(2005) 07 AHC CK 0145

In the Allahabad High Court

Case No : Writ Petition No. 1031 (S/S) of 2003

Ayodhya Singh	APPELLANT
Vs	
Oriental Bank of Commerce,New Delhi & Ors.	RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Citation : (2005) 07 AHC CK 0145

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Allowed

Judgement

Rakesh Sharma, J.

1. Heard Sri S.P. Singh learned Counsel for the petitioner and Sri Vinay Shanker who has put in appearance on behalf of opposite parties.

2. Under challenge are two orders, dismissal order dated 2572002 and the appellate order dated 12122002, passed by the opposite parties, dismissing the petitioner from service and rejecting his appeal preferred against the order of dismissal.

3. It emerges from record that at the relevant time, the petitioner was working as Officer/Branch Manager of Oriental Bank of Commerce at Amethi Branch, District Sultanpur. The Branch Manager was vested with power for making the advance under Government Sponsored Schemes including the Rural Employment Generation Programme of Khadi and Village Industries Commission (hereinafter referred as ''KVIC''). The RBI Rural Planning and Credit Department Central Mumbai issued various circulars, guidelines for disbursement of loans for the purpose for rural industrialization and employment in the villages of India. The petitioner while working as Branch Manager had disbursed loan to various persons. Some irregularities were committed by the petitioner while discharging his duties as Branch Manager, Incharge at Amethi Branch of the bank. A departmental enquiry was conducted against him as per provisions of Regulation 6 of the Oriental Bank of Commerce Officers, Employee (Discipline and Appeal)

Regulation, 1982. A chargesheet dated 24102001 containing six charges was issued against the petitioner. The petitioner had submitted application for supply of documents but the same were not supplied to him. However, a written brief/ reply was submitted by the petitioner on 2842002. The petitioner was made available a copy of the enquiry officer''s report on 1152002. The petitioner could not submit his reply and written comments on the enquiry officer''s findings and he was issued an order dated 2572002, dismissing him from services. The petitioner submitted a detailed appeal against the order of dismissal which was also rejected by a nonspeaking order on 12122002.

4. According to the learned Counsel for the petitioner, the whole departmental enquiry has been held in utter disregard of the principles of natural justice and is violative of relevant service Rules. The order was passed without considering the reply of the petitioner. The petitioner was not provided with the documents cited in support of the charges and the petitioner was not afforded opportunity for producing his defence witnesses. He had acted bona fidely while discharging his duties. He had allowed advance under the Rural Employment Generation Programme of KVIC in accordance with guidelines, circulars issued by the Bank. He had taken due caution and care while disbursing the loan to the persons. The main thrust of the argument of the learned Counsel for the petitioner is that the facts of petitioner''s issuance of advance and its collection were not considered by the enquiry officer and the Punishing Authority. The petitioner was not allowed opportunity to submit his written brief. The enquiry officer had not relied on the submission made by the petitioner during enquiry. The enquiry officer had concluded his finding by writing ''despite sufficient opportunity given, the DR failed to submit his written brief in the case''.

5. Sri S.P. Singh learned Counsel for the petitioner has further argued that the petitioner had submitted 16 documents in support of his version, in his defence but these have been excluded form consideration. The enquiry officer and the punishing authority have acted with a predetermined mind and treated all the charges proved on the basis of the Management. No showcause notice was issued to the petitioner to enable him to make his comments on the enquiry officer''s report.

6. Dismissal order is a nonspeaking and nonreasoned order and has been passed in the absence of written brief of the petitioner. The punishing authority ought to have passed a detailed, reasoned order after considering the material on record.

7. Learned Counsel for the petitioner had relied upon the judgments reported in the case of Ram Chandra v. Union of India, 1986 (2) SLR (sic); Chandra Tiwari v. U.P. Sahkari Gram Vikas Bank Limited, 2003(2) ESR 671; Bank of India v. K.P. Narayan Kutti, 2003 (1) UPLBEC 568; P.N.B. & Ors. v. Chief Personal Authority, 1998 (7) SCC 84; Basant Lal v. U.P.S.R.T.C. & Ors., 1999 (2) L.C.D. 963; State of U.P. v. Satrughan Lal & Ors., 1998(2) LBESR 838 (SC) : 1998(2) L.C.D 1278; Hardawari Lal v. State of U.P., 2000(1) LBESR 546 (SC) : 2000 SCC (L&S) 85; Ser Bahadur v. Union of India, 2002(7) SCC 112; P.C. Kakker v. Chairman/

Managing Director, United Bank of Commerce, 1999(2) LCD 133; P.N. Srivastava v. State of U.P. & Ors., 1999(1) L.C.D. 24 and 1999 (2) UPLBEC 1280; Capt. M. Paul Anthony v. Bharat Gold Mines Limited & Ors., in support of his submission.

8. In the present case no personal hearing was allowed to the petitioner. The material witnesses were not examined. Evidence was insufficient rather nonexistent to arrive at the conclusion of dismissing the petitioner from service. The quantum of punishment in the circumstances of the case, the punishment of dismissal, was too excessive. The petitioner was not provided with the suspension allowance in as much as he has been denied opportunity of proving his case effectively. Moreover, this Court had fixed a time schedule for completing the enquiry as per order dated 312002 passed in the writ petition No. 889 (S/B) of 2001. This schedule was not followed.

9. Sri Vinay Shanker learned Counsel for the bank has resisted the petition filed by the petitioner. He has submitted that a detailed chargesheet was issued to the petitioner on 15102001. The petitioner while posted as Manager/Incharge at Amethi Branch, District Sultanpur had unauthorizedly allowed the advances under Rural Employment Generation Programme of KVIC which were otherwise not covered under the Scheme without ensuring end use of funds and without obtaining requisite margin. Several irregularities were committed by the petitioner, causing immense loss to the bank. He had manipulated to provide illegal gains to one M/s. Gopal Industry and other borrowers. The charges were of serious nature which were found proved by the enquiry officer. The enquiry officer''s findings were based on documentary evidence. The charges leveled, reflected on the integrity of the petitioner. The petitioner was provided with the opportunity by the disciplinary authority vide letter dated 1152002 asking the petitioner to make a representation against the findings of the enquiry officer but the petitioner failed to avail such opportunity. Despite opportunity being given he did not submit his written brief. Since the petitioner did not protest against the findings of the enquiry officer, the disciplinary authority after considering the entire record of the enquiry hold the petitioner guilty of charges leveled against him. The petitioner was rightly awarded the penalty of dismissal. Under the circumstances of the case his appeal was carefully considered and was rejected on 1222002. According to Sri Vinay Shanker learned Counsel for the bank, the case cited by the petitioner are not applicable in the present set of circumstances. There is no illegality or infirmity in the order passed by the authority of the bank. He was rightly dismissed from services.

10. Learned Counsel for the bank had relied upon the judgments'' reported in the case of K. D. Singh v. U.P. Cooperative Spinning Mills Fed. Ltd., 2000(2) LBESR 519 (All) : (2000) 1 UPLBEC 625; P. N. Srivastava v. U.P. Cooperative Spinning Mills Federation Limited, 2000(1) LBESR 929 (All) : (2000) 1 UPLBEC 624; Ram Shanker Shukla v. Nagar Mahapalika Allahabad, (2004) 3 UPLBEC 2801; R.P. Gupta v. Allahabad Bank, (2004) 1 UPLBEC, 611; State Bank of India v. T.J. Paul, 1999(2) LBESR 8 (SC) : (1999) 4 SCC 759; V.C. Kendriya Vidyalaua Sangthan v.

Girdhari Lal Yadav, (2004) 6 SCC 325; State Bank of Patiala v. S.K. Sharma, 1996(2) LBESR 459 (SC); 1996 AIR SC 1669; Apprel Export Promotion Council v. A.K. Chopra, 1999(2) LBESR 194 (SC) : (1999) 1 SCC 759; Union of India v. B.C. Chaturvedi, (1995) 6 SCC 750; M.C. Charati v. Personnel Manager, Syndicate Bank & Ors., 2001 (2) Banking CLR 90 (Kant); Ganesh Samta Ram Sirur v. State Bank of India, 2005(2) LBESR 515 (SC) : (2005) 1 SCC 13 and Regional Manager UPSRTC v. Hoti Lal & Ors., 2003(1) LBESR 863 (SC) : (2003) 3 SCC 605, in support of his submission.

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

12. It is evident from the record that the enquiry officer has relied on the version of the bank only. The petitioner''s case was not considered by the enquiry officer. The enquiry officer has summed up by writing that ?despite sufficient opportunity given, the DR failed to submit his written brief in the case?. It is an admitted case between the parties that petitioner could not submit his reply, comments, written brief in the enquiry officer''s findings. The petitioner could not submit his reply in response to the notice dated 152002. Even in the absence of the reply to the showcause and the statement of the petitioner and his written brief, the punishing authority ought to have gone through the available record and he was required to record his own opinion after perusal of the material on record. The punishing authority has summed up the matter in a short order passed on 2572002. The petitioner''s version, his statement and the documents submitted by him in defence had not been considered by the disciplinary authority. He has relied on the report of the enquiry officer only. In the present case where the written brief of the petitioner was not available, the disciplinary authority ought to have applied his own mind and could have put forth is reasons for arriving at the decision of dismissing the petitioner from service. A perusal of the order dated 2572002 reveals that it was an ex parte order without considering the reply and defence of the petitioner. It can be interfered after perusal of the order of punishment and appellate order that there are nonspeaking and nonreasoned orders. An inference can be drawn that the orders have been passed with predetermined mind to punish the petitioner, ignoring the pleas of the petitioner that no embezzlement was done.

13. In the present case the amount advanced by the petitioner was recovered and installments were being deposited by the borrowers. In this case, no showcause notice was issued to the petitioner. The petitioner had in fact submitted his comments on 2442002, 2842002 and 2342002. His submissions do not find place in the order of penalty. The disciplinary authority had also ignored the version of the petitioner that the petitioner had not deliberately or knowingly committed the procedural irregularities in advancing loan to the borrowers. Dismissal order appears to be excessive and does not commensurate with the charges subjectmatter of acquisition. Appellate authority has also ignored the material on the record and the pleas and ground taken by the petitioner. The petitioner was not paid his suspension allowance and the enquiry

has not been completed within the period stipulated by this Court. Petitioner''s case is covered by the decision of the Hon''ble Supreme Court of India has reported in 1999(2) UPLBEC 1280, Capt. M. Paul Anthony v. Bharat Gold Mines Limited & Ors., and the decision of this Court reported in 1999(1) L.C.D. 24, P.N. Srivastava v. State of U.P. & Ors. The directions of the Court should have been complied with.

14. In view of above, the order of dismissal dated 2572002 and the appellate order dated 12122002 are not sustainable and the same are quashed.

15. The learned Counsel for the petitioner has informed the Court while concluding his arguments that the petitioner had already attained the age of superannuation and now de novo departmental enquiry cannot be held against him. He had not caused any loss to the Bank.

16. In these circumstances, this Court cannot leave it open to the opposite parties to hold fresh enquiry against the petitioner in accordance with law as after his retirement he has ceased to be an employee of the Bank.

17. The writ petition is accordingly allowed.

