(2006) 02 AHC CK 0264

In the Allahabad High Court

Case No : Writ Petition No. 3192 S/S of 1990

Ashok Kumar Srivastava APPELLANT

Vs

Raebarellly Kshetriya Gramin Bank and Others RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:
Regional Rural Banks Act, 1976 — Section 30

Citation : (2006) 9 ADJ 330 : (2006) 6 AWC 6558

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Advocate : Prashant Chandra, for the Appellant; Sanjay Srivastava, Dharmendra Awasthi and Pankaj Khare, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard learned Counsel for the parties.

2. Under challenge is an order dated 1.9.1989, dismissing the Petitioner, a Branch Manager, working in Raebarelly Kshetriya Gramin Bank, from the bank services as well as the appellate order dated 9.2.1990, rejecting the appeal preferred by the Petitioner.

3. The factual matrix of the case is that the Petitioner was appointed as officer in Raebarelilly Kshetriya Gramin Bank on 27.11.1982. He worked in various branches of the Bank. The work, conduct and performance of the Petitioner has always remained satisfactory. At the relevant time, the Petitioner was posted as Branch Manager, Samrauta Branch of the Bank in district Raebarelly. He was put under suspension on 18.5.1986, which was followed by the issuance of a charge-sheet on 12.5.1987. The following charges were levelled against the Petitioner:

(1) Misconduct while working at Gauriganj Branch pertaining to sanction of loan to borrowers who were not residents of the command area of the Branch ; and
(2) Temporary withdrawal of a sum of Rs. 22,000 by operating a fictitious Bank account and re-depositing the said money after using the same for two weeks.

4. However, before the issuance of the charge-sheet, the Petitioner tendered his resignation on 7.5.1987, but no action was taken on his letter of resignation. The departmental enquiry was continued with pre-determined mind. The Petitioner submitted his reply to the charge-sheet on 10.6.1987. He indicated in his reply that he had already preferred a representation before Sri S. N. Srivastava, the then Chairman of Raebarelly Kshetriya Gramin Bank. Sri Srivastava had worked as Chairman of the said bank from May, 1985 to July, 1986. As per Petitioner, the then Chairman exonerated him of the first charge. In respect of second charge, the Petitioner was asked to tender a written apology, with the assurance that thereafter some minor punishment would be awarded to him. Pursuant to this assurance, a letter was dictated by one Sri S. Phadia, the then General Manager of the Bank, which was in the nature of an apology of the Petitioner, as asked by the then Chairman. It was signed by the Petitioner. The then Chairman of the Bank, after submission of the said letter of apology, was changed. The Petitioner was again served with a charge-sheet in respect of the same charges on 1.2.1988. One Sri B. P. Sharma was appointed as enquiry officer to conduct the enquiry. On 23.6.1988, the said Enquiry Officer was replaced by one Sri A. K. Srivastava, Manager Accounts. The then General Manager Sri S. Phadia, who had dictated the aforesaid letter on the instructions of the then Chairman Sri S. N. Srivastava and which was signed by the Petitioner (being an apology), was appointed as Presenting Officer. Sri S. N. Srivastava, who was working as Chairman of the Bank has filed an affidavit on 11.7.2001, verifying the submissions made by the Petitioner. Para 4 of the said affidavit is quoted below:

4. That the Petitioner denied his involvement and gave satisfactory evidence of his innocence. The matter was accordingly considered by the Bank after a careful consideration of the matter on record and taking into consideration that no loss had been caused to the Bank; and also that there was no other complaint subsisting against the Petitioner, it was decided that the Petitioner be reinstated in service and order of suspension be withdrawn. It was also decided that some punishment other than removal would be awarded to the Petitioner.

5. Learned Counsel for the Petitioner has contended that at the outset, the Petitioner had raised objection that the Presenting Officer was of the rank of General Manager, i.e., senior to the Petitioner, whereas the Enquiry Officer, Manager Accounts was subordinate to the Petitioner. He was also subordinate to the Presenting Officer. This material objection was not taken note of and the enquiry continued with Sri S. Phadia as Presenting Officer. The Petitioner vide letter dated 24.11.1988, requested for supply of some documents. A list of witnesses, whom he desired to examine, was submitted. The Petitioner was not supplied with relevant documents and the witnesses sought to be examined by the Petitioner were not called. The enquiry proceeded. The enquiry officer submitted his report. In addition to the defence made in the reply to the charge-sheet etc., the Petitioner had categorically indicated that the same charges have been examined, as conceded by the then Chairman, who had held the first charge to be not established and in respect of second charge, the Petitioner had

been asked to submit a written apology with the assurance that a minor punishment would be awarded to him. The said letter of apology has been taken note of on internal page 7 of the enquiry officer''s report, but this letter of apology has been accepted as Petitioner''s admission of the charge by the enquiry officer. Learned Counsel for the Petitioner has laid stress that the submission of ''plea bargaining'' has not been accepted by the enquiry officer and the punishing authority. The Petitioner preferred an appeal in which he, at the outset, submitted that he had given his written apology on the assurance of the then Chairman Sri S. N. Srivastava that a minor punishment would be awarded to him but this aspect has not been considered by the enquiry officer. As per Petitioner, he had altered his prejudice in signing the said apology but the same has not been considered by the enquiry officer, without any reason. Several other pleas, as submitted above, were raised by the Petitioner in appeal. He, in the prayer clause of the appeal, had submitted that instead of punishment of removal, any other punishment be given to him. The appeal was disposed of on 9.2.1990. The Petitioner was not afforded opportunity of hearing and the copy of order dated 9.2.1990 was not communicated to him. From the communication sent to the Petitioner, it appears that the Board of Directors had not applied their mind and the appeal was dismissed with pre-determined mind, pre-judging the issues. The Petitioner has led this Court through the contents of para 27 of the writ petition, wherein the above submission has been made. The reply to this submission is contained in para 24 of the counter-affidavit of the Bank, which reads as under:

24. That in reply to contents of paragraph 27 of the writ petition it is submitted that minutes of the meeting of the Board are not supplied or made available to a person.

6. This decision was not placed before the Court. The Petitioner has further submitted that the witnesses were not examined in presence of the Petitioner and he was not supplied with the documents.

7. Learned Counsel for the Petitioner has further submitted that the Regulations, under which the entire enquiry was conducted, were not placed before both the Houses of Parliament and had not been published in the official Gazette as required u/s 30 of the Regional Rural Banks Act, 1976. This plea was specifically and categorically raised by the Petitioner. The Respondents did not produce the copy of Gazette notification as proof of said regulations having been placed before both the Houses of Parliament. The Petitioner has cited example of Mr. G. M. Usmani and others, who were exonerated even without complying with the mandatory requirements specified in the service regulations on the ground that the said service regulations cannot be applied as the same had not been notified in the official Gazette as per Section 30 (2) of the Regional Rural Bank Act. The above specific averment has not been denied in the counter-affidavit.

8. Learned Counsel for the Petitioner has placed reliance on the following decisions of the Hon''ble Supreme Court of India in support of his submissions:

(i) B.K. Srinivasan and Others Vs. State of Karnataka and Others,

(ii) Ran Singh Vs. State of Haryana and Others,

(iii) State of U.P. Vs. Shatrughan Lal and Another, and (iv) Indrani Bai (Smt) Vs. Union of India (UOI) and Others,

9. Learned standing counsel appearing for the Bank has resisted the writ petition. He has submitted that a formal regular departmental enquiry was conducted against the Petitioner. All the relevant documents relied upon by the management to substantiate the charges were supplied to the Petitioner and all material witnesses as well as defence witnesses were called by the enquiry officer. The enquiry was conducted by a person duly authorized and competent to conduct the same. The principles of natural justice were followed. The Petitioner while posted at Samrauta Branch, Raebarelilly had opened fictitious account and had defrauded the bank to the tune of Rs. 22,000, as a result whereof, he was placed under suspension and departmental enquiry was conducted against him. Gross financial irregularities were committed by the Petitioner. It has been categorically denied by the authorities of the bank that no assurance, as alleged by the Petitioner, was ever given to him. However, counter-affidavit has been filed by Sri K. M. Khullar, the Chairman of Raebarelilly Kshetriya Gramin Bank while contesting this petition, in which it has been averred that the charges against the Petitioner were grave and the same were found proved as a result of departmental enquiry. It was denied in the counter-affidavit that Sri S. Phadia had dictated any letter on 13.5.1986. The appointment of enquiry officer has been justified by the Chairman of the Bank. According to him, no pressure or coercion was exerted on the Petitioner. Sri A. K. Srivastava, Manager Accounts at headquarters was a senior officer and was rightly appointed as enquiry officer. The appointments of the enquiry officer and the presenting officer were perfectly justified, legal and valid. The documents relevant for the purposes of establishing the charges were made available to the Petitioner. Since the charges were found proved, the Petitioner has rightly been punished by the punishing authority. His appeal has been dismissed after careful consideration by the Board of Directors. The order dated 9.2.1990, is merely a communication to the Petitioner that his appeal has been rejected. The Board of Directors has carefully considered the facts and circumstances of the case and perused the entire record in detail. There was no requirement under law to afford opportunity of hearing to the Petitioner. The minutes of the meeting of the Board cannot be supplied or made available to an employee.

10. Learned Counsel appearing for the Respondents has raised serious objection regarding question of ''plea bargaining'' raised by the Petitioner. According to him, it was not open to be raised by the Petitioner after a lapse of sixteen years ; this plea was an afterthought. The Petitioner is not entitled for any benefit by raising this plea.

11. I have heard learned Counsel for the parties and perused the record.

12. In the present case, right from the stage of preliminary enquiry, formal regular departmental trial, the Petitioner has raised the question of ''plea bargaining''. He has submitted before the enquiry officer, the punishing authority and the Board of Directors that he may be given the benefit of ''plea bargaining''. He has impleaded Sri S. N. Srivastava, the then Chairman of the Bank as opposite party No. 5. Sri Srivastava, who had remained Chairman of the Bank from May, 1985 to July, 1986, had put in appearance and filed an affidavit indicating therein that he had actually given an assurance to the Petitioner to award him some minor punishment and it was only thereafter that he had submitted a letter of apology in writing. The opposite parties have not raised any objection to the assurance made by the then Chairman of the Bank Sri S. N. Srivastava, nor his bona fides were doubted by the contesting parties. This Court has taken note of the fact that these events took place in April, 1986. Thereafter some enquiry was held when Sri S. N. Srivastava was Chairman of the Bank. After his term came to an end, i.e., in July, 1986, the Petitioner was served with the charge-sheet on 12.5.1987. Moreover, the enquiry officer could be appointed on 23.6.1988 only. The bank suffered no losses, as the same were made good by the Petitioner immediately. The Petitioner submitted a letter on 13.5.1986, said to be his admission of the charge, on the assurance given by the then Chairman Sri S. N. Srivastava. This letter was thereafter used against him by the enquiry officer ignoring the fact that the same was written by the Petitioner on the assurance given to him by Sri S. N. Srivastava, the then Chairman of the Bank. The Petitioner could have been awarded a minor penalty in these circumstances.

13. There is substance in the submission made by the learned Counsel for the Petitioner that the regulations under which the entire enquiry had proceeded, had not been notified in the official Gazette as required u/s 30 of the Regional Rural Bank Act, 1976. The Gazette notification was not placed before the Court till the date of final hearing. Due to failure of the Respondents to produce the Gazette notification, the Court has no other option except to hold that these regulations did not have statutory force.

14. However, the matter can be judicially scrutinized to see whether the principles of natural justice have been violated or not, or whether the procedure applied by the appropriate authorities was just and proper. The punishing authority ought to have taken into account the request of the Petitioner for changing the enquiry officer and the presenting officer. The presenting officer Sri S. Phadia, who had presented the case on behalf of the Bank, was himself a material witness against the Petitioner. The allegation was levelled against Sri S. Phadia that he was instrumental in obtaining the alleged admission of the Petitioner on 13.5.1986. In the circumstances, some other officer could have been appointed in place of Sri S. Phadia as presenting officer of the Bank. The appointment of Sri S. Phadia as presenting officer of the bank must have prejudiced the case of the Petitioner.

15. Allegations have also been levelled by the Petitioner against Sri A. K.

Srivastava, enquiry officer, who was directly subordinate to the presenting officer Sri S. Phadia, the then General Manager of the bank. He was an officer equivalent in rank to the Petitioner. It would have been proper if some senior independent and unbiased officer could have been appointed as enquiry officer to conduct the enquiry.

16. It has further come to the notice of the Court that the Petitioner''s application dated 24.11.1988, regarding supply of documents and examination of witnesses has not been dealt with properly. It has not been discussed in the final order of punishment. The order of punishment appears to be brief and it does not deal with the pleas taken by the Petitioner at the time of enquiry.

17. In the present case, the Board of Directors, the appellate authority has not made available the detailed and reasoned order to the Petitioner. The Petitioner had raised several material pleas in the body of the appeal, which ought to have been dealt with by the appellate authority. The Petitioner could have been made available the conclusions drawn by the Board of Directors while dealing with the appeal of the Petitioner containing factual and legal submissions. The Petitioner''s case has not been dealt with fairly by the appellate authority. In the facts and circumstances, the Petitioner''s case is fully covered by the decision of the Hon''ble Supreme Court of India, in Ran Singh Vs. State of Haryana and Others, As is evident from the record, the Petitioner did make the ''plea bargaining'', which was ignored by subsequently appointed Chairman of the Bank.

18. In view of above, the writ petition is allowed and the impugned orders dated 1.9.1989 and 9.2.1990, contained in Annexures-1 and 2 to the petition are quashed. The Petitioner shall be reinstated in the services. He shall be entitled for 50% back wages for the period when he remained out of employment. However, in the facts and circumstances of the case, it shall be open for the appropriate authority of the bank to award some appropriate minor penalty against the Petitioner except dismissal, removal or reduction in rank. The Petitioner has already suffered a lot for whatever misconduct he had committed in the year 1986 by pursuing this long drawn litigation from the stage of issuance of order of punishment, i.e., 1.8.1989 till the disposal of this writ petition.