

(2000) 08 PAT CK 0094
In the Patna High Court
Case No : C.W.J.C. No. 9145 of 1996

Arvind Kumar Ranjan

APPELLANT

Vs

Nalanda Gramin Bank and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Nalanda Gramin Bank Staff Service Regulations — Regulation 31(2)

Citation : (2001) 1 PLJR 360

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Arvind Kumar Singh, R.S. Pandey and Sunil Kumar Pandey, for the Appellant; Sunil Kumar Singh and Ratan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the Petitioner is aggrieved by the order dated 21.6.1997, contained in Annexure 1, whereby and whereunder he has been awarded with punishment of stoppage of two increments and directing non-payment of salary for the period of suspension as also the order dated 25.6.1999 of the Board of Directors of Nalanda Gramin Bank (hereinafter referred to as the Bank), contained in Annexure 2, rejecting the appeal of the Petitioner against the aforesaid order dated 21.6.1997. The Petitioner has further sought for a direction to the Respondent authorities to pay due salary with interest from 3.6.1994 to 6.12.1994.

2. The Petitioner initially joined as Clerk-cum-Cashier in the Bank on 16.9.1981. The Petitioner claimed that he is physically handicapped and thus posted in nearby Branch Office. He was transferred from Alinagar to Gilani as Field Supervisor but the said transfer order, according to him, was never served on him. The Petitioner took leave on medical ground from 3.6.1994 to 6.12.1994 and joined his new place of posting on 7.12.1994. The Petitioner filed writ petition bearing C.W.J.C. No. 7196 of 1994 against his transfer in this Court,

which was disposed of on 21.2.1995. The Petitioner again applied on 21.6.1995 for sanction of leave from 3.6.1994 to 6.12.1994 and again on 2.11.1995. However, without sanction of leave he drew salary for the said period of 187 days for medical treatment of his wife and claimed to have informed the Chairman of the Bank vide Ref. No. 378/95 dated 25.11.1995.

3. The Petitioner was placed under suspension on 9.12.1995 by order dated 9.12.1995 and by another order dated 12.12.1995 the General Manager directed the Branch Manager, Gilani to recover Rs. 39,216.90 with interest from the Petitioner. On 25.3.1996 chargesheet was issued against the Petitioner and on 8.4.1996 the Senior Manager (Administration) directed to recover the said amount from the salary of the Petitioner. On 9.4.1996 the Petitioner filed show cause to the chargesheet denying the allegation. However, on 22.5.1996 the Bank authorities directed the Branch Manager to pay the Petitioner only 2/3rd of the subsistence allowance and 1/3rd will be utilised for recovery of the aforesaid amount.

4. It appears that the Petitioner filed another writ petition, bearing C.W.J.C. No. 6336 of 1996, before this Court for quashing the order of suspension and for direction upon the Respondents authorities not to recover any amount. The said writ petition was disposed of vide order dated 27.1.1997, contained in Annexure 7, with a direction to conclude the departmental proceeding within a period of four months, failing which the impugned order of suspension of the Petitioner shall stand revoked and, further, directed for payment of remaining 1/3rd amount of subsistence allowance also.

5. It is stated that on 27.6.1996 and 19.8.1996 the Petitioner wrote to the Chairman of the Bank for change of the enquiry officer, vide Annexure-8 and vide Annexures 9, 10 and 11 he demanded certain documents from the enquiry officer as those documents were relevant for the Petitioner. The Petitioner gave a list of defence witness on 7.4.1997 and sent letters to defence witness also on 9.4.1997, vide Annexures 12 and 13. However, it is alleged that the departmental proceeding was abruptly closed on 25.4.1997, against which the Petitioner filed a petition on 3.5.1997 and stated that the enquiry officer was conducting the enquiry in illegal manner as the documents and evidence were not supplied to him nor he was given opportunity to present defence witnesses. The enquiry officer submitted his report and the Petitioner was asked to submit his second show cause and he filed his show cause on 7.6.1997. The disciplinary authority finally passed the impugned order on 21.6.1997, contained in Annexure 1, against which he preferred appeal on 6.8.1997 which has also been dismissed vide impugned order dated 25.6.1999 by the Board of Directors, contained in Annexure 2. It is alleged that the Petitioner's appeal was rejected without giving any notice and hearing to the Petitioner. He was simply informed that the Board of Directors had decided to deduct salary of unauthorized absence from him.

6. The grievance of the Petitioner is that he along with other officials of the Bank were transferred and they also went on leave but they withdrew their salary and

their leave was sanctioned later whereas the Petitioner was chargesheeted on the same charge.

7. The assertion of the Petitioner about his being handicapped is denied in the counter affidavit filed on behalf of the Respondent Bank. It is asserted that it is wrong to say that he cannot walk without the support of stick and cannot board a bus. This fact could be verified from some of the T.A. bills submitted by the Petitioner, as per them, he is capable of moving on foot for long, distance and is further capable of travelling by Trekker, Tumtum and other means of conveyance. It is asserted that the Petitioner was working at Alinagar Branch from February, 1987 to May, 1994 and his transfer there from on 30.5.1994 was made by the Chairman of the Bank i.e. the competent authority in usual course without any mala fide intention. The Petitioner, however, proceeded on unauthorized leave from 3.6.1994 to 6.12.1994 without making any application for leave to the competent authority just to circumvent the transfer order further to tight litigation against the Bank in regard to his transfer. The plea of the Petitioner of his having proceeded on leave during the above period for medical reason is falsified from his own letter dated 10.6.1994 in which he stated that though he went to Ali Nagar Branch Office on 3.6.1994 and onwards, but was not allowed to work or mark his attendance. It is stated that another letter dated 11.6.1994 of the Petitioner further falsifies his plea of illness and impeaches the veracity of the medical certificate produced by him, according to which he was suffering from Rhumotoid Airthritis and was unable to move from 3.6.1994 to 6.12.1994. It is stated that the Petitioner used this period for nothing but for filing T.S. No. 77/94 and C.W.J.C. No. 7196/94 against the order of his transfer.

8. It is further stated that the Petitioner's application for sanction of leave for the said period was thus rejected by the competent authority and communicated vide letter dated 6.9.1995 addressed to the Gilani Branch of the Bank, but despite being aware of the said letter, he while being in temporary charge of Gilani Branch of the Bank on account of absence of regular Branch Manager, unauthorisedly got his salary bill for the aforesaid period of his unauthorised absence prepared and further got a sum of Rs. 39,216.90 after deduction of P.F. etc. transferred to his savings fund account. According to the Respondents, this action of the Petitioner was highly illegal and arbitrary and as such on getting information the competent authority, namely, the Chairman of the Bank placed him under suspension and later ordered for recovery of the said amount.

9. With respect to change of enquiry officer, it is stated in the said counter affidavit that the Petitioner's request was duly considered by the disciplinary authority who finding no merit turned it down. Moreover, a perusal of the contents of paragraph 20 would show that the Petitioner has not made specific pleading as to why the enquiry officer was biased against him and as such, in the absence of a definite case of bias the enquiry officer could not have been changed. According to the Respondents, it is more surprising that the so-called representation for change of enquiry officer was made by the Petitioner at the

time when the enquiry had not even commenced on 11.3.1997. In this view of the matter, it is alleged that the Petitioner's representation was nothing but an attempt to thwart the pace of a fair and impartial enquiry.

10. With respect to the supply of documents, it is stated that the disciplinary authority advised the Petitioner to make a request in that regard before the enquiry officer by explaining the relevance of those documents to the chargesheet. Thereafter on the enquiry held on 22.4.1997, the Petitioner gave a list of five documents to the enquiry officer but the presenting officer raised his objection to those documents terming them to be irrelevant to the charge-sheet and in view of the said objection, the enquiry officer heard both the parties on the point of relevance of the documents and thereafter by his reasoned order dated 23.4.1997 held that the Petitioner was not entitled to receive the documents, as they were irrelevant to the charge-sheet. It is alleged that the Petitioner instead of being cooperative was bent upon to delay the enquiry and his so-called request for supply of documents was, in fact, a move in that direction. Barring the said document, all other documents relevant to the charge-sheet have already been supplied to the Petitioner.

11. As regards the production of witnesses, it is stated in the said counter affidavit that each party in the departmental enquiry has to make its own arrangement to produce its witnesses at his own cost. Soon after getting the list of defence witnesses, the enquiry officer by his order passed on the proceeding held on 10.4.1997 directed the Petitioner to produce his witnesses on the next date of enquiry but the Petitioner failed to produce them. In this view of the matter, the Petitioner cannot allege that he was not allowed to produce and examine his witnesses. It is asserted that the departmental proceeding was not abruptly closed rather it was closed after conforming to all the norms Laid down for the conduction of a departmental proceeding inasmuch as the Petitioner was afforded ample opportunity to defend himself and was given adequate opportunity to produce his defence witnesses which he failed to avail of and was also allowed to inspect and examine the exhibits produced by the management of the Bank in support of its case. According to the Respondents, the proceeding book of the enquiry and the enquiry report also bear proof of the fact that the Petitioner was deliberately adopting delaying tactics to frustrate the pace of the enquiry which WcS to be concluded within a certain time-frame made by this Court, so much so that on 25.4.1997, he and his defence representative left the enquiry in a huff without signing the proceedings book and without receiving a copy of the proceeding of that day. In these circumstances, the enquiry was closed on 25.4.1997, on which date, parties were directed to file their written briefs by 5.5.1997 and as the Petitioner failed to submit his written brief within the stipulated time, the enquiry officer submitted his report on 10.5.1997 to the disciplinary authority.

12. The allegations levelled against the Manager, Personnel have been denied and nonetheless, to refute the allegations and demonstrate the motive behind

them, it is stated that at the time of joining the Bank's service, the Petitioner had submitted a medical certificate dated 12.6.1981 issued from Orthopaedic Surgery Department, P.M.C.H. wherein his handicap percentage was mentioned as 25% approximately. Later on, the Petitioner filed another certificate dated 1.9.1990 issued by the Civil Surgeon, Biharsharif wherein his handicap percentage was mentioned as 60%. Since there was discrepancy between the two certificates, the Bank sent both the certificates to the Civil Surgeon, Biharsharif by its letter dated 9.10.1990 with a request to reexamine the Petitioner and give the actual percentage of his handicap. Since this letter was drafted by the Manager, Personnel, the Petitioner feeling aggrieved thereby made a false and motivated complaint, contained in Annexure-15. Moreover, the said Manager has already been transferred and a new person has taken over in his place. It is stated that the case of three other officers named in paragraph 28 is different from that of the Petitioner for the reason that they had submitted leave application before proceeding on leave and as such their leave were later sanctioned by the competent authority. The Petitioner, on the other hand, was absent from his duty without any information and as such under the provisions of the Nalanda Gramin Bank Staff Service Regulations, he is not entitled for salary for the said period. It is stated that the appellate Board confirmed the punishment order directing for recovery of unauthorised withdrawal but taking lenient view of the matter, reduced the punishment by directing the recovery to be made without interest and the charge that the Appellant board has enhanced the punishment is emphatically denied.

13. As regards the charge of the Petitioner that no notice for personal hearing or that no personal hearing was given by the appellate Board, it is stated that Regulation 31(2) does not provide for any such requirement. However, the Petitioner's appeal has been rejected after due consideration of the points raised by the Petitioner in his appeal, the findings of the punishment order and the other relevant documents and evidence available on the record of the case.

14. Mr. Rajendra Prasad Singh learned Senior Counsel appearing for the Petitioner has contended that the enquiry report was submitted without examining even the single witness holding that the charge against the Petitioner is proved. The Petitioner has admittedly been denied of the documents asked for by him, vide Annexure 9. It is submitted that the documents have also not been formally proved. It is thus, submitted that the impugned order is vitiated on account of non-compliance of the principles of natural justice. According to the learned Counsel for the Petitioner, witness must be examined to prove the documents and non-examination of witness with supporting document will invalidate the proceeding and the order based on such documents. It is also contended that though the appellate authority enhanced the punishment but without notice to the Petitioner as such the appellate order is also vitiated.

15. Learned Counsel appearing for the Bank has submitted that it has wrongly been contended that the appellate authority has enhanced the punishment. Bare

perusal of the order would show that the appellate authority has rather reduced the punishment by waiving interest on the amount to be recovered from the Petitioner. It is further submitted that the Petitioner never raised any objection with respect to the documents produced by the presenting officer and as such he cannot now be permitted to raise such objection. In any view of the matter, non-examination of the witnesses has not at all prejudiced the case of the Petitioner as there is no such pleading here in the writ petition. As such, according to the learned Counsel, non-examination of the defence witness without showing prejudice caused would not vitiate the proceeding or the order of punishment. Learned Counsel for the Bank has contended that in view of the nature of only charge against the Petitioner, no witness was considered to be examined by the management and the Petitioner despite submission of list of witnesses failed to produce witnesses. On the question of relevance of documents, it was submitted by him that the enquiry officer heard and rejected the contention of the Petitioner, vide order dated 23.4.1997, but he never raised any objection against the said order. In support of this he placed reliance on the decision of the Apex Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, .

16. In reply, it is submitted by Mr. Singh, learned Senior Counsel appearing for the Petitioner that where rules provide for holding a regular departmental enquiry, it is necessary to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. This is necessary even if the delinquent employee does not attend the enquiry. According to the learned Counsel, the onus of proving the charges is cast on the department and not on the delinquent employee and as such, if no witness is called by the department in support of the charges, it should be held that the (sic--Department?) it has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee. In support of this, he has placed reliance on a decision of this Court in the case of Kumar Upendra Singh Parimar Vs. B.S. Co-Opt. Land Dev Bank Ltd. and Others, .

17. I am unable to appreciate as to how the said decision is of any help to the Petitioner in the present case. The fact aforementioned clearly shows that the Petitioner has been given adequate opportunity to defend himself, but he did not avail of the same. Moreover, it is difficult to accept as a broad proposition that in all cases where no witness is examined, the charge against the delinquent shall not stand proved. In my opinion, it will depend on the facts and circumstances of each case, for example, in case of initiation of a departmental enquiry if the delinquent does not dispute the charge, in my opinion, no witness is required to prove the charge in the absence of any denial by the delinquent. The other example is like the facts in the present case where the Petitioner's application for sanction of leave though was rejected by the competent authority and despite the same being in his knowledge, he while being in temporary charge of the Branch Office of Gilani on account of absence of regular Branch Manager, unauthorisedly got his salary bill for the period of his unauthorised absence from

3.6.1994 to 6.12.1994 prepared and further withdrew a sum of Rs. 39,216.90 after deduction of provident fund etc. by its transfer to savings bank account on 25.11.1995 which on the face of it is unauthorised and illegal. Moreover, the fact aforementioned go to show that the proceeding was conducted strictly in accordance with law and the claim regarding nonfurnishing of the documents was examined and rejected vide order dated 23.4.1997 but the" Petitioner never raised any objection against the said order and as such, the said plea of the Petitioner cannot be accepted at this stage.

18. In the case of State Bank of Patiala v. S.K. Sharma (supra). The Apex Court on consideration of various decisions Laid down the principle to be followed in conduction of the disciplinary enquiry and order of punishment to be imposed upon the employee. It has been held that an order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature, or (b) whether it is procedural in character. A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case, but in the case of violation of a procedural provision, the position is that procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment, but if no prejudice is established to have resulted therefrom, it is obvious no interference is called for. It has been held that in case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

In the present case, learned Counsel for the Petitioner has failed to show as to what prejudice has been caused to the Petitioner on account of non-examination of witness or on account of non-furnishing of the documents the relevance of which was rejected by the enquiry officer long before the final order was passed. Learned Counsel for the Petitioner has also not been able to show as to how and as to in what manner the enquiry officer can be said to carry any kind of bias against the Petitioner.

19. The Supreme Court in the case of State Bank of Patiala v. S.K. Sharma (supra) has held that while applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rules, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is the objective which should guide them in applying the rule of varying situations that arise before them.

20. Having regard to the nature of charge of transfer of Bank's money to his own account by the Petitioner, this Court finds that the Respondent authorities have taken lenient view against the Petitioner in awarding punishment. Accordingly, this Court does not find any reason to interfere with the impugned orders of punishment awarded by the disciplinary authorities and confirmed by the appellate authority.

21. The writ application is, thus, dismissed, but without costs.