
(2008) 02 JH CK 0006
In the Jharkhand High Court

Anil Kumar Mishra

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Citation : (2008) 2 JCR 680

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The controversy involved in this case gives rise to the issue whether the appointing authority having taken a decision to impose the penalty of reduction in the grade and the period of suspension to be treated as not on duty can subsequently change the decision on the advice of the Chief Vigilance Officer and impose the penalty of removal from service, under influence of such advice.

2. The petitioner, who had been working as the Branch Manager, State Bank of India, Patan Branch, was served with a memo dated 17.6.2000, in terms of Rule 68(1) of the State Bank of India Officers' Service Rules, containing articles of charges.

3. The petitioner was mainly alleged that : (i) He collected Rs. 78,411/- from fourteen borrowers for crediting to their loan accounts, but he did not deposit the said amount, (ii) He had sanctioned loan to the wives of fourteen defaulters and had taken their thumb impressions, cash was collected by the petitioner, but was not deposited. (iii) He disbursed loans beyond the allocated budget without obtaining prior sanction, and recovered the lands' margin money in respect of P.M.R.Y loans, and the loan of I.R.D.P. group was disbursed by the petitioner beyond his discretionary power. Besides that, there were some other allegations of irregularities against him.

4. The petitioner denied the charges and faced the enquiry. In the departmental

enquiry, some of the charges were proved against the petitioner. He did not prefer to challenge the findings of enquiry officer. It is not of much relevance to go into the detail of material on record in view of the admitted position, as discussed hereinafter.

5. The enquiry officer submitted his report with the findings that the Charge Nos. (i), (iv) and (vi) (a, b, c) were found proved against the petitioner and the Charge Nos. (v) and (vii) were partly proved whereas the Charge Nos. (ii) and (iii) were not proved. It was held by the enquiry officer that none of the charges proved the allegation that the petitioner did not discharge his duty with integrity and honesty, but the allegations proved go to show lack of his diligence and devotion.

6. The disciplinary authority-cum-the Deputy General Manager, Zonal Office, Ranchi by his Memo dated 1.10.2001, however, disagreed with the findings of the enquiry officer and held that the charges have been fully proved against the petitioner. Although, he did not give any reason for differing with the enquiry report, the petitioner was asked to furnish his submission; on the said findings of the enquiry officer.

7. The petitioner on receipt of the same again denied all the charges, giving his explanation in detail.

8. The appointing authority, thereafter, passed order awarding punishment of removal from service under Rule 67(1) of the State Bank of India Officers' Services Rules. It transpires from the record that appointing authority had taken decision to impose penalty of reduction to the petitioner's Grade of JMGS-I and the period of suspension to be treated as not on duty. But after consultation with the Chief Vigilance Officer, the punishment of removal was awarded to the petitioner.

9. The petitioner contended that the decision regarding the punishment has to be taken by the disciplinary authority/appointing authority independently without being influenced by the advice /recommendation of the Chief Vigilance Officer (C.V.O). The impugned order being influenced by the C.V.O is wholly without jurisdiction.

10. The disciplinary authority had decided to award punishment of reduction of the petitioner's grade, but the same was later on converted into punishment of the removal of the petitioner. No reason has been assigned for enhancement of punishment. Copy of the recommendation of the Chief Vigilance Officer was also not served on the petitioner. He was not given any opportunity to defend against such recommendation which was issued against the petitioner for enhancing punishment.

11. The petitioner contended that in the decision of the disciplinary authority influenced by the said recommendation of the Chief Vigilance Officer without giving any opportunity to the petitioner to defend against such recommendation

is violative of the principles of natural justice and fair play and the decision of awarding punishment of removal from service is unsustainable, arbitrary and is liable to be quashed.

12. The respondents-Bank contested the writ petition. In the counter- affidavit it has been, inter alia, stated that there is no arbitrariness or illegality in the impugned order awarding punishment to the petitioner and there has been no violation of the principles of natural justice. The impugned order was passed after considering the reply to me show cause filed by the petitioner. It has not been mentioned, in the order of appointing authority that the same is being passed at the instance of the Chief Vigilance Officer. The appellate authority in his order has observed that the punishment of removal from service was awarded at the instance of the Chief Vigilance Officer. The disciplinary authority is not the appointing authority. The appointing authority had independently assessed the facts and materials on record produced before him. Since the proceeding against the petitioner was based on Vigilance angle, the Chief Vigilance Officer (C.V.O) was consulted but the decision was taken Independently by the appointing authority. The allegations against the petitioner were found proved by the appointing authority. The punishment of removal from the service has been awarded on the basis of the evidences and in view of the gravity of the charge is not in any way illegal. The appointing authority, though differed with the findings of the enquiry officer, found the charge of misconduct proved.

13. Mr. Satish Bakshi, learned Counsel appearing on behalf of the petitioner, submitted that the petitioner's past service record was unblemished .The enquiry officer has also not found the charges fully; proved against him. The enquiry officer has taken into consideration that during the course of enquiry proceedings, the borrowers did not support the allegation against the petitioner. The wives of three concerned borrowers D.Ws. 1-3 have admitted that they had not deposited any money. In that view, though the charge No. 1 was not proved, the enquiry officer opined that the charge No. 1 was proved, though there is possibility of some foul play. All the remaining charges were regarding procedural irregularities.

14. Mr. Rajesh Kumar, learned Counsel appearing on behalf of the respondents-Bank, on the other hand, submitted that the appointing authority had taken the decision to impose penalty of reduction of the Grade of JMGS-I and the period of suspension to be treated as not on duty, but after consultation with the C.V.O, he decided to impose the penalty of removal from service. Learned Counsel submitted that there is nothing wrong or illegal in consulting the C.V.O as the provision has been made under Rule 70 of the State Bank of India Officers' Service Rules for such consultation. Learned Counsel submitted that Rule 70 of the State Bank of India Officers' Service Regulations provides for the consultation with the Central Vigilance Commission, whenever necessary, in respect of disciplinary cases having vigilance angle. Such consultation has been also approved by the Supreme Court in the case of State Bank of India and Ors.

v. D.C. Aggarwal and Anr. There is, thus, no illegality or infirmity In the order of punishment passed by the appointing authority or in the appellate order whereby the order of punishment has been upheld.

The Bank shall consult the Central Vigilance Commission, wherever necessary, in respect of all disciplinary cases having vigilance angle.

15. I have heard learned Counsel for the parties, perused the materials brought on records, the provisions of the service rules applicable to the petitioner and the rulings relied upon by the parties.

16. The petitioner at this stage has confined his prayer and only assailed the quantum of punishment. Learned Counsel submitted that only some of the charges are said to be proved by the enquiry officer. But the appointing authority differed with the findings of the enquiry officer and held that all the charges have been proved against the petitioner. The petitioner also could not succeed in the departmental appeal. It has been submitted that the disciplinary authority recommended for punishment for lowering down the basic pay of the petitioner to the bottom of MMGS-II for a period of four years and for not treating his suspension period on duty. The appointing authority differing with the said finding and recommendation decided to impose penalty of reduction to the Grade of JMGS-I. The appointing authority, thereafter, passed the order imposing the penalty of removal from service after consultation with the C.V.O. The disciplinary authority has shown disagreement with the enquiry officer and has held that the charges against the petitioner were proved.

17. On perusal of the documents, it appears that the appointing authority has not given any cogent reason for his disagreement with the findings of the enquiry officer. The State Bank of India Officers' Service Regulations 68(1)(ii) provides that the disciplinary authority or any authority higher than it may impose any of the penalties in Rule 67 on an officer. Rule 67 gives the description of punishments which can be imposed.

18. The said rule does not provide for any consultation with any other authority for taking decision regarding the quantum of punishment. The said provision, thus, confers the decision making jurisdiction of the disciplinary authority or any authority higher than him to impose any of the penalties under Rule 67.

19. Admittedly, in the instant case the disciplinary authority had taken decision for imposing punishment of lowering down the basic pay to the bottom of MMGS-II for four years coupled with not treating the suspension period as on duty. His decision cannot be influenced by any other authority other than that has been mentioned in the said provision of Rule 68. In view of the clear finding of the disciplinary authority and his decision of awarding punishment of reduction in rank, the punishment of removal of the petitioner from service awarded/Under the influence and on interference of the Chief Vigilance Officer is untenable, unjust and wholly without jurisdiction.

20. It is admitted that the adverse recommendation of the Chief Vigilance Officer (C.V.O) was not made available to the petitioner. The said recommendation was made behind the back and without his participation. The petitioner remained in dark about the materials which influenced the disciplinary authority to change his decision/ take the decision on the recommendation without supplying the contents of the recommendation and without giving any opportunity to the petitioner to explain. The said recommendation made behind his back and without his knowledge is wholly unjust and violative of the rules of fair play and the same cannot sustain also on that count.

21. In *State Bank of India and Ors. v. D.C. Aggarwal and Anr.*, supra, the Hon'ble Supreme Court has held that relying on the recommendation of the Central Vigilance Commission which was prepared behind the back of an employee without his participation and without giving him any opportunity to know the contents, is violative of the procedural requirements and contrary to the fair and just procedure.

22. On plain reading of Rule 70 also, it is clear that the same does not provide for influencing any decision of the disciplinary authority.

23. By Rule 67 the decision making jurisdiction for awarding punishment has been specifically conferred on the disciplinary authority or any authority higher than him. In that context, the Chief Vigilance Officer cannot be read to be included as either the disciplinary authority or any authority higher than him. The decision making power can be exercised only by the authority who has been given the said power and not by any outsider. The decision of the disciplinary authority cannot be influenced by any advice or recommendation of any outside authority/agency. I, therefore, find no substance in the stand taken by the respondents that the enhancement of punishment on the recommendation of the C.V.O cannot be said to be illegal or arbitrary.

24. In the circumstances of the case, the matter could have been remitted to the disciplinary authority after quashing the orders passed by the appointing authority as also by the appellate authority. However, since the petitioner has confined his prayer only to the extent of the quantum of penalty and it is clear on record from the appellate order that the disciplinary authority had decided to impose penalty by reducing the petitioner's basic pay to the bottom of MMGS-II for a period of four years coupled with the period of his suspension to be treated as not on duty, there is no difficulty in upholding that order. Rule 68(I)(ii) of the *State Bank of India Officers' Service Regulations* confers power on the disciplinary authority to impose any of the penalties under Rule 67 and the said authority has taken the said decision. The penalty imposed for removal from service after consultation with the C.V.O subsequently is thus bad, illegal and unsustainable.

25. Further, the departmental proceeding was initiated long back in the year 2000 and about 8 years has already elapsed. In the context of service of an

employee, 8 years is a long period. If the matter is remitted for fresh order and decision on the quantum of punishment, there will be further delay in disposal of the matter. Further delay in the matter would amount to denial justice to the petitioner. Moreover, as it would appear from the order of the appellate authority that the disciplinary authority had opened his mind on the quantum of punishment i. e. for lowering down the basic pay to bottom of MMGS-II for a period of four years coupled with the period of suspension to be treated as not on duty. That decision being of competent authority should be maintained. Accordingly, this writ petition is allowed. The impugned order of punishment is modified by upholding the independent decision taken by the disciplinary authority whereby the petitioner was awarded penalty of lowering down his official basic pay to the bottom of MMGS-II for a period of four years and the period of suspension to be treated as not on duty. As a consequence the petitioner stands reinstated with the said punishment as earlier decided by the disciplinary authority.

There shall be no order as to costs.