
(2005) 02 DEL CK 0067
In the Delhi High Court
Case No : Writ Petition (C) 2772 of 1986

A.P. Kapur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Citation : (2005) 118 DLT 325 : (2005) 81 DRJ 167 : (2005) 3 LLJ 36 : (2006) 1 SLJ 228

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : K. Venkataraman and S.T. Losapa, for the Appellant; Raj Birbal Anil Kumar Sinha and Raavi Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—Succinctly stated, the Charges against the Petitioner are that he granted overdrafts/loans/financial arrangements which exceeded his specific authorization. It is not in dispute that the Bank did not suffer any pecuniary loss because of these transactions. It appears that the Enquiry Officer has returned a finding that the integrity of the Petitioner cannot be doubted. Even, in these circumstances, the observations of the Hon"ble Supreme Court in Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, militate against the arguments put forward on behalf of the Petitioner. In the said Judgment, it has been observed that:-

17. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, there is no defense available to

say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

2. Counsel for the Petitioner next contends that an oral authorization had been granted to the Petitioner by Shri J.J. Aggarwal, Respondent No. 3, who has not appeared as a witness and, Therefore, the Petitioner has lost an opportunity to conduct his defense fully. Even if the fact that Shri Aggarwal was the Petitioner's witness is glossed over it cannot be ignored that there was no written authorization for the transaction. At best it would have been established that Shri Aggarwal was also a privy and culpable for the grant of financial facilities beyond the Authority of the Petitioner. I find no irregularity warranting the interference of this Court in these circumstances.

3. It has also been contended that the Petitioner had been appointed by the Board of Directors of the Respondent-Bank. I have perused the Letter of Appointment which has been signed by the Deputy General Manager. There is no reason to give any credence to the ipse dixit of the Petitioner that he was appointed by the Board of Directors and, Therefore, could have been dismissed only by the Board.

4. My attention has been drawn to the fact that in the writ petition, it has been conceded that the Petitioner is not challenging the Inquiry Reports on merits. If that be so, the contention that the Inquiry Report had not been supplied to the Petitioner loses all its significance. Counsel for the Petitioner had drawn support from the observations of the Hon'ble Supreme Court in *Union of India and others Vs. Mohd. Ramzan Khan*, , where the Hon'ble Court had concluded that the supply of a copy of the Inquiry Report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be expected from the rules of Natural Justice and the delinquent would, Therefore, be entitled to the supply of a copy thereof. It has specifically been observed in the Judgment that this decision will have only prospective effect. The impugned order of dismissal had been passed in 1995, that is, almost five years previous to the Ramzan's case (supra). In any event, the Constitution Bench of the Hon'ble Supreme Court has considered Ramzan 's case (supra) in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , and has carved out an exception to that Rule as is evident from the following passage:-

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the

report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, Therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the

authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

5. Mr. Birbal, learned Senior Counsel for the respondent has stated that a copy of the Inquiry Report was furnished to the Petitioner along with the Decision of the Disciplinary Authority. Apart from the asseverations in the petition whereby the findings of the Enquiry Report were not assailed, even in the Appeal filed before the Appellate Authority, this ground has not been categorically raised. The Appellate Authority has taken note of the fact that no Reply to the Charge Sheet had been filed. There is thus no merit in this argument.

6. After the filing of the writ petition, the Petitioner appears to have migrated to the United States of America. Counsel for the Petitioner denies that he has migrated, but the fact remains that he has been living there for almost 14-15 years.

7. The scope of the Judicial Review in respect of the decisions of the Disciplinary Authority is in a narrow compass. The Court does not exercise appellate jurisdiction. Unless it is shown that the punishment is shockingly disproportionate or that the conclusion arrived at by the Authority could not possibly have been arrived at thereby making it perverse, Courts should abjure from interference. Courts would also not exercise extraordinary jurisdiction vested under Article 226 of the Constitution when the litigation appears to be in the nature of speculation. The Petitioner has been living in the United States of America and if a decision is given in his favor, it will partake a nature of windfall so far as monetary compensation is concerned.

8. The petition is without merit and is dismissed with no orders as to costs.