

(2024) 02 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7047 Of 2016

Anjani Kumar Tiwari

APPELLANT

Vs

Board Of Directors/Appellate Authority

RESPONDENT

Date of Decision : 14-02-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Officers & Employee Service Regulations, 2010 — Section 39(1)(b)(ii)?Allowed

Citation : (2024) 02 CHH CK 0036

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : K. N. Nande, N. Naha Roy

Judgement

1. The petitioner has preferred the present writ petition praying for the following reliefs:-

"10.1 That, this Hon'ble Court may kindly be pleased to call the entire records pertaining to the case of the petitioner for its kind perusal.

10.2 That the Hon'ble Court may kindly be pleased to set aside the order dated 25/11/2016(Annexure P-1) and order dated 07/04/2016 (Annexure P-2) in the interest of justice, meanwhile the effect and operation of the order dated 25/11/2016 may kindly be stayed till the final disposal of this writ petition, in the interest of justice.

10.3 Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be granted to the petitioner."

2. Brief facts of the case are that the petitioner was working in the respondent Bank for more than last 34 years. He had joined the Chhattisgarh Rajya Gramin Bank as Branch manager on 22/12/1982, thereafter the petitioner was promoted to Scale II Manager w.e.f 13/12/2002 and subsequently to Senior Manager in Scale III from 13/09/2005. On 16/3/2011, the petitioner was issued a charge sheet framing as many as 7 charges against the petitioner. The Petitioner

submitted his explanation on 29/8/2011 and respondent bank satisfied with the explanation dropped 5 out of 7 charges. As the charge no. 6 & 7 were not found to be proper and convincing therefore, the respondent bank again issued an amended charge sheet on 22/11/2011. The petitioner had received a show-cause notice dated 10/04/2015 asking him to show cause as to why a major penalty under the provisions of Section 39(1) (b) (ii) of the Officers & Employee Service Regulations 2010 should not be imposed against him by demoting him from Scale III to Scale II at a minimum basic salary of Rs. 19,400/- p.m. After framing amended charges on the petitioner on 22/11/2011, no notice of 15 days under the aforesaid provision of Regulation 2010 has been given to the petitioner and no any documents or list of witness has been given with the charge sheet to the petitioner. Moreover, doctrine of natural justice has not been complied with, as no fair opportunity of being heard has been afforded to the petitioner, against which the petitioner preferred a writ petition bearing WPS No.2053/2016, which was dismissed on the ground that alternative remedy of preferring an appeal is available to the petitioner, against which he filed writ appeal bearing WA No.409/2016, which was disposed of directing the respondent authorities to consider the case of the petitioner and pass a reasoned order, thereafter the order impugned dated 07.04.2016 (Annexure-P/2) has been passed demoting him from Scale III to Scale II at a minimum basic salary of Rs. 19,400/- p.m, against which the appeal preferred by the petitioner has also been dismissed vide impugned order dated 25.11.2016 (Annexure-P/1). Hence this writ petition has been filed by the petitioner.

3. Learned counsel for the petitioner submits that the respondent no.2 by issuing the impugned order has exceeded his jurisdiction, as respondent No.2 does not fall under the category of Board of Directors/Appellate Authority as per 2013 Regulations, whereas direction by this Court in WA No.409/2016 was given to the Appellate Authority not to the respondent no. 2. Though in specific terms it has not been provided that the charge sheet must contain imputation of charges, list of documents and list of witnesses, however the principle of natural justice is required to be followed and the proper materials or opportunity to the delinquent employee be provided to enable him to put forward his case and file proper response. The petitioner was not provided details of charges, as such he was not in a position to defend his case properly. The charge sheet was vague and did not disclose complete facts which lead to levelling of charges against the petitioner. Thus the enquiry thereupon cannot be held as proper enquiry. The petitioner had no opportunity to meet the charges for want of material documents. The action on the part of the respondent authority in not supplying the information as required by the petitioner to prove himself innocent is contrary to the provisions of RTI Act 2005, besides being in serious violation of the Article 14 and 16 of the Constitution of India. The respondent authority ought to have ensured supplying the information to the petitioner as early as possible to submit his explanation against the show-cause notice dated 10/04/2015 and in the absence of doing so the respondent authority has no right to take any action against the petitioner.

The petitioner has not been afforded fair and just opportunity of hearing and has been treated in discriminatory manner and without seeking his explanation/reply to the show cause notice, major penalties have been imposed by demoting him to one low grade and further putting him at the minimum basic salary of Rs.19400/-. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of State of Uttar Pradesh and others vs Saroj Kumar Sinha, reported in (2010) 2 SCC 772 and Govt. of A.P. and others vs A. Venkata Raidu, reported in (2007) 1 SCC 338 and the order passed by this Court in the matter of Ram Prasad Khande vs Bilaspur Raipur Kshetriya Gramin Bank and others, passed in WP No.970/1993, order dated 12.07.2010.

4. Learned counsel for the respondents strongly opposes the submission made by the petitioner's counsel and submits that the petitioner is on a thoroughly misconstrued notion that after issuing him with a show cause notice dated 10.04.2015, no opportunity of hearing was afforded to him and that the respondents have violated the provisions of Regulation 39(1)(b) Explanation VIII (c) (ii) of the Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulations, 2010 (in short, "Service Regulations, 2010"). The petitioner was granted an opportunity of hearing in view of asking explanation from him through show cause notice dated 10.04.2015 as to why a major penalty under the provision of Regulation 39(1)(b)(i) of the Service Regulations, 2010 should not be imposed upon him, thereby demoting him from Scale-III to Scale-II at a minimum basic salary of Rs.19,400.00 and it was expected out of the petitioner to file an explanation to the show cause notice in a reasonable time which he utterly failed to do. On the other hand, the respondents in no way have contravened Regulation 39(1)(b) Explanation VIII (c) (ii) of the Service Regulations, 2010, but to the contrary, the petitioner has wrongly applied the regulation which provides for grant of fifteen day notice while considering a case for imposing minor penalties as has been prescribed under Regulation 39(1)(a), but in the instant case, major penalty has been imposed upon the petitioner as prescribed under Regulation 39(1)(b) commensurate to the gravity of the charge levelled, therefore, the contention of the petitioner about the enquiry proceedings being vitiated on account of failure to comply with the principal of natural justice does not hold water at all. The contention raised by the petitioner that the respondent No.2 has exceeded his jurisdiction as the respondent No. 2 is not the competent authority in case a departmental enquiry is instituted against the petitioner being an Officer Scale-III is per se wrong, as the disciplinary authority in case of the petitioner being Scale-III officer is the Chairman as per Regulation 2(g)(i) of Service Regulations, 2010 and the impugned punishment order has also been passed by the Chairman of the respondent bank being the competent authority. Therefore, the writ petition deserves to be dismissed.

5. The petitioner has filed additional documents vide Annexure-P/13 & P/14 on this ground that the Branch Manager concerned was given clean chit, whereas the petitioner has been found guilty and has not been supplied necessary documents to defend his case properly.

6. In response to the additional documents submitted by the petitioner, the respondents have filed the additional reply and contended that at no point of time, the petitioner was subjected to discrimination of any kind. It is further contended that on conclusion of the enquiry recording, the charges to be proved, the petitioner was supplied with a copy of the enquiry report vide letter dated 25.06.2014 asking for filing his defence statement within 10 days or the disciplinary authority would be proceeding with the matter. The petitioner has strongly contended for his defence having been prejudiced on account of denial of necessary documents, which comes out to be factually incorrect in view of there being a letter dated 22.08.2014, in response to his request letter dated 11.07.2014 demanding supply of documents on random basis, thereby clearly communicating him that the documents sought by him which were relevant to the subject of enquiry were being sent to him except the documents not related with the enquiry. It is reiterated herein that the petitioner in the course of enquiry was supplied with all due material, however it was not open for him to protract or distract the enquiry proceedings by complaining for not being supplied with the documents which were not referred/relied by the enquiry officer or were part of the enquiry proceedings. The petitioner in his defence statement has stressed upon giving a clean chit to the Branch Manager, Gharghoda, of which he was a supervising authority. The petitioner specifically relying on the merits of enquiry, particularly the cross-examination of the then Branch Manager has stated that the Branch Manager was not even subjected to any questionnaire ever with respect to the loan cases, which were the subjected matter of the enquiry against him and as such the enquiry proceeding was vitiated on account of malice and pick and choose on part of the respondents. The respondents firmly and categorically deny this contention. Relying on the same minutes of enquiry proceedings, it is submitted that the subject matter of the enquiry proceedings is subsequent to June 2009, whereas as per the statement given by the Branch Manager in the cross-examination, it is clear that he was posted at the Branch concerned from May 2004 to August 2008 only, which amply clarifies that the loan cases forming the subject matter of the enquiry had no concern with his posting and as such had no occasion for putting any question to such Branch Manager. Reliance has been placed by the respondents on the judgment rendered by the Hon'ble Supreme Court in the matter of Boloram Bordoloi vs Lakhimi Gaolia Bank and others, reported in (2021) 3 SCC 806.

7. Heard learned counsel for the parties and perused the material available on record.

8. It is not disputed in this case that the petitioner was working in the respondent bank and he joined as Branch Manager on 22.12.1992, thereafter he was promoted to Scale-II Manager w.e.f. 13.02.1992 and after that he was promoted to the Senior Manager in Scale-III w.e.f. 13.09.2005. It is also not disputed that a departmental enquiry was initiated against the petitioner and on 16.03.2011, first charge sheet was issued against the petitioner. The

respondent bank satisfied with the explanation of the petitioner dropped 5 charges out of 7 and the respondent bank issued an amended charge sheet on 22.11.2011 and show cause notice dated 10.04.2015 was also issued to the petitioner for imposing major penalty and by impugned order dated 07.04.2016 (Annexure-P/2) major penalty has been imposed upon the petitioner, whereby he has been demoted from Scale III to Scale II at a minimum basic salary of Rs. 19,400/- p.m. The appeal preferred by the petitioner has also been dismissed vide order dated 25.11.2016 (Annexure-P/1).

9. The petitioner has filed several documents, which show that the petitioner has filed various applications for supply of documents. The petitioner has also filed Annexure-P/5 order dated 06.09.2016 passed by this Court in Writ Appeal No.409/2016, which was preferred by the petitioner challenging the order passed by the learned Single Bench dated 24.06.2016 passed in WPS No.2053/2016. The Division Bench of this Court has observed in para 3 of the order dated 06.09.2016 as under:-

"3. In view of the above, we dispose of this appeal with the following directions:

(i) That, the Appellant/Petitioner shall, alongwith a copy of this order, appear before the Appellate Authority on or before 26th September, 2016. Thereafter, the Appellate Authority shall fix a date for hearing of the appeal.

(ii) It is made clear that no counsel would be allowed to appear on behalf of the Appellant/Petitioner.

(iii) If the Appellant/Petitioner wants, he shall be heard in person and thereafter, the appeal be disposed of by a reasoned order by 7th October, 2016."

10. In the appeal preferred by the petitioner before the Department, the petitioner has raised various grounds. It is clear from the show cause notice dated 10.04.2015 (Annexure-P/3) that enquiry report dated 12.06.2014 was sent to the petitioner. The petitioner filed his reply on 11.07.2014 (Annexure-R/4). In his reply vide Annexure-R/4 in last para, the petitioner wrote as under:-

Thereafter again notice was issued to the petitioner Vide Annexure-R/5 dated 22.08.2014. The petitioner filed his reply (Annexure-R/6) and after that disciplinary authority passed the order dated 07.04.2016 (Annexure-P/2) and thereafter the appeal preferred by the petitioner before the Department has also been dismissed vide order dated 25.11.2016 (Annexure-P/1).

11. The petitioner has also objected that the respondent authority has not taken any action against the Branch Manager Mr. V. K. Sinha. The petitioner accepted this fact that the petitioner was the area manager at that time. The petitioner also objected that the relevant information was not supplied along with the charge sheet. It is clear from the documents that the amended charge sheet was issued on 22.11.2011. The petitioner has also filed various applications which shows that when the petitioner filed application under RTI Act, then he got information.

12. This Court vide order dated 12.07.2010 passed in WPS No.970/1993 has observed in paras 5 & 6 as under:-

"5. It is true that along with the charge sheet and imputation of charges, there was no list of documents and, as such, the petitioner was not afforded an opportunity to put forward his case in response to the show cause notice along with the charge sheet. It is crystal clear that no documents were supplied along with the charge sheet on the basis of which charges were framed. The petitioner had no opportunity to meet the charges for want of material document. Some documents were given during departmental proceeding but the relevant documents on the basis of which finding was recorded were not made available to the petitioner. Thus, the enquiry is vitiated.

6. The Supreme Court, in *Kashinath Dikshita v. Union of India & Others*, the Supreme Court observed as under:

"10 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?"

13. The Hon'ble Apex Court in the matter of *A. Venkata Raidu* (supra) has held in para 9 as under:-

"9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge No. 1, what is mentioned is that the respondent violated the Orders issued by the Government. However, no details of these Orders have been mentioned in Charge No. 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the G.O which is said to have been violated by the respondent, the number of that G.O, etc. but that was not done. Copies of the said G.Os or directions of the Government were not even placed before the Enquiry Officer. Hence, Charge No. 1 was not specific and hence no finding of guilt can be fixed on the basis of that Charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessor. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged."

14. Again in the matter of *Saroj Kumar Sinha* (supra), the Hon'ble Apex Court has held in para 39 as under:-

"39. 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 department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of State of Punjab vs. Bhagat Ram (1975) 1 SCC 155:

"6. 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.

7. 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 statements 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.

8. 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 levelled 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."

15. In light of the above, it is clear that in the present case, the first charge sheet was issued against the petitioner on 16.03.2011 and the amended charge sheet was issued on 22.11.2011. As per the petitioner, the charge sheets issued to him did not annex list of documents and witnesses. It is clear from various documents that the petitioner filed various applications under RTI Act, as such it is clear that all the documents were not supplied to the petitioner. It is also clear that during suspension period, the petitioner was engaged by the bank in recovery work. In reply of show cause notice, the petitioner again sought time for reply, but no time was given to the petitioner and the respondent did not file any acknowledgment in this regard that any document was supplied to the petitioner. Therefore, looking to the above principle and the facts and circumstances of the case, it is clear that no proper opportunity of hearing was given to the petitioner to put forward his case in his defence. Learned Appellate Authority has also not considered this ground that essential documents were not supplied to the petitioner. Thus, it is the case of perversity in enquiry as

well as in the report. Thus order of punishment on the basis of enquiry report is not sustainable.

16. Accordingly, the writ petition is allowed and the impugned orders dated 25.11.2016 (Annexure-P/1) and 07.04.2016 (Annexure-P/2) are hereby set aside with all consequential benefits to the petitioner. However, liberty is reserved in favour of the respondents to proceed further, if they so desire, and may initiate departmental enquiry against the petitioner by providing him ample opportunity of hearing as well as necessary documents with respect to the enquiry proceedings.