
(1999) 09 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 4335 (W) of 1990

Amal Kanti Bose

APPELLANT

Vs

W.B. State Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21

Citation : (2000) 85 FLR 64 : (2000) 2 LLJ 171

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Advocate : Molovy Chakraborty, Alok Roy Chowdhury and Debasish Purkait, for the Appellant; Ahin Choudhury and Subrata Goswami, for the Respondent

Judgement

D.P. Kundu, J.—The writ petitioner was an employee of the West Bengal State Co- operative Bank Ltd. (hereinafter referred to as the Bank). While the petitioner was working as supervisor in the Baduria Branch of the Bank, by virtue of a charge-sheet dated January 6, 1989 certain charges were levelled against the petitioner. By another charge-sheet dated October 21, 1989 some additional charges were also levelled against the writ petitioner. The charges against the writ petitioner were grave in nature and they include falsification of accounts, breach of trust, misappropriation of Bank's money, dishonesty in connection with the Bank's business and property, negligence, dereliction of duty and defalcation. It is not necessary to quote the charges levelled against the writ petitioner. An employee may be very bad and dishonest person and may deserve penalty of dismissal from service. But no penalty can be imposed even upon a very bad and dishonest employee without following principles of natural justice or procedures prescribed by law.

2. In the instant case a purported enquiry was held and in the said enquiry, the Enquiry Officer found the petitioner guilty of the charges levelled against him and the enquiry report was furnished to the General Manager who was disciplinary authority of the writ petitioner. The disciplinary authority recommended dismissal

of service of the writ petitioner and Board of Directors of the Bank in its meeting held on February 21, 1990 resolved unanimously that the punishment of dismissal from service should be imposed on the writ petitioner with immediate effect. Therefore, the General Manager by an order dated February 23, 1990 dismissed the petitioner from the service of the Bank with immediate effect without prejudice to the Bank's right to initiate appropriate proceedings for recovery of just and lawful dues to the Bank from the writ petitioner. In the writ petition, the petitioner challenged the order of dismissal dated February 23, 1990 passed by the General Manager of the Bank.

3. The learned Advocate for the petitioner argued many points in favour of the petitioner. One of the grounds of attack was that the enquiry proceeding was held behind his back. The petitioner was not intimated when the enquiry proceedings would be held. As a result, the petitioner was deprived to cross-examine the witnesses produced during the enquiry proceeding and the witnesses were examined behind his back and he could not get opportunity to examine himself and his witnesses to prove his innocence.

4. In course of hearing, the learned Advocate appearing for the respondent submitted that for the first time in the supplementary affidavit affirmed by the petitioner on June 29, 1999, the petitioner in paragraph 9 of the said supplementary affidavit stated - "That the petitioner states that no disciplinary proceeding in accordance with law relating to the said charges of defalcation has been held by the Bank authority. The petitioner has not been summoned before the disciplinary proceedings and/or given reasonable opportunity of hearing in the manner of examination-in-chief/cross examination of witness or witnesses in the disciplinary proceedings if any at all, practically no disciplinary proceeding had taken place in the matter of said charges of defalcation, on the other hand, one Enquiry Officer visited the Bank and talked to some of the staff of the Bank including the Branch Manager of the Bank, Bongaon regarding those charges of defalcation against the petitioner and thereafter, submitted a report to the punishing authority. And, the disciplinary proceedings was held only in this manner and was not held in a statutory manner. More so, no copy of the enquiry report was supplied to the writ petitioner which is to be supplied mandatory as per settled principles of law. And, in violation of the principles of natural justice in such whimsical and arbitrary manner, the petitioner has been dismissed from his service by the Bank-respondents without giving the petitioner, the reasonable opportunity of making representation against penalty of dismissal proposed". The learned Advocate for the respondents submitted that from the record of the disciplinary proceedings it is evident that the petitioner took part in the enquiry proceeding and, therefore, the statements made in the said paragraph 9 of the supplementary affidavit were not correct and thus the petitioner has not approached the Court with clean hands and for that reason only this Court should not entertain the writ application and should dismiss it.

5. The learned Advocate for the respondents produced the records relating to the

disciplinary proceeding against the writ petitioner before this Court. From the said records it appears that the enquiry proceeding was held on December 27, 1989, December 28, 1989 and December 29, 1989. It appears from the records that on December 27, 1989, the writ petitioner attended the enquiry proceeding. But it does not appear from the records of the enquiry proceeding that the writ petitioner was present in the enquiry proceeding either on December 28, 1989 or on December 29, 1989. Nothing has been brought to the notice of the Court by the respondents to show that the petitioner was intimated that on December 28, 1989 and December 29, 1989 the enquiry proceeding would be held. It is not the case of the respondents that even though the petitioner was intimated that the enquiry proceeding would be held on December 28, 1989 and December 29, 1989 yet he wilfully or intentionally remained absent on December 28, 1989 and December 29, 1989. The case of the respondents is that the petitioner actively took part in the enquiry proceeding and availed opportunity of hearing the evidence of the witnesses and cross-examining them. I wanted to know from the learned Advocate for respondents whether he can produce anything to show that the petitioner was intimated that the enquiry proceeding would be held on December 28, 1989 and December 29, 1989. But the learned Advocate for the respondents failed to produce anything before this Court to show that the petitioner was intimated that the disciplinary proceeding would be held on December 28, 1989 and December 29, 1989. On the face of the records produced by the respondents it is evident that on December 28, 1989 and December 29, 1989, the petitioner was not present in the enquiry proceeding. There could be no good reason why the petitioner should remain absent on December 28, 1989 and December 29, 1989 had he been informed about those dates, specially when he took part in the proceeding on December 27, 1989. Under these circumstances, specially when the respondents failed to produce anything from the records to show that the petitioner was intimated that on December 28, 1989 and December 29, 1989, the departmental proceeding would be held against him, irresistible conclusion would be that the petitioner was not intimated that on December 28, 1989 and December 29, 1989, the enquiry proceeding would be held against the writ petitioner. I am of the view that though it is true that on December 27, 1989, the petitioner attended the departmental proceeding yet it cannot be said that the departmental proceeding was held on December 28, 1989 and December 29, 1989 after due intimation to the writ petitioner. I am of the view that it is not possible to hold that the petitioner has not approached the Court with clean hands.

6. The learned Advocate for the respondents argued that the points taken in paragraph 9 of the supplementary affidavit affirmed on June 29, 1999 by the petitioner, were not taken in the writ petition. The learned Advocate for the respondents further argued that no foundation had been made in the writ application for such allegations, The learned Advocate for the respondents argued that for these reasons the statements made in paragraph 9 of the aforesaid supplementary affidavit of the petitioner should not be taken into

consideration by the Court. But it appears that the respondent Nos. 1 and 2, in connection with the aforesaid supplementary affidavit affirmed by the writ petitioner on June 29, 1999, have filed a supplementary counter affidavit affirmed on August 30, 1999, by Uday Ranjan Sarkar, the present General Manager of the Bank. It further appears that in paragraph 9 of the said supplementary counter affidavit affirmed on August 30, 1999, the respondents Nos. 1 and 2 have dealt with the statements made in paragraph 9 of the supplementary affidavit affirmed by the petitioner on June 29, 1999. Therefore, it cannot be said or argued that the respondents did not get an opportunity to meet the allegations of the petitioner. The respondents got full opportunity to deal with the allegations made by the writ petitioner in paragraph 9 of the supplementary affidavit affirmed on June 29, 1999. That apart, the respondents in support of their statements made in paragraph 9 of their supplementary counter affidavit produced the records relating to the enquiry proceeding before this Court. As discussed hereinabove in this judgment, it appears from the records that the petitioner appeared in the enquiry proceeding on December 27, 1989, but it does not appear that the writ petitioner was present in the enquiry proceeding on December 28, 1989 and December 29, 1989. There is nothing on record to show that the petitioner was intimated that on those two days i.e. December 28, 1989 and December 29, 1989, the enquiry proceeding would be held against the writ petitioner. Under these circumstances, I am unable to hold that the enquiry proceeding was held on December 28, 1989 and December 29, 1989 against the writ petitioner after due intimation to the writ petitioner. On this ground itself the entire disciplinary proceeding is vitiated due to violation of principles of natural justice. In my view on December 28, 1989 and December 29, 1989, the enquiry proceeding was held behind the back of the writ petitioner without giving him any intimation and thereby depriving him of the opportunity of hearing the witnesses and to cross-examine the witnesses produced in course of the enquiry proceeding held on December 28, 1989 and December 29, 1989. I am also of the view that petitioner has been deprived of an opportunity to state his case before the Enquiry Officer in course of enquiry proceeding because he was not intimated that on December 28, 1989 and December 29, 1989, the enquiry proceeding would be held and for that reason he could not remain present on those days. In fact the petitioner could not raise any objection regarding holding of the enquiry proceeding on December 28, 1989 and on December 29, 1989 without any intimation to him because he had no knowledge that enquiry was held on December 28, 1989 and December 29, 1989. The petitioner for the first time came to know about holding of enquiry proceeding on December 28, 1989 and December 29, 1989 only when the enquiry report was made available to him. The enquiry report for the first time was made available to the writ petitioner only as an annexure to the supplementary counter affidavit affirmed on August 30, 1999 on behalf of the respondent Nos. 1 and 2.

7. In this case, the writ petitioner, in his supplementary affidavit, clearly stated that no disciplinary proceeding in accordance with law relating to the charges

framed against the petitioner had been held by the Bank authority. The petitioner further stated that he had not been intimated about the disciplinary proceeding and/or given reasonable opportunity of hearing in the matter of examination-in-chief/cross-examination of witness or witnesses in the disciplinary proceeding if any. This is a case where the respondents had knowledge about the aforesaid allegations made by the petitioner and in their supplementary counter affidavit the respondents dealt with those allegations. In support of the case of the respondents, the respondents also produced the records before this Court. From the records it is both apparent and evident that no intimation had been given to the petitioner that the departmental proceeding would be held also on December 28, 1989 and December 29, 1989. It is both apparent and evident from the records produced by the respondents that the petitioner was present in the departmental proceeding on December 27, 1989 but on December 28, 1989 and December 29, 1989, he was not present. As stated earlier, in course of hearing of the case I wanted to know from the learned Advocate for the respondents whether he can produce anything before this Court to show that the petitioner was intimated that on December 28, 1989 and December 29, 1989, the departmental proceeding would be held against him in respect of the charges framed against him. The learned Advocate for the respondents failed to produce any such evidence to show that the petitioner was intimated. It is not the case of the respondents that in spite of intimation, the petitioner did not take part in the enquiry proceeding held on December 28, 1989 and December 29, 1989. The case of the respondents is that the petitioner took part in the enquiry proceeding. But from the records produced by the respondents it is both evident and apparent that on December 28, 1989 and December 29, 1989, the writ petitioner was not present in the enquiry proceeding. When the petitioner took part in the enquiry proceeding held on December 27, 1989, there could be no good reason why the petitioner should not attend the enquiry proceeding held on December 28, 1989 and December 29, 1989 had he been intimated that the enquiry proceeding would be held on December 28, 1989 and December 29, 1989. Therefore, irresistible conclusion is that the petitioner was not informed that the departmental enquiry would be held on December 28, 1989 and December 29, 1989 and on those two days the enquiry was held behind his back, thereby depriving him of the opportunity to hear the witnesses, to cross-examine them and to make out his own case. Under these circumstances, I am of the opinion that glaring illegality is both evident and apparent on the face of the records produced by the respondents in support of their case. Though such statements were not made by the petitioner in the writ petition but subsequently, the petitioner in the supplementary affidavit made such statements and the respondents had full opportunity to deal with such allegations by filing supplementary counter affidavit. Glaring illegality being self-evident on the face of the records produced by the respondents in support of their case, the Court can take notice of such glaring illegality. This glaring illegality goes to the very root of the matter. In my view when illegality is glaring on the face of the records produced by the respondents in support of their case, the Court cannot remain a

silent spectator. In my view Court should take notice of such glaring illegality though not specifically taken in the writ petition but stated in the supplementary affidavit and the respondents by filing a counter dealt with such statements made in the supplementary affidavit. In this connection reference may be made to Anil Kumar Gupta and Others Vs. State of U.P. and Others, , where the Supreme Court held that though contention regarding a glaring illegality not specifically raised, being self-evident the Court can take notice of it. In the instant case, the allegations made by the writ petitioner in his supplementary affidavit have been denied by the respondent Nos. 1 and 2 in their supplementary counter affidavit as stated earlier but in addition to that in support of their denial the respondents produced the relevant records relating to the departmental proceeding against the writ petitioner and from the record it is both evident and apparent that glaring illegality had been committed by the respondents in the matter of departmental enquiry held against the writ petitioner. The denial made by the respondents in their supplementary counter affidavit is not supported by the records produced by them before this Court. Under these circumstances, I am of the view that this Court can certainly, on the basis of glaring illegality appearing from the records produced by the respondents and failure of the respondents to produce anything to satisfy this Court that the petitioner was intimated that on December 28, 1989 and December 29, 1989, the departmental proceeding would be held against him, take notice of the aforesaid glaring illegality.

8. In paragraph 9 of the supplementary counter affidavit affirmed on August 30, 1999, the respondents, inter alia, stated - "A copy of the enquiry report was not even asked for by the writ petitioner. The enquiry report was always available and he could obtain the same, if he wanted the same. He did not even care to ask for inspection of or for a copy of the same. It is denied that there was any violation of principles of natural justice or that any order was made in whimsical or arbitrary manner as alleged or at all". It is now well settled that the enquiry report even if it is not asked for by the concerned employee should be made available to the employee concerned. It is too late in the day to argue that the enquiry report was not even asked for by the writ petitioner and that the enquiry report was always available and he could obtain the same if he wanted the same and he did not even care to ask for inspection of the enquiry report. The law is that it is the duty of the disciplinary authority to furnish the employee a copy of the enquiry report when enquiry was not conducted by the disciplinary authority himself, even if the employee has not asked for the same. Therefore, the stand taken by the respondents in the above quoted portion of paragraph 9 of the supplementary counter affidavit affirmed on August 30, 1999 is not tenable in law.

9. The writ petitioner had no opportunity to know, prior to the service of enquiry report as an annexure of the said supplementary counter affidavit, that enquiry proceeding was held on December 28, 1989 and December 29, 1989. The learned Advocate for the respondents conceded that the Bank is a "State" within

the meaning of Article 12 of the Constitution of India. That point being conceded by the respondents, there is no escape from the provisions of Part III of the Constitution of India. The respondent cannot act arbitrarily in violation of Article 14 of the Constitution and cannot also deprive the writ petitioner of his livelihood in violation of the procedure established by law.

10. In the instant case, the petitioner was dismissed from the service in utter violation of the principles of natural justice which is inbuilt in Article 14 of the Constitution. Therefore, in view of the above discussions, the petitioner has been dismissed from the service in utter violation of Articles 14 and 21 of the Constitution of India. This violation of the principles of natural justice has vitiated the entire disciplinary proceeding from the stage of enquiry.

11. In view of the discussions made hereinabove I set aside and quash the enquiry report, order of dismissal and all consequential actions taken and orders passed against the writ petitioner on the basis of the enquiry report. The respondents are given liberty to proceed against the writ petitioner afresh from the stage of enquiry on the self-same charges. The allegations against the petitioner are so serious that this Court cannot ask the respondents to allow the petitioner to join his service. Liberty is given to the respondents to take an appropriate decision as to whether the petitioner shall continue to remain under suspension or not. Such decision should be taken by the respondents within six weeks from the date of communication of this judgment and order. If the respondents decide to continue the suspension of the writ petitioner then they should forthwith pay the writ petitioner arrear subsistence allowance in accordance with law from the date of his dismissal and shall go on paying his subsistence allowance in accordance with law month by month till final decision is taken in the departmental proceeding. If the respondents proceed against the petitioner afresh the entire departmental proceeding should be finished within six months from the date of communication of this order. If the respondents fail to complete the disciplinary proceeding within the period stipulated hereinabove for the reasons beyond their control, they will be at liberty to pray for extension of the time. Learned Advocate for the petitioner argued that the charges framed against the petitioner are vague and indefinite. The petitioner is given liberty to raise this question before the disciplinary authority and if such question is raised by the petitioner then disciplinary authority should consider and dispose of such question by a reasoned order which should be communicated to the writ petitioner within two weeks from the date of passing such reasoned order. In these terms the writ petition is allowed.

Later - If the xerox certified copies are prayed for, on usual undertaking xerox copy should be made available within seven days from the date of application. The records produced before this Court be returned to the learned Advocate for the respondents.