

(2017) 04 CAL CK 0011
In the Calcutta High Court
Case No : 8866 of 2016 in F M A 1898 of 2016

Atindra Nath Bhattacharyya

APPELLANT

Vs

State Bank of India & ors.

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 04 CAL CK 0011

Hon'ble Judges : Dipankar Datta, Sahidullah Munshi

Bench : DIVISION BENCH

Advocate : Soumik Mukherjee, Sudip Pal Chowdhury

Final Decision : Disposed off

Judgement

1. The appellant was an officer of the State Bank of India, who would have retired from the service of the bank on attaining the age of 60 (sixty) years on January 31, 2006. Unfortunately, he had been proceeded against departmentally by issuance of a charge-sheet dated December 28, 1999 and ultimately removed from service by an order dated January 24, 2003. The order of removal from service was carried in appeal by the appellant but the appellate authority by an order dated April 19, 2005 confirmed the order under challenge and dismissed the appeal.

2. There was no immediate challenge to the appellate order dated April 19, 2005 by the appellant; however, he invoked the writ jurisdiction of this Court by filing a writ petition, W.P. 18145(W) of 2006, as late as in September, 2006 wherein the disciplinary proceedings including the inquiry report and the order of removal as well as the appellate order were subjected to challenge.

3. The writ petition was considered by a learned judge of this Court. By the judgment and order dated January 13, 2016, His Lordship set aside the order of removal as well as the appellate order confirming it; however, liberty was

reserved for the bank to issue a second show-cause notice and to arrive at a conclusion upon giving an opportunity to the appellant to make his submissions.

4. Aggrieved by such liberty, the appellant has carried the judgment and order January 13, 2016 in appeal.

5. A reading of the judgment and order under appeal reveals that the procedure prescribed in Chapter XI of the State Bank of India Officers Service Rules, 1992 (hereafter the Service Rules) titled "Conduct, Discipline and Appeal, was found to have been observed by the respondents in breach leading to violation of principles of natural justice. His Lordship referring to the Service Rules held that the same does not per se provide for issuance of a second show-cause notice but proceeded to hold that an opportunity should have been given to the appellant to show cause regarding the nature and quantum of punishment proposed to be imposed. Such a view was formed relying on the decision of the Supreme Court reported in [2009] (120) FLR 608 : State Bank of India & ors. v. Ranjit Kumar Chakraborty & anr., wherein it was held that natural justice has to be read into the relevant rules when the disciplinary authority is not competent to pass an order imposing major penalty and an opportunity of hearing must be given by the appointing authority before imposing such penalty. It is based on such a finding that the impugned order of removal was interdicted and liberty reserved, as aforesaid.

6. Mr. Mukherjee, learned advocate appearing for the appellant, contended that the appellant having reached the age of retirement as far back as on January 31, 2006, the learned judge ought not to have granted liberty to the respondents to proceed against him from the stage of second show- cause. It was also contended that the Service Rules do not empower the disciplinary authority to proceed against an officer for alleged misconduct after the officer has reached the age of retirement and, therefore, there has been serious error in the exercise of jurisdiction.

7. Reliance was placed by Mr. Mukherjee on the decision of the Supreme Court reported in (1997) 8 SCC 60 : State Bank of India v. A.N. Gupta & ors., for the proposition that proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the bank as service rules do not provide for continuation of disciplinary proceedings after the date of superannuation. The decision reported in (2007) 6 SCC 694 : UCO Bank & anr. v. Rajinder Lal Capoor, was cited for the proposition that an order of dismissal or removal from service can be passed only when an employee is in service and that if a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. Anticipating an argument of his adversary that the writ petition was belatedly presented after the date of retirement the decision reported in (2008) 15 SCC 256 : Ravindra Nath v. State Bank of India & ors., was cited where the Court adopted a liberal view and held that the high court was not justified in dismissing the writ petition on the ground of delay.

8. Referring to CAN 8866 of 2016, being an application for bringing on record subsequent events, Mr. Mukherjee submitted that the appointing authority despite being informed of pendency of the appeal, once again passed an order dated May 2, 2016 removing the appellant from service. He urged that such order too deserves to be set aside on the ground argued by him, recorded above.

9. The prayer of the appellant has been vehemently opposed by Mr. Pal Chowdhury, learned advocate for the respondents. According to him, the appellant ought not to be allowed to take advantage of his own conduct in approaching the Court with his writ petition after January 31, 2006 i.e. the date of his retirement, if he were in service. It was also contended by him that a fresh order of penalty was passed by the disciplinary-cum-appointing authority after repeated opportunities extended to the appellant were not availed of by him and there being utter non-cooperation on his part.

10. We have heard learned advocates for the parties and perused the decisions cited at the bar.

11. Before considering the rival claims it would be appropriate to observe that the law laid down in the cited decisions, though binding on us, may not apply in the given fact situation. It is axiomatic that a decision is an authority for what it decides and not what can logically be deduced therefrom. Continuation of a disciplinary proceeding against a delinquent after his superannuation would arise obviously if such proceeding is not taken to its logical conclusion prior to superannuation. Unless the service rules so permit, recourse thereto cannot be had. There cannot be any quarrel with regard to such proposition, which is well-settled. The decision in A.N. Gupta (supra) reveals that charge-sheet was not issued prior to retirement of the respondent in CA No.2141 of 1980 whereas in respect of the appellant in CA No.9943 of 1983, apart from issuance of charge-sheet within the extended period of service, no further development took place in connection with the contemplated enquiry. In Rajinder Lal Capoor (supra), charge-sheet was issued nearly 2 (two) years after retirement. However, here, the appellant was proceeded against while he was in service and suffered the order of removal prior to the date on which he would have attained 60 (sixty) years. The appellate order was passed, also prior thereto. The fact situation before us is conspicuously different from the fact situations obtaining before the Supreme Court in A.N. Gupta (supra) and Rajinder Lal Capoor (supra) and, therefore, such decisions cannot appropriately guide us in deciding the precise issue that has emerged for decision. The decision in Ravindra Nath (supra) turns on its facts and, thus, is also not of any help to the appellant.

12. It is, therefore, of utmost importance to ascertain what the Service Rules provide. Rule 19(3) of the Service Rules under Chapter IV titled "Appointment, ***, Retirement and Termination" ordain that in "case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may,

at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings". This being the legal position, Mr. Mukherjee's argument on the relevant point has to be considered in the light thereof.

13. Having bestowed our due consideration, we are of the clear opinion that the learned judge was fully justified, on facts and in the circumstances, in granting liberty to the appointing authority to proceed against the appellant afresh from the stage of issuance of second show-cause notice; stated differently, by directing that the appellant shall be afforded an opportunity to represent against the penalty proposed. The discretion that could be exercised by the Managing Director under Rule 19(3) of the Service Rules was left unfettered. At the risk of repetition, it may be observed that the order of removal dated January 24, 2003 was interdicted by the learned judge not on the ground of the same being perverse but on the ground of violation of natural justice in that the appellant was denied the opportunity to place his version on the quantum of punishment. Decisions of the Supreme Court are legion that if disciplinary proceedings culminate in an order of penalty imposed on the delinquent and such proceedings are held by a court of competent jurisdiction to have been vitiated by reason of non-compliance with any principle of natural justice, the order of penalty upon being set aside would not clothe the delinquent with an automatic right of reinstatement in service but that the proceedings must start afresh from the stage the violation crept in. In view of the decision in *Ranjit Kumar Chakraborty* (supra), the respondents ought to have afforded an opportunity of hearing to the appellant prior to imposing punishment. What would be the nature of punishment cannot obviously be predicated and, therefore, it must be left to the appointing authority to consider the same, in accordance with law.

14. The learned judge justly granted the relief to the appellant by setting aside the order of removal as well as the appellate order but most appropriately granted the respondents liberty to proceed against him from the stage of issuance of a second show-cause notice.

15. The fact of the appellant having delayed his approach to the Court is also crucial inasmuch as thereby, he allowed the date of his retirement to pass by (had he been in service). The mere fact of the date of retirement having passed by would not enure to the appellant's benefit in obtaining an order from us to the effect that the respondents do not have the authority to impose any punishment on him after he has reached the retirement age or that he is entitled to any financial benefit between the date of the order of removal and the date of his retirement. Rule 19(3) of the Service Rules stares at the face of the appellant and the appointing authority having exercised discretion to carry the proceedings forward by issuing a second show-cause notice, the same can never be branded as illegal or unauthorized.

16. It has also to be remembered that the remedy under Article 226 being discretionary, relief does not follow only upon making out of a sound legal point by the litigant; the writ court may decline relief if it is found that the litigant is in some way taking advantage of his own wrong for the purpose of such relief.

17. The judgment and order under challenge is thus upheld.

18. Adverting to the application in question, we are of the considered view that justice demands that the appellant be given one last opportunity to place his version before the appointing authority in response to the notice dated April 7, 2016. The order dated May 2, 2016 shall remain in abeyance. The appointing authority shall grant the appellant an opportunity of hearing once again and proceed with an open mind and without being influenced by the reasons recorded in the order dated May 2, 2016. Upon hearing the appellant, if he chooses to turn up, the appointing authority may revoke the order of removal dated May 2, 2016 and pass a fresh order either by not imposing any penalty, or imposing such penalty that is considered fit and proper in the circumstances. On the contrary, if the appointing authority is desirous of maintaining the order dated May 2, 2016 imposing the penalty of removal from service on the appellant, the arguments of the appellant that might be advanced shall be dealt with and fresh reasons assigned in support thereof. This exercise shall be completed as early as possible but not later than a month from date of receipt of a copy of this judgment and order.

19. With the aforesaid observations, the appeal and the application stand disposed of. There shall be no order as to costs. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.