(2004) 02 AHC CK 0068

In the Allahabad High Court

Case No : C.M.W.P. No. 19274 of 1992

Ashish Kumar Baxi APPELLANT

Vs

Bank of Baroda and Others RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976 — Regulation 18, 3, 4
Constitution of India, 1950 — Article 14, 311(1)

Citation : (2004) 2 AWC 1519 : (2004) 3 LLJ 978

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Dhruva Narayana, B.K. Narayana and Farida Jamal, for the Appellant; V.B. Singh and Vijay Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—By means of the present petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 31.12.1990 by which he has been dismissed from the services of the respondent Bank and the order dated 9.1.1992. by which the appeal of the petitioner has been dismissed.

2. I have heard the learned senior counsel appearing for the petitioner at length.

3. Disciplinary proceedings were initiated against the petitioner for certain acts of misconduct committed by him while he was posted and functioned as the Branch Manager of Laluli Branch, district Fatehpur. The articles of charge and statement of allegations of misconduct in support of articles of charge were served upon the petitioner through the memorandum dated 10.12.1988. The charges against the petitioner were as follows :

"(1) He did not take all possible steps to ensure and protect the interest of the Bank, but in fact took such steps, as were derogatory, detrimental, prejudicial and injurious to the interests of the Bank.

(2) He did not discharge his duties with utmost integrity and honesty and in fact did such acts as displayed lack of probity on his part.

(3) He did not perform his duties with devotion and diligence.

(4) He did not maintain discipline in all transactions.

(5) He violated banking norms, rules and regulations.

(6) He misused and abused his position as Branch Manager.

(7) His assets are disproportionate to his known sources of income.

(8) He demanded and accepted illegal gratification.

(9) He manipulated/tampered bank records.

(10) He did acts unbecoming of a Bank Officer."

The petitioner submitted his written statement of defence.

4. The inquiring authority submitted his findings along with the records/flies of the enquiry. Based on his findings, the inquiring authority held all the charges except charge No. 8 as proved. The disciplinary authority after considering in detail the findings of the inquiring authority concluded that the petitioner cannot be kept in the services of the Bank in view of the serious charges proved against him and imposed the punishment of dismissal upon the petitioner by means of the order dated 31.12.1990. The disciplinary authority noted that the following allegations stood proved against the petitioner :

"(a) Mr. Baxi sanctioned IInd loan to certain borrowers to help him in adjusting their earlier loan accounts.

(b) He sanctioned accommodation loans resulting in misutilisation of Bank''s funds.

(c) He sanctioned loan against Banks'' norms to help borrowers to meet their margin money requirements.

(d) He manipulated the Bank''s record to cover up his act of commission and omission in disbursing 4 RTO Accounts.

(e) He allowed impersonation and forgery in respect of guarantor of one RTO A/c.

(f) He sanctioned 4 RTO loans to partners of firm M/s. Jai Int Udyog aggregating to Rs. 90,000 where shops were not in existence/bills fake. In the sanction proposal for Rs. 1.75 lac, he concealed the facilities sanctioned to the partners.

(g) During the period from January, 1983 to March, 1986, the investment made by Mr. Baxi were equal to salary drawn by him."

5. The disciplinary authority also noticed that the following serious charges were

proved against the petitioner :

"(a) Mr. Baxi did not take all possible steps to ensure and protect the interest of the Bank but in fact took such steps as were derogatory, detrimental, prejudicial and injurious to the interest of the Bank.

(b) He did not discharge his duties with utmost integrity and honesty and in fact did such acts as displayed lack of probity on his part.

(c) He misused and abused his position as Branch Manager.

(d) His assets are disproportionate to his known sources of income.

(e) He manipulated, tampered bank''s record."

6. In para 9 of the termination order dated 31.12.1990, the disciplinary authority has recorded the following finding :

"Therefore, the charges proved against Shri Baxi are very grave. His collusion with certain borrowers is very clear as detailed in various allegations held proved and brought out by the inquiring authority in his report. He went to the extent of tampering with Bank''s record to cover his misdeed and allowed acts of forgery/ impersonation. His acts display lack of probity which is further reflected in total investments made by him during the period January, 1983 to March, 1986, leaving nothing for his subsistence during the said period. The Banks are financial institutions whose strength rest on the pillars of integrity, honesty and sincerity of their employees. Hence, a Bank cannot afford to keep such employees in employment whose integrity is doubtful, assets disproportionate to known sources of income, who manipulates/tampers records, misuses/abuses his powers and allows impersonation."

7. The petitioner filed an appeal before the appellate authority, namely, the General Manager. The said appeal was dismissed by a detailed order dated 9.1.1992, which has also been impugned in the petition. The appellate authority noticed that in the departmental enquiry the petitioner had been given reasonable opportunity to defend himself, to produce documentary and oral evidence and to cross-examine the witnesses of the management. The appellate authority in the order has observed as follows :

"Charges and allegations proved against the appellant show that he has grossly misused the powers vested in him by the Bank, by motivated advances. Even the appellant had gone to the extent of manipulating/tampering of bank''s records to obtain sanction of R.M. after his retirement, disbursing loans against fake bills, sanctioning of loans beyond area of operations, sanction of loans for even raising margin money by borrower. He even allowed impersonation in one A/c. Acquiring assets beyond his known source of income for the period beyond his known sources of income for the period also bring out the facts of probity and honesty on the part of the appellant. I am, therefore, of the view that the punishment of dismissal from Bank''s service is proper, looking to seriousness of charges. Hence the appeal of the appellant fails."

8. The first submission made by Sri Dhruva Narayana, learned senior counsel for the petitioner was that the petitioner had been promoted as an officer by an order dated 25.1.1978 issued under the signatures of the Deputy General Manager but his services had been terminated by the disciplinary authority who was only the Assistant General Manager. The submission proceeded on the footing that no one could be dismissed by an authority lower in rank than the appointing authority. In this connection reference may be made to the Bank of Baroda Officer Employees'' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the Regulations) which have been framed u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, by the Board of Directors of the Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Regulation 3 (g) stipulates that the "disciplinary authority" means the authority specified in the schedule, which is competent to impose on an officer employee any of the penalties mentioned in Regulation 4. Regulation 6 provides for the procedure for imposing major penalties. Regulation 18 provides that after the completion of the production of the evidence, the officer employee and the presenting officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence. The schedule to the aforesaid Regulations in respect of an officer in ''F'' grade to which the petitioner belonged, provides that the disciplinary authority shall be any Assistant General Manager or Deputy General Manager and the appellate authority shall be the General Manager.

9. Thus, it cannot be said that the Assistant General Manager was not the competent disciplinary authority.

10. The contention, however, sought to be raised by the learned senior counsel for the petitioner was that since the . Assistant General Manager was lower in rank to the Deputy General Manager who had issued the promotion order, he could not be the disciplinary authority. In my opinion, this submission is also liable to be rejected. There is no provision in the Regulations, which provides that an authority subordinate to the authority by which an officer was appointed, cannot dismiss an officer. Article 311(1) of the Constitution of India cannot come to the aid of the petitioner since it applies to the members of the civil service of the Union or an All India service or a civil service of a State or who holds a civil post under the Union or a State. Admittedly, the employees of the Bank of Baroda do not fall under any one of these categories and they cannot seek the protection of Article 311(1) of the Constitution. The employees of the Bank of Baroda can claim only such rights, which have been conferred under the Regulations. The Regulations provide that the disciplinary authority could be the Assistant General Manager and in the absence of any such provision as contained in Article 311(1) of the Constitution of India, it is not open to the employees to contend that they cannot be dismissed by an authority lower than the appointing

authority.

11. In this connection, reference may be made to the decision of the Hon''ble Supreme Court in State of Bank of India Vs. S. Vijaya Kumar, wherein it has been clearly held... that Article 311 of the Constitution of India has no application to the employees of the Bank and they can claim only such rights which have been conferred upon them by the Regulations. Similar view was taken by the Supreme Court in the case of Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay, 1992 (2) SCC 224

12. It may also be pertinent to state here that at no stage the petitioner raised such an objection either before the disciplinary authority or before the appellate authority and it is for the first time in the present petition that such objection has been raised. The petitioner participated before the disciplinary authority. Thus, in my opinion, this is also an additional ground for rejecting the aforesaid contention of the petitioner.

13. The next submission raised by the learned counsel for the petitioner was that he was not supplied a copy of the inquiry report and as such the principles of natural justice have been violated. The counsel for the petitioner placed reliance upon the decision of Union of India and others Vs. Mohd. Ramzan Khan, The aforesaid decision of the Supreme Court was considered subsequently by the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and in the case of Oriental Insurance Company Ltd. v. S. Balakrishnan 2001 (2) AWC 1443 : AIR 2001 SC 400. The Supreme Court in para 2 held as follows :

"The question, however, still remains to be considered is whether the High Court was justified in interfering with an order of punishment passed by the disciplinary authority merely on the ground that non-supply of enquiry report has vitiated the entire proceedings. It had not been brought to the notice of the learned Judges of the Court that the judgment of this Court in Ramzan Khan has already been considered by this Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., which is a Constitution Bench decision of the Court, and which clarifies the entire position. Without being aware of the correctness of law, the High Court appears to have interfered with an order of dismissal passed in a disciplinary proceedings in grave charges like the one with which we are concerned in the present case. Applying the principles indicated by this Court in E.C.I.L. case to the facts of the present case, we cannot conceive any prejudice, which is said to have been caused to the delinquent, and, therefore, non-supply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid premises, we set aside the impugned order passed by the learned single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed."

14. In the entire petition, the petitioner has not pointed out what prejudice has

been caused to him on account of the non-furnishing of the enquiry report and, therefore, in view of the decision of the Supreme Court in Oriental Insurance Company Ltd. (supra), I hold that the non-supply of the enquiry report cannot vitiate the enquiry proceedings.

15. The third submission raised by the learned senior counsel appearing on behalf of the petitioner was that a copy of the written brief filed by the presenting officer was not supplied to the petitioner and, therefore, the disciplinary proceedings stand vitiated. In support of his contention, counsel relied upon the decision of the Calcutta High Court in the case of the Collector of Customs and Ors. v. M.D. Habibul Haq 1973 (1) SLR 321, wherein it has been held that the requirements of rules on principles of natural justice demand that the employee should have been served with a copy of written brief filed by the presenting officer and failure to supply such a copy has resulted in denial of reasonable opportunity to the employee to defend himself and thus the entire disciplinary proceedings were invalid. It may be pertinent to state here that under Regulation 6(18) it has been provided that after the completion of the production of the evidence, the officer employee and the presenting officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence. There is no requirement under the Regulations for exchange of the copy of the written briefs. The written briefs are nothing more than written arguments of their respective cases and, in my opinion, non-supply of the written arguments of the presenting officer to the petitioner, cannot be said to be denial of a reasonable opportunity to defend himself. I am, therefore, unable to pursue myself to take the view taken by the Calcutta High Court in the case of Collector of Customs (supra).

16. This apart the Supreme Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, approved its earlier decision in Virendra Kumar Misra Vs. State of U.P. and others, in which it was held that there can be certain circumstance in which an order passed even in violation of the principles of natural justice need not be set aside under Article 226 of the Constitution of India. An example was cited where no prejudice was caused to the person concerned. interference under Article 226 of the Constitution was not necessary. The petitioner did not raise this issue before the disciplinary authority nor did he at any time demand a copy of the written brief filed by the presenting officer. Such a ground was not taken even before the appellate authority. Even in the present petition, it has not been stated as to what prejudice has been caused to the petitioner on account of the failure in supplying the copy of the written brief. Thus, this contention of the petitioner has also no force and is, therefore, rejected.

17. The fourth contention raised by the learned senior counsel for the petitioner was that Regulation, 4 of the Regulations under which the penalty of dismissal has been imposed against the petitioner is ultra vires the provision of Article 14 of the Constitution of India being arbitrary, in that expression "for acts of

misconduct or for any other good or sufficient reasons" occurring in Regulation 4 conferred unbridled power oh the punishing authority to inflict any penalty. This contention was considered by the Court in detail in the case of N. C. Ganguly v. Bank of Baroda and Ors. 1996 (3) UPLBEC 1572, and it was held that the power under the Regulations is a quasi-judicial power subject to scrutiny by the appellate authority and judicial review by this Court under Article 226 of the Constitution and, therefore, provide sufficient safeguard against arbitrary exercise of power. The Court, therefore, rejected the submissions regarding the challenge to the aforesaid Regulation. In view of the aforesaid decision of the learned single Judge, I reject the fourth contention also advanced by the learned senior counsel for the petitioner.

18. The learned senior counsel then made an attempt to challenge the findings recorded by the disciplinary authority. The procedural steps under the Regulations have been followed and after detailed enquiry the inquiring authority submitted the report. The same has been considered by the disciplinary authority while passing the impugned order and also by the appellate authority, I do not find any infirmity in the findings recorded by the disciplinary authority.

19. There are serious charges against the petitioner including the charges of forgery/impersonation. The Banks are financial institutions whose strength rests on the pillar of integrity, honesty and sincerity of the employees. A bank can ill afford to keep an employee whose integrity is doubtful and assets are disproportionate to the known source of income.

20. The writ petition, therefore, lacks merit and is accordingly, dismissed. No orders as to cost.

