

(2003) 09 AHC CK 0035

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42220 of 1992

Anoop Kumar Saxena

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) 6 AWC 5161 : (2004) 1 UPLBEC 52

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : D.P Singh and V.P. Pathak, for the Appellant; Sharad Verma and Sahab Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. This writ petition has been filed praying following reliefs :

(1) Issue a writ, order or direction in the nature of writ of prohibition restraining the respondents from proceeding with the disciplinary proceedings against the petitioner in pursuance of Memorandum dated 28.7.1992 and 20.8.1992, initiated by the respondent Nos. 2 and 4 and pending before the respondent No. 3.

(2) Issue a writ, order or direction in the nature of certiorari quashing the entire disciplinary proceedings held so far against the petitioner by respondent No. 3 at the instance of respondent Nos. 2 and 4.

(3) issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of case."

3. The case of the petitioner is that the Central Bank of India is one of the Nationalized Banks and is "State" within Article 12 of the Constitution of India. The petitioner joined as Clerk in the Central Bank of India with effect from

27.12.1978. In December, 1991, he was posted as Clerk at Kaimganj Branch, Central Bank of India, Farrukhabad. Respondent No. 4 Regional Manager acting as Disciplinary Authority issued a charge-sheet dated 10.7.1992, against the petitioner. He also issued memorandum dated 28.7.1992 and 20.8.1992, that the Regional Manager, Etawah was functioning as Disciplinary Authority and one Sri G.D.V. Sadhwani, Branch Manager, Fatehgarh has been appointed as Enquiry Officer. The respondent No. 4 vide order dated 19.12.91, suspended the petitioner in contemplation of an enquiry. On 8.10.92, enquiry proceedings were held at Kaimganj against the petitioner. During the said proceedings the defence representative on behalf of the petitioner raised the following preliminary objections :

(a) That Sri R.K. Agarwal who is Regional Manager of Etawah Region is not entitled in law to act as the Disciplinary Authority against the petitioner.

(b) That the appointment of Sri G.D.V. Sadhwani, (Branch Manager, Fatehgarh Branch) as Enquiry Officer against the petitioner is arbitrary and illegal inasmuch as Shri R.K. Agarwal, Regional Manager had no legal authority to act as Disciplinary Authority and consequently to appoint any Enquiry Officer.

4. This writ petition has been filed on the ground that the Regional Manager of Etawah region is not entitled in law to act as the Disciplinary Authority against the petitioner and the appointment of Sri G.D. Sadhwani, Branch Manager, Fatehgarh Branch as Enquiry Officer against the petitioner is arbitrary and illegal inasmuch as Sri R.K. Agarwal, Regional Manager had no legal authority to act as Disciplinary Authority or appoint any Enquiry Officer.

5. It is contended that Rule 12.1 of the Central Bank of India provides that Divisional Manager of the concerned division alone will be the Disciplinary Authority for Officer Staff in a Junior Management like the petitioner. Respondents in their counter-affidavit as well as in oral arguments submit that by letter dated December 31, 1984, the designation of the Divisional Manager has been revised as Regional Manager and therefore, respondent No. 4 Regional Manager can act as Disciplinary Authority against the petitioner.

6. In rebuttal the petitioner submits that even if the designation from the Divisional Manager to Regional Manager is changed, there is no delegation of powers of the Divisional Manager on the Regional Manager and there is no evidence to show that Sri R.K. Agarwal, Regional Manager, was at any point of time conferred the powers of Divisional Manager as Disciplinary Authority. Neither any notice was displayed as per Rule 12 nor it was ever issued by the Central Bank of India authorizing Regional Manager to act as Disciplinary Authority for employees like the petitioner hence, Regional Manager cannot as Disciplinary Authority of the petitioner and that the Enquiry Officer (respondent No. 3) who has been appointed by respondent No. 4 (Regional Manager) cannot hold the enquiry against the petitioner. It is submitted that in view of order dated 11.2.1993, passed by this Court the respondents have proceeded against the

petitioner. The order dated 11.2.93 is as under :

"List this case on 22.2.93.

Shri Sharad Verma appearing for the respondents prays for and is granted time till the date fixed to file counter-affidavit,. Sri D.P. Singh may also obtain instructions as to the effect and implications of the order dated 31.12.84, regarding new designation of the Officers. Let a copy of this order be supplied to Sri D.P. Singh today

It is meanwhile understood that the final orders shall not be passed in the matter by the Disciplinary Authorities until further orders of this Court. The petitioner shall be allowed to participate in further enquiry proceedings.

Sd. S.R. Singh, J., 11.2.93."

7. It is contended by the Counsel for the respondents that the powers of the Disciplinary Authority to initiate disciplinary action against the workmen were originally vested in the Executive Director of the Bank. Pursuant to the powers vested in him, the Executive Director, vide his notice dated 28.3.1980 read with Schedule-A (already annexed as Annexure-1 to the writ petition) directed that any Officer of the Bank not lower in rank and status than a Divisional Manager or equivalent status shall be competent to act as the Disciplinary Authority in regard to disciplinary proceedings against any member of the workman staff governed by the provisions of the Award and Bipartite settlement provided that if such Disciplinary Authority chooses he may entrust the enquiry to any other Officer.

8. The Counsel for the petitioner submits that while he working as a Clerk in the respondent Bank at Kaimganj Branch, Farrukhabad was suspended by the Regional Manager, Regional Office of the Bank at Etawah on 19.12.1991 pending enquiry on charge of gross irregularities of serious nature. The Regional Manager of the Bank at its Regional Office at Etawah the respondent No. 4 within whose jurisdiction the petitioner and his Branch acting as Disciplinary Authority issued a memorandum dated 24.2.1992, asking to submit his written explanation.

9. The powers of the Disciplinary Authority have been vested in the Regional Manager and not Sri R.K. Agarwal in person and Sri Agarwal was acting by virtue of his designation and not in person. It is also submitted that in view of the circular dated 31.12.1984, there was no question or necessity of nominating Sri Agarwal as Disciplinary Authority nor for that matter of publishing notice in this behalf. The post of Regional Manager, is only another nomenclature for what used to be the Divisional Manager in the respondent-Bank till 31.12.1984. There does not appear to be any illegality in the proceedings.

10. By order dated 17.11.1992 only time was granted to the Counsel for the respondent-Bank for filing a counter-affidavit and no orders were passed on the stay application. Thus, there was no restraint on the disciplinary proceedings either impliedly muchless expressly on the part of this Court and they continued as before.

11. The petitioner has come at premature stage and if any, order is passed against him after domestic enquiry he can challenge the same before the Labour Court. It appears that the petitioner has rushed to this Court prematurely.

12. Counsel for the petitioner has cited following rulings in support of his case :

(1) In Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, , the Appointing Authority was appointed as Disciplinary Authority. In the instant case, only designation of Divisional Manager was changed as Regional Manager.

(2) In the case of Central Bank of India Vs. C. Bernard, , it has been held that Disciplinary Authority cannot be a non-official, but Enquiry Officer can even be a non-official.

(3) In P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , it has been held that the Disciplinary Authority cannot be lower in rank than the Appointing Authority but superior to the delinquent.

13. These rulings do not apply to the facts of the present case.

14. In view of the above discussions, I do not find any merit in this writ petition. The writ petition is premature and is dismissed. The interim order is vacated. The Disciplinary Authority may proceed according to law.