

(2010) 12 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition No. 3836 of 1989

Ajay Kumar Jain

APPELLANT

Vs

Bilaspur Raipur Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : (2011) 1 CG.L.R.W. 491

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal, Mr. Sourabh Sharma and Mr. Sudeep Agrawal, for the Appellant; Pramod Kumar Verma with Shri Sumit Verma, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—The petitioner was a Branch Manager in Bilaspur-Raipur Kshetriya Gramin Bank. From November, 1981 till September, 1985, the petitioner was posted in Branch Sarseeva, District Raipur. From Sarseeva Branch the petitioner was transferred to Portha Branch, District Bilaspur. Several complaints were received by the Chairman against the petitioner relating to his posting at Sarseeva. The complaints were regarding taking bribe for grant of loan. Preliminary enquiry was conducted and an explanation was sought from the petitioner vide memo dated 3-12-85 (Annexure-C). The petitioner vide his letter dated 14-12-85 (Annexure-R/1) requested for permission to go to Sarseeva Branch for inspecting the relevant documents. Permission was granted vide memo dated 13-2-86 (Annexure-R/2). The petitioner visited Sarseeva Branch and inspected the relevant documents on 25-2-86. The petitioner thereafter submitted his reply vide letter dated 27-2-86 (Annexure-D). In the meanwhile certain other complaints were also received against the petitioner and further explanation was called vide memo dated 27-10-86 (Annexure-E). The petitioner again requested for permission to inspect the documents at Sarseeva Branch. The contention of the respondents is that earlier when the petitioner has visited Sarseeva Branch, he tried to influence the complainants and the witnesses and a

complaint was received in this connection vide letter dated 4-3-86 (Annexure-R/3), therefore, the Management this time asked the petitioner to particularize the documents which he desired to inspect by giving memo dated 10-2-87 (Annexure-G). The petitioner did not particularize the documents for which the inspection was sought by him. Thereafter a charge-sheet was served on the petitioner on 13-7-87 (Annexure-K). There were 8 charges against the petitioner. The charges relate to commission of irregularities in disbursing of loans; commission of irregularities in subsidy; demand of illegal gratification for grant of loans; and furnishing false and incorrect information"s to the Head Office etc.-etc. No documents were supplied to the petitioner relating to the 8 charges contained in the charge-sheet. The list of witnesses was also not annexed with the charge-sheet. The petitioner, therefore, filed an application dated 21-7-87 (Annexure-L) and again requested respondent authorities to grant him permission to go to Sarseeva Branch for inspection of the documents. The petitioner referred that earlier also, during the course of preliminary enquiry, he had prayed for supplying the copies of the complaints and had also prayed for grant of permission to make inspection of the documents concerned by going to Sarseeva Branch, but the same was not granted, therefore, it is difficult for the petitioner to file reply of the charge-sheet and he may be permitted to visit Sarseeva Branch for the said purpose. No response to this application was given and the Management took a decision to hold departmental enquiry and enquiry officer was appointed vide order dated 29-7-87 (Annexure-M). The petitioner thereafter submitted another application dated 5-8-87 (Annexure-N) and made similar request for permitting him to inspect the documents relating to the charges, otherwise he would not be able to file reply. However the enquiry commenced and sittings were held on 21-8-87, 7-9-87, 22-9-87, 11-11-87, 12-11-87, 13-11-87, 2-12-87, 4-12-87, 5-12-87, 7-12-87 & 8-12-87. The Management filed their written statement dated 9-2-88 (Annexure-Q), the petitioner also submitted his written statement dated 18-3-88 (Annexure-R) and ultimately the enquiry officer submitted his report dated 27-7-88. The enquiry officer did not find charge No. 3 & 8 to be proved. However other charges, including the charge of accepting illegal gratification, were held proved. The Disciplinary Authority agreed with the enquiry report and the petitioner, thereafter, was served with a show-cause notice dated 30-7-88 along with copy of enquiry report. The petitioner submitted reply on 9-8-88. The Disciplinary Authority after considering the reply of the petitioner passed the order of removal of the petitioner from service on 26-8-88 (Annexure-U). The petitioner then filed an appeal before the Appellate Authority. However, the appeal filed by the petitioner was dismissed vide order dated 26-5-89 (Annexure-X). The petitioner, thereafter, has filed this writ petition challenging the aforesaid orders passed by the Disciplinary Authority as also the Appellate Authority. Mr. Sanjay K. Agrawal, learned counsel appearing on behalf of the petitioner, firstly argued that the charges were vague, therefore, the enquiry based on such charges would stand vitiated being not fair. He relied on the decisions of Sawai Singh Vs. State of Rajasthan, & Surath Chandra Chakrabarty Vs. State of West Bengal,

2. For the sake of principles, I would like to discuss the main contents of above judgments cited by Mr. Agrawal. In *Sawai Singh (supra)*, the charges were vague and it was difficult to meet the charges fairly by any accused. The Supreme Court referring to the decisions of *Surath Chandra Chakrabarty Vs. State of West Bengal*, and *State of Andhra Pradesh Vs. Sree Rama Rao*, held that the charges involving the consequence of termination of service must be specific; though a departmental enquiry is not like a criminal trial and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation. The Supreme Court further observed that where the charges framed against the delinquent officer were vague and no allegations regarding it have been made by him before the enquiry officer or before the High Court, the fact that he has participated in the enquiry would not exonerate the department to bring home the charges. The enquiry based on such charges would stand vitiated being not fair.

3. In *Surath Chandra (supra)*, the charge was so bare that it was not capable of being independently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. The Supreme Court observed that it was precisely for this reason that Fundamental Rule 55 provides that the charges should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The Supreme Court therefore held that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts particulars not having been supplied to the appellant.

4. In case on hand, as stated above, there were 8 charges and the charge-sheet served upon the petitioner would show that various details have been mentioned in the charge-sheet with reference to the person and the dates. In fact, for every charges firstly the concerned authority has stated the allegations of charges in detail and thereafter the exact charge framed against the petitioner has been mentioned. If the charges framed read together with the allegations of charges described on the same sheet in a different column, it would be clear that the charges, in fact, were not vague and after going through a particular charge exactly framed and the statement of allegations made with reference to the said charge, it gives all necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up the defence as held in *Surath Chandra (supra)*. The object of furnishing the statement of allegations is to give all necessary particulars to the person concerned to exactly understand

about the allegations made against him. The allegations of charges, if available in the charge-sheet, and specific charges framed are to be read together and not in isolation, otherwise the very purpose of supplying the allegations of charges along with the charge-sheet would frustrate. If we read the charges framed against the delinquent along with the statement of allegations, given side by side on the same sheet of the charge-sheet, it would be clear that all necessary particulars and details were there and in such situation it cannot be said that the petitioner was denied proper and reasonable opportunity of defending himself by reason of charges being altogether vague and indefinite.

5. Mr. Agrawal has very much emphasized on charge No. 4 which relates to taking illegal gratification of Rs. 400/- for grant of loan of Rs. 4,000/-. In the said charge, date on which the gratification was accepted is not there. However, it is clear from the allegations of charge that on 12-7-84 a loan of Rs. 4,000/- was sanctioned for the grocery shop of the borrower and one Mohanlal Agrawal was directed to supply the articles. Mohanlal supplied the articles short of Rs. 400 /- saying that this amount has been deducted by him which was paid by him to the petitioner for giving him supply order under the sanctioned loan. Though the date of giving Rs. 400 /- by Mohanlal to the petitioner is not there in the charge, all other particulars with date are there in the allegations of charges which make it clear as to what are the exact allegations made against the petitioner. In my view, conjoint reading of this charge as such, and the allegations of the charge make this charge clear and unambiguous and the argument advanced by Mr. Agrawal does not appear to be reasonable. Moreover, it was not a case of single charge. There were 8 charges out of which except charge No. 3 & 8 all other charges were held proved by the enquiry officer. Therefore, in the facts and circumstances of the case, the particulars of charge No. 4 alone would not assume much importance and in light of the other charges framed and held proved, the report of the enquiry officer cannot be set-aside on this ground.

6. Mr. Agrawal then argued that no documents along with charges were supplied to the petitioner. Even on any subsequent stage, copies of the documents were not supplied. The petitioner prayed for inspection of the documents by permitting him to go to Branch Sarseeva, which was also denied, and in this manner the principles of natural justice were not followed. Therefore the enquiry report vitiates.

7. It is not disputed that the list of witnesses or the documents, on which the Management sought to rely to prove the alleged 8 charges, were not supplied to the petitioner along with the charge-sheet. Mr. Pramod Kumar Verma, learned Sr. Advocate appearing on behalf of the respondents, argued that it was mentioned in the covering memo of the charges dated 13-7-87 (Annexure-K) that if the petitioner wants to inspect the documents before filing his reply and the documents are in possession of the Bank, the petitioner should file a list of such documents and he should also show relevance of the documents with the charges framed against the petitioner. His submission was that the said clause in

the memo dated 13-7-87, serving the charge-sheet on the petitioner, was sufficient compliance of the principles of natural justice and if the petitioner did not file any list of documents as per the above memo, it cannot be said that the enquiry vitiates on account of violation of principles of natural justice.

8. To appreciate the rival contentions raised by learned counsel for the parties, I would like to quote the contents of the Clause mentioned in memo/charge-sheet dated 13-7-87, which the counsel for the respondents has referred to in the arguments. It reads thus:

9. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, 9, the Supreme Court held that when a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. The Supreme Court, referring to earlier decisions, observed in Para-13 that:

13. The appellant relied on *Trilok Nath v. Union of India*, 1967 SLR 759 (SC) in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the enquiry.

Reliance has also been placed on *The State of Punjab Vs. Bhagat Ram*, and *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.*, in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in *State of Punjab v. Bhagat Ram (supra)* by this Court as under :

The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statement is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

10. In *Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others*, , the respondent, who was given a charge-sheet, at the earliest sought for inspection of the documents mentioned therein and submitted his reply to the charge-sheet. The enquiry officer replied that since the respondent had already given the reply to the charge-sheet item-wise, he was at liberty to inspect the documents at the time of final arguments. As a result of the enquiry, the respondent was dismissed from service. The Supreme Court held that postponement of the opportunity to inspect the documents to the time of final hearing was obviously an erroneous procedure. In the first instance, the delinquent should be given the opportunity for inspection and thereafter the enquiry should be conducted and then the delinquent should be heard at the time of conclusion of the enquiry. In this case that procedure was not adopted. Therefore, the procedure in conducting the enquiry adopted was clearly in violation of the principles of natural justice.

11. In *State of U.P. Vs. Shatrughan Lal and Another*, , it was held that the opportunity of hearing which the principles of natural justice emphasizes has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilized against that person are indicated in the charge-sheet but copies thereof are not supplied to him inspite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided. The Supreme Court also referred to the judgment rendered in *High Court of Punjab and Haryana Vs. Amrik Singh*, wherein it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the

principle of natural justice would be violated. The Supreme Court further held in Para-6 that preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. Judgment of Kashinath Dikshita (*supra*) was also referred wherein it was held that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

12. In *State of U.P. and Others Vs. Saroj Kumar Sinha*, , the Supreme Court further held that the proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration.

13. On the above principles if we examine the case of the petitioner, it would appear that a reasonable opportunity of hearing was not provided to the petitioner by the respondents. As stated earlier, though 8 charges were framed against the petitioner and the copy of the charge-sheet was supplied to the petitioner on 13-7-87, neither the list of witnesses was annexed with the charge-sheet nor the statements of the witnesses or the documents sought to be relied by the respondents were supplied to the petitioner along with charge-sheet. The petitioner by his application dated 21-7-87 (Annexure-L) has raised these points before the Chairman in which he clearly expressed that unless he is allowed to inspect the documents relating to the charges leveled against him, he would not be in a position to file his reply. Therefore, he should be allowed to inspect the documents. Mr. Verma, learned Sr. Advocate appearing on behalf of the Bank, stick upon the last note appended to the memo of service of charge-sheet and submitted that if the petitioner would have given the list of documents, along with relevancy of those documents, for the purpose of inspection, the respondents would have allowed him to inspect the same, but since the petitioner did not file any such list prior to the commencement of departmental enquiry, the inspection was not done by him and the respondents cannot be held liable for not observing the principles of natural justice. The contention of Mr. Verma cannot be accepted in light of the principles laid down by the Supreme Court in the judgments referred to above. How the petitioner would come to know that the Bank is going to rely on such & such documents at the time of enquiry ? How the petitioner would know that the Bank will produce such & such witnesses at the time of the enquiry ? How the petitioner would know that how many complaints have been lodged against him and by whom and which are those complaints? It is a matter of common knowledge that when certain allegations are made by the prosecution then the person defending the

prosecution is required to rebut those allegations, and at the enquiry/trial, the prosecution is required to prove them and not that the defence or delinquent is required to prove his innocence in general without being specific to rebut the allegations raised against him. Therefore mere mentioning of such note in the memo of charge-sheet can not be held to be sufficient compliance of principles of natural justice in the given facts and circumstances of the case.

14. Apart from the above we also note that on the very first day of enquiry, the presenting officer filed the list of 65 documents and he also filed the list of 19 witnesses sought to be examined during the course of enquiry. A perusal of the proceedings of the day and the list of documents would show that it contains various inspection cards of the shops, various complaints, news paper cutting and bills etc. This shows that only the routine documents of the Bank were not proposed to be utilized against the petitioner during the enquiry. We can understand about the routine documents, that the petitioner in a general manner would have asked for inspection of the loan records of the concerned persons, but how we can expect that he would be knowing that apart from the above there are various other documents in the possession of the Bank which the Bank is going to use against the petitioner and he should have also prayed for inspection of those documents. From the proceedings of the enquiry it is also clear that even on the very first day of the enquiry i.e. on 21-8-87 the petitioner raised his objection and prayed for supplying the copies of the concerned documents. The following is the observation made in the proceedings of the day :

15. This makes clear that the petitioner on the very first day, made demand about documents and also prayed for inspection but the enquiry officer did not care about it and the copies of the concerned documents were not supplied to the petitioner even during the course of the enquiry. As I have already stated that earlier when the petitioner was issued the first memo during the course of preliminary enquiry, he was allowed to inspect the documents of Sarseeva Branch. However, when the second memo was issued and the petitioner again prayed for inspection, it was denied by the respondents on the ground that earlier when the petitioner had visited Sarseeva Branch, he tried to influence the complainants and the witnesses, and a complaint in this regard dated 4-3-86 (Annexure-R/3) was received and on this account the Management had asked the petitioner to particularize the documents which he desired to inspect. This explanation given by the Management appears to be frivolous for the simple reason that if the petitioner would like to influence the witnesses by pressurizing or even threatening them, it was not in the hands of the Management to stop the petitioner because there was no prohibition against the petitioner to go to Sarseeva. Therefore, the ground taken by the Management that if they would have allowed the petitioner to go to village Sarseeva, it was most likely that the petitioner would have influenced the witnesses, is totally untenable.

16. It is therefore clear that the petitioner was not afforded proper opportunity of hearing in the enquiry in as much as the copies of the documents and list of

witnesses etc. were not supplied to the petitioner along with charge-sheet. The petitioner made a demand for supplying of the documents but the demand was not attended and the enquiry commenced. The petitioner was not allowed inspection of the documents. Even on the first day of the enquiry, the petitioner again raised similar objection and he prayed for supplying of the documents and also for permission to inspect the documents which were not granted to the petitioner during the course of entire enquiry and the petitioner was held guilty of as many as 6 charges out of 8 including the charge of taking illegal gratification and was removed from the service. In the above facts and circumstances as also in view of the aforesaid pronouncements of the Supreme Court it is apparent that the petitioner was denied reasonable opportunity to defend himself and the order of punishment, therefore, cannot be sustained on this account alone.

17. For the foregoing reasons, the petition is allowed. The order of removal dated 26-8-88 (Annexure-U) is hereby quashed. Consequently the order passed by the Appellate Authority dated 26-5-89 (Annexure-X) is also quashed. The petitioner shall be entitled to all the consequential benefits flowing from this order. There shall be no orders as to cost.