

(2011) 01 JH CK 0089

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5792 of 2005

Anu Shankar Prasad

APPELLANT

Vs

Palamau Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : (2011) 2 JCR 133

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This petition has been filed under Article 226 of the Constitution of India for seeking the writ of certiorari for quashing the impugned order dated 30th April, 2005 contained in annexure-5 to the writ petition whereby the services of the Petitioner had been terminated and thereafter he further prayed to quash the order dated 30.8.2005 contained in annexure-6 to the writ petition whereby the appeal preferred by the Petitioner had been rejected by the appellate authority.

2. While the Petitioner was posted as Accountant at Palamau Kshetriya Gramin Bank, Panki during the period of February 1995 to April 1999. It was found that on several occasions, he made the payment to the persons without following the procedure. Several occasions he fraudulently withdrawn bank's money from Bank's customer's saving bank accounts and by opening fake Demand Loan accounts in the fictitious names in an improper, unjustified and illegal way. It is also alleged that he was violating normal rules of the business of the banking, he exercised the power of superior authority, while granting the said loans to the borrowers. He used to cover up his deeds by placing forged documents, vouchers, withdrawals and wrong balancing of the accounts and further he did not take the proper security for the said transactions. After conclusion of the inquiry the Disciplinary Authority took the decision to terminate his services.

3. Learned Counsel appearing for the Petitioner contended that the Bank had proceeded ex-parte against the Petitioner and no proper opportunity was given to him to defend his case. He further pointed out that after framing the charges against the Petitioner, no evidence was taken; and there is no evidence against the Petitioner to establish the charge. He further pointed out that he demanded certain documents during the enquiry and the said documents were not given to him. He further pointed out that the quantum of punishment which has been awarded is excessive.

4. Learned Counsel appearing for the Respondents contended that a proper opportunity was given to him on several occasions and he appeared before the enquiry officer. The charges were framed on 4th October, 2001 and on the same day, the said charge-sheet was handed over to him. Thereafter, during the course of enquiry, he also appeared before the enquiry officer, which is evident from annexure-A to the counter affidavit. He further pointed out that the so-called application was submitted by the Petitioner after the conclusion of the enquiry; when the enquiry report was sent to the Petitioner for seeking his comments. He further pointed out that from perusal of Charge-sheet (annexure-1), it is clearly revealed that it was prepared on 4.10.2001. Thereafter, the enquiry report at annexure-2 by enquiry officer submitted on 28.4.2004 and the application-Annexure-3 to the writ petition by which the papers have been demanded was given on 12.05.2004. He further pointed out that Annexure-B to the counter affidavit reveals that after receiving the inquiry report, the Petitioner submitted an application on 12.4.2005 before the Disciplinary Authority (annexure-B) to the counter affidavit that he is involved in the said transactions and he admitted the said acts and omissions committed by him. After receiving the said application, the Disciplinary Authority proceeded against him and passed the said order impugned against him.

5. I have heard the learned Counsel for the parties and perused the record. Whereas the question of opportunity is concerned, learned Counsel for the Petitioner has stated that no proper opportunity has been given to the Petitioner. From perusal of the charge-sheet, it is evident that within ten days after receiving the charge-sheet he had to reply. The said date expired in the year 2001 itself. The documents which have been sought to be given to him, was demanded after the conclusion of the enquiry report and the papers were demanded on 12.5.2004. The enquiry concluded prior to 27.4.2004. There is no denial of the fact as stated by the Respondents in its counter affidavit that the said letter was given to the enquiry officer when the report was submitted to him for his comments. There was no demand of any document while he appeared before the enquiry officer. It is also alleged in counter affidavit that the defence representative of the Petitioner, who had earlier agreed to defend his case in the departmental inquiry, also did not turn up on the subsequent dates fixed. Despite reminders and all opportunities were given, neither his representative nor he presented himself before the inquiry officer. This fact of the counter affidavit has not been rebutted. It is also revealed from the record that the disciplinary

authority has also given him several dates and also asked the Petitioner to appear before him. The Petitioner also gave an application to the departmental authority before recording the impugned order, admitting the misconduct, and he took the plea that he did not willfully do it. Thus, from perusal of the contents made in the counter affidavit as well as the documents filed by the Petitioner and the Respondents, it cannot be concluded that no proper opportunity was given to the Petitioner.

6. Whereas the second contention regarding the fact that there is no evidence on record to sustain the punishment, the argument is misconceived. It is settled position of law that the High Court in exercising the power of judicial review under Article 226 of the Constitution of India, does not act as an appellate authority. Its jurisdiction is described and confined to correct the errors of law or procedural error if any resulting in the manifest miscarriage of justice or violation of principle of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. The Hon''ble Apex Court in the case of Union of India (UOI) Vs. Parma Nanda, has held as under in para 27 of said judgment:

We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

7. Thereafter, the matter also came for consideration in the year 1995 in the case of B.C. Chaturvedi Vs. Union of India and others, . The Hon''ble Apex Court has held as under in para-12:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or

conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

8. The Hon''ble Apex Court has also reiterated the same view in the case of *Government of Andhra Pradesh v. Md. Nasrullah Khan* reported in (2006)2 SCC 376.

9. Thus it is settled position of law that the court can only see the procedure and manner of the inquiry which had been conducted and can not go on the merit as an appellate court. I have gone through the inquiry report. I found that the bank has considered all the documentary evidence while considering the charges. There is evidence on record which has been discussed in the inquiry report. Thus this Court cannot reappraise the evidence which has been adduced by the Department before the Inquiry Officer unless that is perverse. No perversity has been pointed out before me. I do not find any force in the contention of the learned Counsel for the Petitioner.

10. Learned Counsel for the Petitioner further tried to emphasize that the punishment awarded by the departmental authority did not commensurate to the facts and circumstance of the case. It is settled position of law that if the punishment is found shocking by the court then the Court can interfere in the matter. Now, I have to analyse whether the punishment is shocking or not. It is the case of the Respondents that certain irregularities, illegal acts and omissions had been committed by the Petitioner during the banking transactions. It is also settled position of law that even the cases where no loss has been attributed to the bank and that had jeopardized the banks'' rules and committed irregularities, that is a question of faith of the public upon the banking system. So, in the course of action, spreading for sufficiently long period that involving a large number of transactions has been done by delinquent and he had not been acting within his authority, if it is allowed in the organization of the bank, the discipline of the bank will disappear and the functioning of the bank

would become unmanageable. The Hon''ble Apex Court in the case of Disciplinary Authority -cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik reported in 1996 SCC 1194 has held as under in para-9 of the judgment.

It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the Respondent. Regulation 3 requires every officer/employee of the bank to take all possible steps to protect the interests of the Bank and to discharge his duties within utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the Respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank - for that matter, in the case of any other organization--every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organization/bank will disappear" the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesses. No organization, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority---that too a course of conduct spread over a sufficiently long period and involving innumerable instances--is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation

24. No further proof of loss is really necessary though as a matter of fact, in this

case there are findings that several advances and overdrawals allowed by the Respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit-huge profit, as the high Court characterises it-they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the Respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the Respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the Respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the Respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the Respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24.

11. Learned Counsel for the Petitioner has also laid stress on the point that the other similarly situated person had been given a less punishment than the punishment of the Petitioner. Learned Counsel for the Respondent laid stress on the point that if an act is not in consonance with the provisions of law, done by any authority, does not give any enforceable right to the Petitioner to perpetuate the same. The Straight Jacket Formula can not be laid down for all such cases. The doctrine of discrimination is founded with the existence of enforceable right. Article 14 would apply only when discrimination is mooted out to actual and similar person within the same inquiry. It has been held in 1997 SCC 801 in the case of State of Haryana and other v. Ram Kumar Maan that if an illegality has been done or any violation of law has been done that cannot be allowed to be perpetuated. The cases depend on its own facts and circumstances. In view of the above, it is evident that the punishment awarded by the Departmental authority is not shocking and as such, I do not find any force in the contention of the learned Counsel for the Petitioner.

12. In view of the above, I do not find any force in the petition. The petition is hereby dismissed. No order as to cost.