(2006) 04 CAL CK 0035

In the Calcutta High Court

Case No : C.R. No. 6162 (W) of 1979

Bakul Chandra Dey APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Citation : (2006) 2 CALLT 631 : 110 CWN 504 : (2007) 112 FLR 1099 : (2007) 1 LLJ 166

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Saad Mahmood, Prabir Rej, M. Ahmed and B. Chattopadhyay, for the Appellant; P.K. Pal Chowdhury, A.K. Routh, A. Dasgupta, S. Pal Chowdhury and A. Biswas, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein has filed this writ petition challenging the validity and/or legality of the disciplinary proceedings initiated against the said petitioner.

2. It has been alleged on behalf of the petitioner that the departmental enquiry was conducted on a concocted allegation manufactured in a calculated manner by the respondent No. 5 to satisfy the personal vengeance. It has been specifically urged on behalf of the petitioner that, the enquiry was not conducted in accordance with law upon observing the prescribed procedures and rules as are applicable in this regard. It has further been submitted on behalf of the petitioner that the disciplinary proceeding was concluded in the present case even without supplying the enquiry report to the petitioner.

3. It has been alleged by the respondents that the petitioner on 25th July, 1969 instructed one Khageshwar Burman, an employee of the North Bengal University to withdraw money from the savings bank account of one Sri Santosh Kumar Ganguly and thereby tried to or attempted to commit fraud. According to the

agent of the State Bank of India, Siliguri Branch, the petitioner herein picked up the pass book of the said Santosh Kumar Ganguly from the savings bank counter of the said bank and thereafter presented letter of withdrawal alongwith the said pass book to the savings bank counter through the said employee of the North Bengal University with an intention to defraud the bank.

4. From the records it appears that the agent of the State Bank of India, Siliguri Branch by the written communication dated 28th July, 1969 asked the petitioner to explain his conduct in the aforesaid matter. According to the petitioner, on that very day i.e. on 28th July. 1969 the agent of the Branch procured one confessional statement from the petitioner under threat and the petitioner therefore, lodged a diary with the Siliguri Police Station on the very same day i.e. on 28th July, 1969 wherein the said petitioner specifically mentioned that the agent of the State Bank of India. Siliguri Branch procured the aforesaid confessional statement under threat. The said agent of the bank, however, on 30th October, 1969 issued the charge-sheet against the petitioner.

5. The petitioner also duly replied to the said charge-sheet denying all the allegations mentioned in the said charge-sheet. In the said reply the petitioner also stated that the confessional statement has been procured from the petitioner by the said agent under threat and physical torture.

6. It has been categorically mentioned by the petitioner that he was ill on 25th July, 1969 when the alleged incident took place at the counter of the respondent bank. The petitioner also submitted a medical certificate from a Medical Practitioner in order to show that he was ill on the date of occurrence. The said medical certificate was issued by the doctor concerned almost after 1 year 5 months from the date of illness and/or treatment of the said petitioner. However, according to the petitioner, no evidence has been adduced in support of the contention that the said petitioner came to the bank premises on the date when the alleged incident took place. Ultimately, on 27th August, 1975 i.e. almost after lapse of six years from the date of alleged incident, the Enquiry Officer actually started the enquiry proceedings in respect of the petitioner herein.

7. Although the management examined as many as 6 witnesses including the complainant, who issued the charge-sheet, but surprisingly the Medical Officer, who issued the medical certificate to the petitioner certifying that the petitioner was ill on 25th July, 1969, was not allowed to adduce evidence before the Enquiry Officer as according to the Enquiry Officer, it was not necessary.

8. The learned Advocate of the petitioner submits that the Enquiry Officer should have taken note of the various contradictions in the evidence adduced by various witnesses. Referring to the depositions of the various witnesses, the learned Advocate of the petitioner submits that the Enquiry Officer should not have ignored the contradictory statements made by various witnesses and the petitioner should have also been exonerated from the charges as according to the petitioner, none of the charges has been proved and/or established in the

enquiry proceedings conducted by the Enquiry Officer.

9. The Enquiry Officer submitted his report before the disciplinary authority upon holding the petitioner guilty of the charges levelled against him. The learned Advocate of the petitioner urged before this Court that the findings of the Enquiry Officer are baseless and pervous.

10. It has been submitted on behalf of the petitioner that the Enquiry Officer did not supply the copy of the enquiry report and the disciplinary authority also without supplying the copy of the enquiry report and granting, an opportunity to the petitioner to submit a proper representation before the disciplinary authority issued a show cause notice to the said petitioner proposing the punishment of dismissal from the service of the bank. The aforesaid show cause notice was issued by the disciplinary authority on 5th April, 1976 and the petitioner was ultimately dismissed from service by a non-reasoned cryptic order on 30th April, 1979.

11. The aforesaid order of dismissal was challenged by the petitioner on the ground that the Enquiry Officer relied on the alleged confessional statement of the petitioner which according to the petitioner, was procured by the agent of the bank under threat and coercion. According to the petitioner, the said confessional statement cannot be admissible in evidence as the said confessional statement was not a voluntary statement of the petitioner and on the contrary the same was procured under threat and coercion. It has also been submitted on behalf of the petitioner that the findings of the Enquiry Officer are perverse as the charges levelled against the petitioner have not been established on the basis of valid and proper evidence admissible in law.

12. It has been specifically urged on behalf of the petitioner that the rules of natural Justice have been flagrantly violated in the present case as the petitioner was denied the reasonable opportunity to defend himself before the Enquiry Officer and the disciplinary authority. The learned Advocate of the petitioner submits that various illegalities and irregularities have vitiated the decision making process in the present case. The learned Advocate of the petitioner specifically alleged that the purported dismissal order has been issued to the petitioner without observing the due process of law and also without granting proper and adequate opportunity to the petitioner to submit his explanation in answer to the show cause notice. The learned Advocate of the petitioner submits that the disciplinary authority proceeded in the instant case with a closed and biased mind as the said disciplinary authority issued the show cause notice to the petitioner proposing the punishment of dismissal from the service of the bank even without supplying the copy of the enquiry report to the said petitioner.

13. According to the petitioner, the said disciplinary authority formed an opinion behind the back of the petitioner on the basis of the records and documents supplied by the Enquiry Officer along with the enquiry report which was not even supplied to the petitioner at that point of time. The learned Advocate of the

petitioner submits that the disciplinary authority before taking any decision and/ or formation of any opinion in respect of the petitioner should have forwarded a copy of the enquiry report to the said petitioner so that the petitioner could submit a proper representation upon going through the enquiry report for the consideration of the disciplinary authority. The learned Advocate of the petitioner further submits that the said petitioner could not effectively deal with the findings of the Enquiry Officer as the enquiry report was not supplied to the petitioner before formation of the opinion by the disciplinary authority. The learned Advocate of the petitioner also submits that the disciplinary authority should have formed an opinion only after granting adequate opportunity to the petitioner to defend himself after going through the enquiry report submitted by the Enquiry Officer.

14. It is true that this Court cannot act as an appellate authority over the Enquiry Officer but at the same time, this Court should also examine whether the charges levelled against the petitioner have been established before the Enquiry Officer beyond all reasonable doubt and this Court should further examine whether the disciplinary authority has formed its opinion upon granting adequate opportunity to the petitioner to defend himself after submissions of the report by the Enquiry Officer. It is not in dispute that the report submitted by the Enquiry Officer was not supplied to the petitioner although the disciplinary authority formed an opinion against the petitioner and issued a notice asking the petitioner to show cause why he should not. he removed from the service of the hank.

15. Referring to the aforesaid conduct of the disciplinary authority, learned Advocate of the petitioner submits that the said disciplinary authority was totally biased against the petitioner as the said disciplinary authority before supplying the enquiry report to the petitioner and granting an opportunity to the said petitioner to submit his comments on the said enquiry report issued the notice to the petitioner asking him to show cause why he should not he dismissed from the service of the bank.

16. The learned Advocate of the respondent bank, however, submits that the findings of the Enquiry Officer cannot be said to be perverse as according to the learned Advocate of the respondents, the findings of the Enquiry Officer are based on sufficient materials and documents including the evidence adduced by various witnesses. The learned Advocate of the respondent bank further submits that the charges levelled against the petitioner have been proved before the Enquiry Officer on the basis of the confessional statement of the said petitioner and according to the learned Advocate of the respondents, the said confessional statement was never obtained under threat and coercion as alleged or at all. The learned Advocate of the respondent bank also submits that before the Enquiry Officer it has been established that the said confessional statement was voluntarily made by the petitioner and there was no occasion to extract such confessional statement- under threat, and coercion as has been alleged by the petitioner.

17. It has been submitted by the learned Advocate of the respondent bank that there is no mandatory rule and/or provision for supplying the enquiry report of the Enquiry Officer to the petitioner. The learned Advocate of the respondent bank further submits that the law relating to the supply of the enquiry report was not settled at the material point of time. The learned Advocate of the respondent bank specifically urged before this Court that the petitioner was neither entitled to receive the copy of the enquiry report under the Rules applicable to the said petitioner nor the said petitioner was entitled to receive the said enquiry report under the provisions of any other law.

18. Although it is true that the copy of the enquiry report was not-supplied to the petitioner by the disciplinary authority before imposition of the punishment of dismissal but the same has no bearing in the facts of the present case in view of the decisions of the Hon''ble Supreme Court in the eases of Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . It has been specifically held in the aforesaid two decisions by the Hon''ble Supreme Court that no order of punishment before the date of the decision in Ramzan Khan case (supra) could be challenged on the ground that there is failure to furnish enquiry report before imposition of the punishment by the disciplinary authority.

19. In the present case, admittedly, the dismissal order was passed by the disciplinary authority on 30th April, 1976, which is undisputedly long before the date of the decision of the Supreme Court in Ramzan Khan case (supra), which was decided on 20.11.1990.

20. The Supreme Court in the case of Debotosh Pal Choudhary Vs. Punjab National Bank and Others, has also specifically observed as follows:

8. It is true that the petitioner was not provided with a copy of the enquiry report by the disciplinary authority before imposition of the punishment of dismissal, but that circumstance has no bearing on the dismissal of the petitioner in view of the decisions of this Court in Ramzan Khan case and Managing Director, ECIL v. B. Karunakar. The said two decisions arc to the effect that no order of punishment before the date of the decision in Ramzan Khan case would be challengeable on the ground that there is failure to furnish inquiry report before imposing the punishment by the disciplinary authority. In the present case, the punishment had been imposed upon the petitioner by the disciplinary authority on 8.10.1988 long before the decision of this Court in Ramzan Khan case on 20.11.1990....

21. However, the order of dismissal, in the present case, in my view, is unreasoned and cryptic one.

22. The dismissal order passed by the Regional Manager on 30th April, 1976 is quoted hereunder:

No-RM. III (General)/906

Date: 30th April, 1976

Dear Sir,

With reference to the submissions made by you in your letter dated the 22nd April, 1976 addressed to the Branch Manager, State Bank of India, Siliguri, in response to our letter No. R.M. III (General)/704 dated the 5th April. 1976 as no extenuating factor has been brought out by you, it has been decided to dismiss you from the Bank''s service with immediate effect in terms of paragraph 521(5)(a) of the modified Sastry Award.

2. A payment order representing your up-to-date subsistence allowance is enclosed.

3. Please acknowledge receipt.

Yours faithfully, Sd/- Illegible. Regional Manager.

23. On examination of the aforesaid order of dismissal it is difficult to say that the disciplinary authority had applied its mind to the case before terminating the services of the petitioner. The disciplinary authority, namely, the Regional Manager, did not refer to the charge sheet, evidence on record including the statements made during the enquiry and/or even the report of the Enquiry Officer. The said disciplinary authority also did not refer to the show cause notice issued to the petitioner and reply filed by the said petitioner in this regard.

24. The disciplinary authority in the aforesaid order of dismissal neither referred to the enquiry report nor even expressly mentioned about the acceptance of the findings of the Enquiry Officer and therefore, it is very difficult to hold that the disciplinary authority has inflicted the punishment on the basis of the findings of the Enquiry Officer and on accepting the reasons given by the said Enquiry Officer in support of the said findings, It may not be obligatory on the part of the disciplinary authority to discuss the evidence in details in order to come to the same findings as that of the Enquiry Officer but at the same time, the disciplinary authority cannot inflict a punishment without referring even to the enquiry report and the reasons furnished by the Enquiry Officer in support of the findings when fact remains that the disciplinary authority inflicted the punishment after submission of the enquiry report by the Enquiry Officer upon completion of the enquiry proceedings.

25. Since the order of dismissal is unreasoned and cryptic one and there was no reference to or discussions of the evidence, this Court is entitled to examine the records of the disciplinary proceedings in order to ascertain whether the charges levelled against the petitioner have been established in the enquiry proceedings.

26. In the case of Nand Kishore Prasad Vs. State of Bihar and Others, , Sarkaria, J. has specifically observed as hereunder:

24. The desirability of writing a self-contained speaking order in disciplinary proceeding culminating in an order of removal be over-emphasised. It is true

that the impugned orders do not fully measure upto this devoutly desired standard. Nevertheless, they do contain a bald and general allusion to the primary facts, and a cryptic inference therefrom. There is no specific reference to or discussion of the evidence. The High Court, therefore, examined the record of the disciplinary tribunal, not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary facts relied upon by the domestic tribunal in support of its conclusion. We do not see any impropriety in the course adopted by the High Court.

27. It is well settled that if the findings of the Enquiry Officer and the disciplinary authority are perverse then, the High Court should interfere in the matter. The Supreme Court in the case Yoginath D. Bagde Vs. State of Maharashtra and Another, held as hereunder:

51...The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at (he domestic trial are such to which no rasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao. Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the Court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the Court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by in ordinary prudent man or the findings were perverse.

28. On examination of the enquiry report it appears that the Enquiry Officer solely relied on the alleged confessional statement of the petitioner although the said petitioner specifically alleged that the said statement was procured under threat and coercion. In any event, when the petitioner after receiving the charge-sheet specifically denied the charges levelled against him and the enquiry proceeding was conducted in view of the denial of the charges mentioned in the charge-sheet by the petitioner, the Enquiry Officer cannot ultimately arrive at a finding that the charges levelled against the petitioner have been established solely on the basis of the alleged confessional statement.

29. The charges levelled against the petitioner were required to be established on the basis of the records and the evidences adduced by the witnesses. The petitioner herein repeatedly submitted before the respondent authorities including the Enquiry Officer and the disciplinary authority that on account of illeness the said petitioner did not join his duty on the date of occurrence i.e. 25th July, 1969 and a medical certificate was also produced in this regard.

30. The Enquiry Officer did not disbelieve the correctness of the medical certificate submitted by the petitioner in support of his ailments and admittedly, the doctor who issued the said medical certificate was not examined before the Enquiry Officer. The Enquiry Officer, however, observed that inspite of the ailment, it was possible on the part of the petitioner to come to the bank promises but on examination of the depositions of the various witnesses it does not appear that anybody has seen the petitioner inside the bank premises on the date of occurrence. It has also not been established how the pass book of one account holder, namely, Santosh Kumar Ganguly, came to the possession of the petitioner.

31. The presence of the petitioner inside the bank premises on the date of occurrence was required to be established in order to establish the charges mentioned in the charge-sheet. The petitioner specifically urged before the respondent authorities that the alleged confessional statement was procured under threat and coercion and subsequently retracted the same. The petitioner also lodged a complaint with the local Police Station in this regard on the very same day.

32. The Enquiry Officer surprisingly came to the conclusion that the said diary had been inserted by manipulation or influence long after the incident took place although no police personnel attached with the said Police Station nor the original diary was examined by tile Enquiry Officer.

33. The relevant extract from the enquiry report is quoted hereunder:

From a perusal of the contents of the police diary-entry I am inclined to believe Shri A.S. Phani''s contention that the diary-entry was the result of an afterthought and had somehow been inserted by manipulation/influence long after the incident took place.

34. The aforesaid inference of the Enquiry Officer is not only baseless and without any foundation but the same reflects the closed and biased mind of the Enquiry Officer.

35. On examination of the available records before this Court and particularly, considering the evidence on record, I am of the opinion that the charge levelled against the petitioner and mentioned in the charge-sheet was not established in the enquiry proceedings beyond all reasonable doubt and the Enquiry Officer proceeded only on the basis of hearsay evidence. The authorities of the bank could not produce any evidence and/or witness before the Enquiry Officer in order to establish that the petitioner was present on the date of occurrence at the relevant time.

36. In view of the aforementioned reasons, I have no other alternative but to hold that the findings of the Enquiry Officer are totally perverse and the same cannot be relied upon.

37. In the present case, the petitioner had no occasion to consider the said

enquiry report before imposition of the penalty as the copy of the said enquiry report was not supplied. However, the petitioner repeatedly claimed himself as innocent and pointed out various irregularities before the disciplinary authority in relation to the enquiry proceedings conducted against the said petitioner. The disciplinary authority unfortunately, did not consider the representations of the petitioner in an appropriate manner and the unreasoned cryptic order of dismissal only reflects the total non-application of mind on the part of the disciplinary authority,

38. In the case of Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, , Desai, J, observed as hereunder:

18. Between appraisal of evidence and total lock of evidence there is an appreciable difference which could never be lost sight of and the High Court, ought not to have short-circuited writ petition.

39. In the present case, the Impugned order of the dismissal is totally perverse and cannot be sustained in law as the same suffers from total non-application of mind and therefore, this Court has no other alternative but to set aside the said order of dismissal and issue appropriate direction for reinstatement of the employee concerned, namely, the petitioner herein with full back wages as in my view, no employer can deny back wages to the employee concerned after issuing an unsustainable dismissal order from service.

40. For the reasons discussed hereinbefore, I am unable to uphold the decision of the Enquiry Officer regarding establishment of the charge framed against the petitioner and also the imposition of penalty by the disciplinary authority in this regard as mentioned in the impugned order of dismissal dated 30th April, 1976. Accordingly, I set aside and/or quash the findings of the Enquiry Officer as mentioned in the enquiry report being annexure ''G'' to the writ petition and the subsequent order of dismissal issued by the Regional Manager of the bank being annexure ''J'' to the said writ petition.

41. The respondents are therefore, directed to forthwith allow the petitioner to resume his duties in the service of the bank if the said petitioner has not yet attained the age of super-annuation and make necessary payment of salary and allowances regularly as admissible to the said petitioner. The respondent authorities herein are also directed to calculate the arrear salary and other allowances of the said petitioner treating the said petitioner in service from the date of suspension and make necessary payment of arrear dues after adjusting the subsistence allowance within a period of four weeks from the date of communication of this order.

42. In the event, the petitioner has already attained the age of super annuation then the respondent authorities should determine the arrear salary and allowances due and payable to the petitioner from the date of suspension till the date of actual retirement on attaining the age of super annuation after adjusting the subsistence allowances already paid to the said petitioner. The aforesaid

payment should be made by the respondent authorities within a period of four weeks from the date of communication of this order.

43. This Writ Petition thus stands allowed. There will be, however no order as to costs.

44. Let urgent xerox certified copy of this Judgment, if applied for, be supplied to the learned Advocates of the parties upon compliance with usual undertaking.

Later:

After pronouncement of the Judgment, the learned Counsel of the respondents prays for stay of operation of the Judgment and order. I find no reason to grant such stay. Accordingly, the prayer for stay is refused.