
(2009) 08 PAT CK 0103
In the Patna High Court

Asgar Ali

APPELLANT

Vs

The Vaishali Kshetriya Gramin Bank

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0103

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—The Petitioner of C.W.J.C. No. 11416 of 1999 (Asgar Ali v. the Vaishali Kshetriya Gramin Bank and Ors.), has preferred this appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, and is aggrieved by the order dated 29.6.2001, passed by a learned Single Judge of this Court, whereby the writ petition has been dismissed, the departmental proceeding as well as the order of punishment of dismissal from service against the petitioner (appellant herein) has been upheld.

2. A brief statement of facts essential for the disposal of the appeal may be indicated. The writ petitioner was, at the relevant point of time, posted as Clerk - cum- Cashier at Pehsaul Branch, district Muzaffarpur of the respondent Bank. The Bank suspected embezzlement and breach of trust at the hands of the appellant and issued a letter in the nature of show-cause to him, calling him upon to explain his position. The appellant had submitted his reply dated 16.2.1995 (Annexure-A), wherein he admitted that he had embezzled a sum of Rs. 95,000/- from the Bank's account and promised to return the same as soon as possible. The subject of his reply was as follows:

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In that view of the matter, the Bank decided to initiate a departmental proceeding against him for embezzlement of the Bank's money. He was placed under suspension by order dated 24.3.1995 (Annexure-4 to the writ petition), and was served with the charge-sheet dated 28.4.1995 (Annexure-5 to the writ petition), followed by supplementary charge-sheet dated 19/21.8.1995

(Annexure-6 to the writ petition). The appellant submitted his written statement before the learned enquiry officer. He participated in the enquiry proceeding, but did not cross-examine the witnesses produced by the Bank nor did he produce his own witness in support his defence. The enquiry officer has submitted his report dated 18.4.1996 (Annexure-3 to the writ petition), wherein he found the charges to have been proved against the appellant. This was followed by the order of the learned disciplinary authority dated 19.5.1996 (Annexure-1 to the writ petition), whereby the appellant has been dismissed from service. The appellant's departmental appeal was dismissed by order dated 4.9.1999 (Annexure-2 to the writ petition). This was followed by the writ petition, which has been dismissed by the impugned order.

3. While assailing the validity of the departmental proceedings as well as the order of the learned Single Judge, learned Counsel for the appellant submits that no show-cause notice was issued to him before initiation of the departmental proceeding which renders initiation of the departmental proceeding bad in law. He next submits that the learned disciplinary authority has straightway issued the charge-sheet and the supplementary charge-sheet and had simultaneously appointed the enquiry officer. He relies on the judgment of the Supreme Court in *State of Punjab v. V.K. Khanna and Ors.* AIR 2001 SC 343, paragraphs 21 and 34. He next submits that the charge-sheets did not enclose the memo of evidence. He submits in the same vein that certain vital documents were not produced during the course of enquiry though the same were allowed to be inspected. He submitted his letter of protest dated 15.11.1995 (Annexure-7 to the writ petition), before the learned enquiry officer. He relies on the judgment of the Supreme Court in *Kashinath Dikshita Vs. Union of India (UOI) and Others*, He next submits that his application to engage a friend outside the Bank to represent him in the enquiry proceeding was rejected by the learned enquiry officer. He also submits that the complainant was not examined. He lastly submits that a criminal case is pending against him on the self-same facts.

4. Learned Counsel for the respondents submitted that show-cause notice was indeed issued to the appellants, he had submitted his reply and, on a consideration of the same, the decision was taken to initiate a departmental proceeding against him. He next submits that it is evident on a plain reading of the enquiry report that the prescribed procedure was followed and the appellant was afforded full opportunity to defend his case. He next submits that it is evident from a plain reading of the enquiry report that the modus operandi has been fully established and the appellant's admission was only incidentally mentioned. He lastly submits that photo copies of all the documents relied on by the Bank were supplied to the appellant, and he was allowed inspection of all the documents on which he himself wanted to rely. He lastly submits that there was no complainant in this case. On a consideration of the appellant's reply dated 16.2.1995 (Annexure-A) and the other materials then available, it was decided to issue a charge-sheet against him.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. Law is well settled that there is no duty on the disciplinary authority to issue show-cause notice to the delinquent employee before the decision is taken to initiate a departmental proceeding against him. In other words, there is no requirement in law to issue a show-cause notice which by itself does not lead to civil consequences, and such an action only leads to a detailed enquiry. For example, there is no legal necessity to issue show-cause notice before initiation of departmental proceeding, or before the decision is taken to lodge a first information report. The following passage from the Halsbury's Law of England Vol. I, Fourth Edition, paragraph 74, page 90, illumines the position and is reproduced hereinbelow for the facility of quick reference:

...Although, in general the rule applies only to conduct leading directly to a final act or decision, and not to the making of a preliminary decision or to an investigation designed to obtain information for the purpose of a report or a recommendation on which a subsequent decision may be founded....

6. In the facts and circumstances of the present case, it is factually incorrect to state that no show-cause notice was issued to the appellant. The Bank had indeed issued show-cause notice to the appellant and the appellant has submitted his reply by his communication dated 16.2.1995, whereby he had admitted that he had embezzled Rs. 95,000/- from the Bank's fund and because of the circumstances indicated therein, and had promised to refund the same. In view of such admission before the Bank and other materials, the Bank had taken the decision to initiate the departmental proceeding against the appellant. The contention is, therefore, rejected.

7. Learned Counsel for the appellant has also raised the grievance that the charge-sheet does not enclose the memo of evidence. The contention is stated only to be rejected. We find from the materials on record that copies of all the documents on which the Bank relied during the course of enquiry were supplied to the appellant. In so far as the documents relied by the appellant are concerned, the same in original were allowed to be inspected. We are, therefore, convinced that the entire documents were made available to the appellant to establish his defence during the course of enquiry.

8. Learned Counsel for the appellant has also submitted that he wanted to engage his friend from a different bank to represent him during the course of enquiry. We proceed on the footing that the same was not permitted by the learned enquiry officer, and we are of the view that the same did not cause prejudice to the appellant. Apart from the fact that he himself is an educated and qualified person, has put in service of large number of years in Bank, was in the position to place his case before the learned enquiry officer in the departmental proceeding. The position perhaps may have been different had he been a Class-IV employee. In any view of the matter, learned Counsel for the appellant has not in the least shown any circumstance showing prejudice to him. The

contention is rejected.

9. He has also submitted that the Bank had not examined the complainant. The contention is stated only to be rejected for the reason that the charge-sheet was not framed in view of any complaint from a customer etc. After the bank authorities had developed suspicion about the appellant's working, they examined the documents and as a matter of abundant precaution had issued show-cause notice to him as to why action in accordance with law be not taken against him for embezzling Bank's funds. He had indeed shown cause by his communication dated 16.2.1995 (Annexure-A), wherein he admitted the embezzlement and requested for time to enable him to refund the amount. In view of these materials, the disciplinary authority had taken decision to initiate a departmental proceeding against the appellant. There was thus no complainant. The contention is rejected.

10. Learned Counsel for the appellant has lastly submitted that the criminal case on the self-same facts has been started against the appellant. Law is well-settled that it is open to the employer to initiate a criminal case as well as departmental proceeding on the self-same facts, both can proceed parallel to each other, and the result of one will not affect the other for the reason that the standard of proof in both the proceeding are quite different. The contention is rejected.

11. In the result, we do not find any merit in this appeal. It is accordingly dismissed.