.2018.

Feeling aggrieved by and dissatisfied with the judgment and order dated 16.07.2018 passed by the Administrative Appellate Tribunal, Dhaka, the petitioner preferred the instant civil petition for leave to appeal under Article 103 of the Constitution of the People's Republic of Bangladesh.

Mr. A.F. Abdur Rahman, learned Senior Counsel, appearing on behalf of the petitioner submits that the allegation brought against the petitioner was that he misappropriated Tk. 11,158/-drawn from the bank in the name of relation of some pensioners. But the so called pensioners did not make any allegation against him before the bank authority. The incident took place due to misunderstanding between the bank and the petitioner. The money withdrawn by the petitioner as alleged by the bank was subsequently deposited in its exchequer. The

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penalty like dismissal from service to the petitioner was too harsh. It is further submitted that considering the gravity of the allegation and length of service in the concerned bank, the Administrative Tribunal allowed the appeal filed by the petitioner in part modifying the penalty of dismissal from service to the previous post of Assistant Cashier.

Per-contra, Mr. Sheikh Mohammad Zakir Hossain, learned Advocate, appearing for the respondent No.04 submits that the allegation brought against the petitioner was not new one. The petitioner during his earlier service defalcated Tk.1,37,020/- from 04.01.2009 to 30.03.2009. When it was detected, he deposited the same amount of money in the bank through two checques on his saving account. It is further submitted that his conduct was not at all good for the interest of financial institution. Considering his previous conduct and the facts and circumstances of the case, the Administrative Appellate Tribunal rightly dismissed his appeal and allowed the appeal filed by the bank authority.

Heard the submissions of learned Advocates of both the parties perused the judgment and order of the Administrative Tribunal as well as Administrative Appellate Tribunal, it reveals that the petitioner as Officer Cash while serving at Chandragonj branch, Laxmipur, a departmental proceeding was initiated against him on the allegation of negligence of duty, forgery/cheating and misconduct and that he having gone to Laxmipur branch misappropriated Tk. 11,158/- in the

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name of relation of some pensioners. Thereafter, a charge sheet was made with a direction to submit written explanation within 10[ten] working days to the effect that he would not be dismissed from service or any other penalty to be imposed upon him. Denying the material allegation, the petitioner submitted written statement stating that on good faith, he put his signatures on the back of pension vouchers in order to assist the pensioners for drawing pension money. The authority appointed an Enquiry Officer who, after holding inquiry, submitted report on 13.11.2011 finding the petitioner guilty in connection with the allegations brought against him. The authority, thereafter, issued the 2nd show cause notice on 11.12.2011 vide office Memo No. শৃআবি/শাখা-ক/ডি-২৯৫০/৭৫৩ asking him to submit a written reply as to why he would not be dismissed from service under probidhan ৩৯(১)(খ)(ঈ) of the Probidhanmala within seven working days from the date of receipt of the notice. In reply he admitted the allegation partly and thereby sought mercy to consider his matter with lenient view but the authority dismissed him from service by order dated 11.01.2012 under memo No. শৃআবি/শাখা-ক/ডি-২৯৫০/৮৩৮. The main allegation is that the petitioner misappropriated Tk. 11,158/- and subsequently he was found partially guilty of the offence in connection with cheating and misappropriation of money. For which the petitioner begged mercy to the authority in his written statements. He was also repentant for his unintentional mistake in the said transaction of money but the punishment of dismissal from service imposed upon him was severe. It further reveals that another

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previous allegation of misappropriation of Tk.1,37,020/- brought against him in the charge but it was not proved in the inquiry. The Administrative Appellate Tribunal in its finding opined that the bank authority has lost confidence in him because of corruption and cheating committed by him.

On perusal of the documents on record, we do not find any grave allegation of corruption in the conduct of the petitioner during his service except an allegation of misappropriation of Tk.11,158/- which he deposited immediately after it was occurred.

Having considered the submissions advanced by the learned Advocates and the discussions made above, we find merit in the instant leave petition. However, it is better to dispose of the same without granting leave.

Accordingly, this civil petition for leave to appeal is disposed of. The decision of Administrative Appellate Tribunal, Dhaka passed in A.A.T Appeal No.283 of 2016 is hereby set aside and A.A.T Appeal No.337 of 2016 is affirmed and thereby decision of A.T Case No.45 of 2014 [New], arisen out of 123 of 2012 [Old] passed by the Administrative Tribunal No. 02, Dhaka is restored.

Sd/- Hasan Foez Siddique, CJ
স্বাঃ এস. ইনায়েতুর রহিম, J
Sd/- Jahangir Hossain, J

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25.05.23

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