
(1992) 04 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 4965 of 1983

Baidyanath Shukla

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 13-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0036

Judgement

Radha Mohan Prasad, J.—In this application the petitioner, who was an Officer in the Central Bank of India (hereinafter called as "the Bank"), has prayed for quashing of the order contained in Annexure 1 to the writ petition whereby a punishment of reduction to a lower stage by two steps in the times scale of pay was imposed on him purporting to be in terms of Clause (a) of Regulation 4 of the Central Bank of India Officer Employees" (Discipline and Appeal) Regulation, 1976 (hereinafter called as "the Regulations") which is a major penalty.

2. The short relevant facts as would appear from the writ petition and the counter-affidavit filed on behalf of the respondent Bank are that the petitioner at the relevant time was posted as Branch Manager of the Bank at its Harnaut Branch. A memorandum of imputation of lapses dated 14-9-1978 was issued to the petitioner who submitted his statement of defence which was later appeared to be of serious nature and memorandum, statements of articles of charges and the statement of allegations dated 16-1-1979 was issued calling upon the petitioner to submit his statement of defence. The petitioner submitted his defence on 25-1-1979. Subsequently, a minor corrigendum to articles of charges and the statement of allegations were also issued on 22-9-1979 in respect of charge No. 7. A departmental enquiry was conducted by the officers appointed by the disciplinary authority which was concluded on 22-12-1979 after holding several sittings on various dates. The petitioner in his defence pleaded not guilty to the charges levelled against him. From the impugned order it appears that the petitioner was charged for his various acts of omission and commission amounting to breach of Regulations 3 and 16 of the Central Bank of India Officer Employees" (Conduct) Regulations, 1976 (hereinafter called as "the Conduct

Regulations") thereby constituting misconduct, according to Regulation 24 of the Conduct Regulations. The enquiry officer submitted his report and the disciplinary authority after going through the same as also through enquiry proceedings, written briefs of both the sides and all the evidence adduced during the course of enquiry proceedings by both sides found some of the charges to be fully proved against the petitioner.

3. It appears that the defence representative made the following submissions:

1. Due to the endeavour of Sri Sukla the profit figures of Harnaut Branch increased from Rs. 34,000 to Rs. 73,000 during his tenure as Branch Manager.

2. Due to the facts of omission and commission as mentioned in the Bank's charge sheet, no loss has occurred to the Bank.

3. The charged officer is under suspension for nearly one and half years.

The disciplinary authority after taking into account all these factors and also the fact that no mala fide intention on the part of the petitioner had been proved, passed the final order imposing the aforementioned major penalty as per Regulation 4(e) of the Bank.

4. Being aggrieved by this order the petitioner preferred an appeal which was heard and according to the Bank, the petitioner had been given full opportunity but neither he nor his representative raised any dispute for non-furnishing of any document of report of the enquiry officer to him, rather on the specific questions raised by the appellate authority to the petitioner as to whether apart from which was argued and placed before him he had to add anything more, the petitioner had categorically replied "nothing more" Respondent Bank in their counter-affidavit has also submitted that the petitioner has acted in gross negligent manner and in contravention of the Conduct Regulations and hence committed acts of misconduct.

5. Mr. Sinha, learned Counsel the arises for has Bank, has referred to the representation of the petitioner contained in Annexure-D to the counter-affidavit in this regard, which is dated 31st January, 1981. From the perusal of the said representation also it would appear that the petitioner admitted occurring of some minor irregularities in performance of his duties. He relying on the said representation submitted that even at this stage he did not raise any grievance with regard to non-furnishing of the copy of the enquiry report. On the other hand, Mr. Madan Mohan Prasad, learned Counsel appearing for the petitioner, has submitted that as there is no dispute that the petitioner was not supplied with the copy of the enquiry report the petition can be allowed on this ground alone in view of the latest decision of the Supreme Court reported in Union of India and others Vs. Mohd. Ramzan Khan, . In the said decision the point for determination was that as to whether the alteration of the provisions of Article 311(2) under the Forty Second Amendment of the Constitution doing away with the opportunity of showing cause against to proposed punishment, the delinquent

has lost his right to be entitled to a copy of the enquiry report in the disciplinary proceedings. The Supreme Court held that supply of a copy of the enquiry report along with the recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The relevant paragraphs of this decision are paragraphs 13 and 15 and the relevant extract of which is usefully quoted hereunder:

13...There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facts do make the matter quasi-judicial and attract the principles of natural justice...with the Forty Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected."

"15...____For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by say application of natural justice could be totally ruled out or (sic)truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 2nd amendment, we, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy hereof. The Forty-second amendment has not brought about any change in this position.

6. Mr. Sinha, learned Counsel appearing for the Bank in reply submitted that the said decision will have no bearing to the facts of the present case where the delinquent was supplied with the copy of the enquiry report though after the impugned order (Annexure 1) was passed. Moreover, according to him, at the appellate stage also the petitioner was given adequate opportunity to defend himself I do not find any substance in this submission. The order of the appellate authority, which is contained in Annexure-4 to the writ petition, was passed on

13th September, 1980 Le. much before the copy of the enquiry report was supplied to the petitioner.

7. In any view of the matter, it cannot be denied that the order of punishment is based on the report submitted by the enquiry officer and the petitioner-delinquent officer was kept away from the conclusions arrived at by him which precluded him from knowing the contents thereof, The report which has been used by the disciplinary authority in arriving at the final decision for imposing punishment without bringing it to the knowledge of the petitioner of the material against him in the same makes the impugned order violative of the rules of natural justice. To have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. I, therefore, hold that the petitioner was entitled for a copy of the enquiry report along with the recommendations, if any, before the imposition of punishment, as contained in Annexure-1 to the writ petition, and action taken by the disciplinary authority contrary to the aforesaid makes the order violative of the rules of natural justice.

8. In the result, this writ application is allowed and the order, contained in Annexure-1 to the writ petition, as well as the order passed by the appellate authority, as contained in Annexure 4 to the writ petition, are quashed. However, in the facts and circumstances, there will be no order as to costs.