
(2007) 03 CAL CK 0030
In the Calcutta High Court
Case No : C.A.J.F.M.A. No. 488 of 2002

Bank of India and Another	Vs	APPELLANT
Tapan Kumar Sil and Others		RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 111 CWN 458 : (2007) 115 FLR 225 : (2007) 3 LLJ 934

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : R.N. Majumdar and Rupa Mukherjee, for the Appellant;Saktinath Mukherjee and Chameli Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred by the appellant-Bank of India and its Zonal Manger of Kolkata zone from the judgment and order dated January 16, 2002 passed by the learned single Judge in the writ petition filed by the writ petitioner/respondent No. 1 herein. By the said judgment and order learned single Judge of this Court allowed the said writ petition and quashed the impugned orders passed by the bank authorities.

2. From the records it appears that the concerned disciplinary authority of the appellant bank initiated disciplinary proceedings against the writ petitioner/respondent No. 1 by issuing the charge-sheet dated August 4, 1993 which contained the following charges:

- (i) refusing/disobeying the lawful and reasonable order of your superior (i.e., Manager of the Branch) repeatedly.
- (ii) not allowing the Manager to engage the said Sri Bharat Sahoo for the aforesaid purpose.
- (iii) compelling the Manager to lift the cash box by himself.

(iv) disrupting the customer services and normal functioning of the branch.

3. By written representation dated October 1, 1993, said writ petitioner/respondent No. 1 herein replied to the aforesaid charge-sheet-dated August 4, 1993 denying all the allegations mentioned in the said charge-sheet. Ultimately, the Enquiry Officer upon conducting the enquiry proceedings in relation to the aforesaid charges mentioned in the charge-sheet dated" August 4,1993 submitted the enquiry report on September 6, 1994.

4. Scrutinising the said enquiry report it appears that the Enquiry Officer bifurcated the 1 charge No. (i) into various components and found the said charge No. 1 has been proved although the said Enquiry Officer categorically held that the other three charges stood disproved. The disciplinary authority thereafter, issued the second show cause notice to the writ petitioner/respondent No. 1 herein agreeing with the findings of the Enquiry Officer in respect of charge No. 1(i) and disagreeing in respect of charge Nos. (ii), (iii) and (iv).

5. The said writ petitioner, namely, the respondent No. 7 herein thereafter challenged the entire disciplinary proceedings including the second show cause notice issued by the disciplinary authority before this Honourable Court by filing a separate writ petition being CO. No. 10957 (W) of 1994 which was finally disposed of by Ms. Ruma Pal, J. (as Her Lordship then was) on March 21,1995 whereby and whereunder the proceedings after the submission of the enquiry report by the Enquiry Officer was set aside. The operative part of the said judgment and order passed by Ms. Ruma Pal, J. on March 21, 1995 is quoted hereunder:

For the reasons stated earlier the proceedings after the submission of the Enquiry Report by the Enquiry Officer is set aside. The petitioners will be given an opportunity of criticising the report before the Disciplinary Authority on such points as I they may be advised including the points raised in the writ proceedings. The Disciplinary Authority will thereafter arrive at a finding of guilt on the basis of the material before him and the arguments advanced. The Disciplinary Authority will conclude the proceedings in the manner prescribed.

6. The writ petitioner/respondent No. 1 (herein, however, was aggrieved by the aforesaid order dated March 21,1995 passed by Ms. Ruma Pal, J. and preferred an appeal before the Division Bench of this Honourable Court which was finally disposed of by the Division Bench presided over by S.B. Sinha, J. (as his Lordship then was) on February 25, 2000 by allowing the said appeal in part with certain observations and directions as specifically mentioned in the said judgment and furthermore, quashed and set aside the impugned order.

7. Pursuant to the aforesaid order of the Division Bench disciplinary authority issued a letter to the writ petitioner/respondent No. 1 herein enclosing the copy of the findings of the Enquiry Officer and asked the writ petitioner to submit representation on the said findings. The writ petitioner/respondent No. 1 thereafter, submitted the representation on the aforesaid findings of the Enquiry

Officer dated September 6, 1994. After submission of the aforesaid representation by the writ petitioner/ respondent No. 1, disciplinary authority concurring with the findings of the Enquiry Officer issued show cause punishment notice to the said writ petitioner/respondent No. 1 herein proposing the punishment of reduction of basic pay of the said writ petitioner/respondent No. 1 to the next lower stage for a period of two years.

8. The writ petitioner/respondent No. 1 herein however, filed another writ petition before this Court challenging the said show cause punishment notice issued by the disciplinary authority and same was finally disposed of by a learned single Judge of this Honourable Court whereby and whereunder the said learned single Judge set aside the said show cause punishment notice issued by the disciplinary authority and a further direction was issued by the authority concerned to pass a reasoned order in respect of the earlier, representation submitted by the said writ petitioner/respondent No. 1 on May 12, 2000.

9. Pursuant to the said order of the learned single Judge, disciplinary authority upon considering the said representation of the writ petitioner dated May 12, 2000 again issued, show cause notice of punishment on July 10, 2000 and the writ petitioner/respondent No. 1 submitted his representation on the said show cause punishment notice on July 29, 2000. Thereafter, on September 2, 2000, disciplinary, authority issued the punishment order and challenging the said order of punishment, again a writ petition was filed before this Court which was finally disposed of by the judgment and order dated January 16, 2002 whereby and; whereunder the learned single Judge of this Honourable Court allowed the writ petition and quashed the impugned order of punishment issued by the disciplinary authority in respect of the respondent No. 1/writ petitioner.

10. The appellant herein has challenged the aforesaid judgment and order dated January 16, 2002 passed by the learned single Judge in the instant appeal on the ground that there was no scope on the part of the respondent No. 1/writ petitioner to re-agitate the issue of proved charge as being barred by the principle of constructive res judicata. It has been urged on behalf of the appellant that the learned single Judge committed a serious error of law by going into the question of proved charge.

11. We are unable to accept the aforesaid contentions made on behalf of the appellant herein as the earlier Division Bench while deciding the appeal being F.M.A. No. 57 of 1997 did not approve the view taken by the disciplinary authority on the findings of the Enquiry Officer. The earlier Division Bench did not consider the issue specifically arising out of the alleged proved charge, as the earlier findings of the disciplinary authority were not accepted by the earlier Division Bench. As a matter of fact, the said Division Bench while deciding the appeal being F.M.A. No. 57 of 1997 by the judgment and order dated February 25, 2000 directed the disciplinary authority to proceed in the matter afresh upon giving a personal hearing to the concerned employee, namely, the respondent No. 1/writ petitioner herein and thereafter pass a reasoned speaking order. It

was also directed by the said Division Bench that subject to the findings to be arrived at by the disciplinary authority, proceedings for second show cause notice and orders thereon may be passed in conformity with the principles of natural justice. Accordingly, it cannot be said that the Division Bench, while deciding the said appeal being F.M.A. No. 57 of 1997, at all decided the issue arising out of the proved charge specially when no decision of the disciplinary" authority was approved by the Division Bench while deciding the said appeal. In the aforesaid circumstances, it cannot be said that the issue relating to the proved charge is barred by the principles of constructive res judicata and the learned single Judge committed error in law by going into the aforesaid question of proved charge.

12. The only issue, therefore, now is to be decided whether the only proved charge being Charge No. (i) was proved in accordance with law.

It is not in dispute that the Enquiry Officer bifurcated the charge No. (i) into 1 various ingredients and proceeded to examine whether the same have been proved. The charge No. (i) mentioned in the charge-sheet is quoted hereunder:

(I) refusing/disobeying the lawful and reasonable order of your superior (i.e., Manager of the Branch) repeatedly.

13. The aforesaid charge No. (i) was. divided into various ingredients by the Enquiry Officer as hereunder:

Ingredients of the Charges:

1st charge : Refusing/disobeying the lawful -and reasonable order of the Superior.

Ingredients (i) An order was passed by the Superior (Manager).

(ii) Order was reasonable.

(Hi) Order was lawful or handicapped.

(iv) Refusal to carry out the order.

(v) Disobedience in any form.

14. Although other charges were also bifurcated into various ingredients by the Enquiry Officer but we are not inclined to make any comments on the same since the other" charges were disproved before the enquiry authority and the disciplinary authority also accepted the same and awarded punishment on the ground that the charge No. (i) has been proved.

Now, we are to decide whether the original charge mentioned in the charge-sheet can be bifurcated into different ingredients and thereafter, same can be taken into; consideration.

15. The charge No. (i) relates to the directions and/or instructions of the Branch Manager to the writ petitioner/respondent No. 1 herein to open the cash vault and taking out cash box with the help of one Shri Bharat Sahoo, a coolie and not

regular employee of the bank. The Branch Manager asked the writ petitioner, who was functioning then as the Cashier of the bank, to use the cash key and open the cash vault and safe of the branch for the purpose of taking out the cash box with the help of the outsider coolie. Since the Branch Manager wanted that the cash was to be carried out by one Shri Bharat Sahoo, who was not a regular employee of the bank, the writ petitioner did not use his cash key to open the cash vault and safe of the said bank. The Branch Manager admittedly deployed an outsider namely, Shri Bharat Sahoo for carrying cash inspite of having specific knowledge that the policy of the bank does not approve any outsider to carry cash.

16. The writ petitioner herein being the Head Cashier of the bank cannot disown his responsibility to run the functioning of the cash department of the bank upon observing the policy decisions following the circulars issued by the authorities of the bank from time to time. The writ petitioner/respondent No. 1 herein being the Cashier of the concerned branch of the bank is also the joint custodian of the cash vault and safe of the said branch and fully responsible for the safety and security of the cash department. The aforesaid responsibility of the said Cashier, namely, the respondent No. 1/writ petitioner herein would be evident from the fact that the cash vault and safe of the bank can be opened by using both the keys of the Manager and Cashier of the bank at a time.

17. In the aforesaid circumstances, the Manager unilaterally, if issues any direction in violation of the bank's circular to the Cashier regarding functioning of the cash department, then the Cashier cannot comply with such direction of the Manager ignoring the declared policy decisions of the bank as well as the circulars issued by the superior authority from time to time in relation to the functioning and security of the cash department.

18. It is not in dispute that specific circulars have been issued by the superior authority of the bank directing not to engage coolie and the Enquiry Officer also specifically recorded the same in the enquiry. The Enquiry Officer also came to the conclusion that there has not been straight refusal but a conditional acceptance of the oral order of the Manager. The existence of the circular regarding non-engagement of the local coolie has also been accepted by the Enquiry Officer. The relevant portion from the enquiry report is quoted hereunder:

In view of the above this Enquiry is of the opinion that there has not been straight refusal but a conditional acceptance of the Oral Order of the Manager. Had there been no circular from Z.M. and H.O. issued for non-engagement of the local coolie, the Manager's oral instruction would have been termed a lawful and valid order but existence of the above circular has cast an extra responsibility on the Manager to communicate the instruction clarifying the position raised by the CSE for his safety.² Cashier being the joint custodian of Cash-safe, is fully responsible for any disorder, indifferent attitude, laxity and violation of Bank's circular for security of the cash department, laxity and violation of Bank's circular for security of the cash department. Even Bank's recent Circulars No.

ZO: OPR JKM: 94-95: 2 dated April 2, 1994, ZO: FAC: JPG : 32 dated April 28, 1994, ZO: SEC : SG: 3 (h): 94-95.76 dated May 25, 1994, Cir. No. ZO : OPR : 94-95: JKM: 81 dated June 1, 1994 (Annexure I to III and ED - 14) have elaborately clarified the position of safety and security to be adhered to by all particularly for cash deptt. The responsibility for running of cash deptt. attributes cashier an extra precaution for safety rules of cash deptt. Any laxity in observing the safety rules will automatically make him responsible accountable to the Bank.

Under the above circumstances, a cashier, for the purpose of clarification, may point out to the Manager the spirit of the Bank's 5 circular and thereafter, if the Manager issues a written instruction to act, then Cashier would have no option but to obey. Unfortunately, in the instant case, no such memo was issued to the cashier to remove his dilemma, confusion, hesitation cropped up on account of existing Z.M. and H.O. strict instructions. This part of the instruction is obviously handicapped due to administrative Bank's Circular not to engage coolie, which cannot be totally neglected by the Enquiry.

19. Although the Enquiry Officer arrived at the aforesaid conclusion but surprisingly, came to the conclusion that Charge No. (i) has been proved. Undisputedly, charges can be framed by the disciplinary authority and not the enquiry authority. The Enquiry Authority is required to enquire into the charges already levelled against the concerned employee by the disciplinary authority and specifically mentioned in the charge-sheet. Therefore, the charges mentioned in the charge-sheet cannot be bifurcated into different ingredients by the Enquiry Authority as has been erroneously done in the instant case.

20. On examination of the findings of the Enquiry Officer in respect of the Charge No. (i) we find that one of the important ingredient, in relation to the said Charge No. (i) was decided in favour of the writ petitioner/respondent No. 1 wherein the Enquiry Officer came to the conclusion that cash lifting work by an outsider coolie cannot be lawful due to existence of various bank's circulars and furthermore, the Manager's oral instruction could not be termed as a lawful and valid order due to existence of the circulars, issued by the superior authority of the bank regarding non-engagement of the local coolie but the said Enquiry Officer even thereafter surprisingly held that the Charge No. (i) has been proved.

21. The Enquiry Officer, on one hand, admitted that the order passed by the superior, namely, the Manager of the bank cannot be termed as lawful but ultimately arrived at a conclusion that the respondent No. 1/writ petitioner refused/disobeyed the lawful order of (the superior. The disciplinary authority unfortunately did not appreciate the aforesaid contradictions in the enquiry report. The respondent No. 1/writ petitioner being the Cashier of the bank discharged his responsibility of running the cash department in strict compliance with the administrative circulars issued by the superior authority of the bank and being the joint custodian of cash vault and safe did not allow an outsider coolie to enter into the cash department for the purpose of carrying cash in violation of the specific circular issued by the superior authority of the bank.

22. Furthermore, the Enquiry Officer failed to appreciate that the Charge No. (i) was not an independent one and overlooked thereby that upon failure of charge Nos. (ii), (iii) and (iv), charge No. (i) as framed in the charge-sheet could not have been substantiated. The Enquiry Officer failed to take into account that, imputation of misconduct as stated in paragraph 2 of the charge-sheet was the basis of all the four charges and three of the charges having failed, the remaining one cannot stand on its own.

23. The disciplinary authority also failed to appreciate that the Cashier has the specific responsibility to run the cash department upon observing the safety rules and other precautionary measures in compliance with the administrative circulars issued by the superior authority of the bank. The disciplinary authority should have also taken note of the findings of the Enquiry Officer that the verbal direction of the Manager to engage an outsider coolie cannot be regarded as a lawful order due to the existence of the bank's circular prohibiting engagement of coolie. The disciplinary authority should not have punished the respondent No. 1/writ petitioner herein for disobeying the illegal order issued by the Branch Manager as the respondent No. 1/writ petitioner being the joint custodian of the cash vault and safe and also being the responsible competent authority to run the cash department cannot ignore the specific circular issued by the superior authority of the bank for maintaining safety and security of the cash department.

24. The Enquiry Officer even after coming to the conclusion that the order of the Bank: Manager regarding engagement of local coolie was not valid and lawful due to the existence of the specific circular of the superior authority of the bank cannot thereafter, come to the conclusion that the respondent No. 1/writ petitioner refused the lawful order of the superior as according to the Enquiry Officer, said order of the Manager was not at all lawful. The disciplinary authority, therefore, should have held that the first charge was not at all established in the enquiry and accordingly, no order of punishment can be passed against the concerned employee, namely, the respondent No. 1/writ petitioner herein.

25. On. Mr. Saktinath Mukherjee, learned senior Counsel of the respondent No. 1/writ petitioner urged before this Court that the disciplinary proceedings initiated against the writ petitioner is not at all maintainable as the said respondent No. 1/writ petitioner did not commit any misconduct. Mr. Mukherjee submits that the respondent No. 1/writ petitioner being the Cashier of the bank acted in strict compliance with the administrative circulars issued by the superior authority of the bank and refused to comply with the illegal order issued by the Manager of the bank. Mr. Mukherjee further submits that the respondent No. 1/writ petitioner being a responsible officer of the bank is under an obligation and duty bound to discharge his due duties and responsibilities as a Cashier of the Bank following the instructions, norms and policies as declared and mentioned in different circulars issued by the superior authority of the bank from time to time. Mr. Mukherjee also submits that the writ petitioner/respondent No. 1 did not commit any misconduct for which any disciplinary proceeding could be initiated.

26. On examination of the judgment under appeal we find that the learned single Judge also specifically held that in such circumstances, when the writ petitioner being the Head Cashier and in overall responsibility of the cash department refused to allow a badli coolie, who is not a regular subordinate staff of the bank, to carry the cash and when the instruction of the Branch Manager to the writ petitioner was to open the cash vault for taking away cash box to be carried by such a staff, who is not a regular subordinate staff, the writ petitioner could not be held responsible for any misconduct and far less a misconduct which can result in reduction of the basic pay of the writ petitioner.

27. The term "misconduct" implies a wrongful intention and not a mere error of judgment. A single act of omission or error of judgment would ordinarily, not construe misconduct. Misconduct means comprised positive acts and not mere neglect or failures.

28.. Misconduct arises from ill-motive and mere acts of negligence or errors of judgment do not constitute any misconduct. Even if there is any error of judgment in discharging the duties the same cannot constitute misconduct unless ill-motive in the aforesaid act is established.

29. In the present case, the concerned employee, namely, the writ petitioner/respondent No. 1 herein did not disobey any order of the superior authority, namely, the Manager but simply pointed out that the instruction to take out the cash box from the cash vault and safe with the help of an outsider coolie and not a regular employee of the bank was not proper in view of various circulars of the head office and zonal office of the bank and thus the employee concerned decided to act in compliance with the specific circulars issued by the head office and the zonal office of the bank. The writ petitioner/ respondent No. 1 considered the decision of the Manager to deploy an outsider coolie to bring out the cash box from cash vault and safe of the bank as. erroneous and illegal pursuant to the various circulars issued by the head office and zonal office of the bank and therefore, the said writ petitioner/respondent No. 1 hesitant to comply with the instructions of the Manager to allow ? the cash box to be taken out with the help of an outsider coolie. The aforesaid decision of the employee, namely, the writ petitioner/respondent No. 1, if not approved by the authority, then the same can be at best" regarded as error of judgment in discharging the duties but under no circumstances, the same can constitute a misconduct.

30. As such, the learned single Judge came to the conclusion that no misconduct has been committed by the writ petitioner. The learned single Judge while exercising his power of judicial review has rightly held that piecemeal consideration of the first charge by the Enquiry; Officer and the disciplinary authority led to the wrong conclusion, which is not permissible in law.

31. Undisputedly, the High Court while Exercising its authority under Article 226 of the Constitution of India cannot sit in appeal over the findings of the Enquiry Officer or the disciplinary authority and assume the role of the appellate

authority but the same does not mean that the Honourable High Court cannot examine the legality and/or propriety of the decision making process. The Honourable Supreme Court of India in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, has specifically held as hereunder at p. 605 of LLJ:

6. ...The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it 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 an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

32. Mr. Mukherjee referred to and relied upon the following decisions of the Honourable Supreme Court in support of his arguments:

- (1) B.C. Chaturvedi Vs. Union of India and others, .
- (2) Government of Tamil Nadu Vs. K.N. Ramamurthy, .
- (3) Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .
- (4) Yoginath D. Bagde Vs. State of Maharashtra and Another, .
- (5) Union of India Vs. K.A. Kittu And Others, .

33. In the case of Government of T.N. v. K.N. Kamamurthy (supra), Honourable-Supreme Court held as hereunder 1998 I LLJ 89 at p. 90:

7. ...This Court further held that in case of charges framed in a disciplinary enquiry, the Tribunal or the Court can interfere only if on the charges (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

34.. The Honourable Supreme Court also held in the case of Union of India v. K.A. Kittu and Ors. (supra) that while exercising power of judicial review the Court may examine/consider contrary findings of the Enquiry Officer which has been done by the learned single Judge in the present case.

35. Having heard the learned Counsel appearing for the parties and considering the relevant documents including the charge-sheet, enquiry report and the punishment order issued to the writ petitioner/respondent No. 1 herein, we are of the opinion that the learned single Judge has rightly decided the issues raised in the writ petition and we affirm the aforesaid decision of the learned single Judge and held that neither the charge No. 1 has been proved nor even any misconduct was committed by the respondent No. 1/writ petitioner for which disciplinary proceedings could be initiated by the disciplinary authority upon issuing the charge-sheet to said writ petitioner/respondent No. 1.

36. For the aforementioned reasons, we do not find any merit in the instant

appeal and the same is therefore, dismissed. There will be, however, no order as to costs. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned advocates of the parties on usual undertaking.