

(1993) 12 CAL CK 0004
In the Calcutta High Court
Case No : C.O. No. 12075 (W) of 1991

Bhanu Pratap Gosaaain

APPELLANT

Vs

Assistant General Manager Allahabad Bank and Others

RESPONDENT

Date of Decision : 03-12-1993

Acts Referred:

United Industrial Bank Ltd Officers (Service and Conduct) Rules, 1979 — Rule 9.1

Citation : 98 CWN 713

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : L.C. Bihani, Ram Anand Agarwala and Raja Tarafdar, for the Appellant; Durga Sankar Mullick, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—This writ petition was moved on behalf of Bhanu Pratap Gossain, the erstwhile Branch Manager, Allahabad Bank, posted at Sadar Bazar Branch, New Delhi, challenging inter alia, the order of removal from service dated December 31, 1990, passed by the Assistant General Manger and Disciplinary Authoirty, being the respondent No. 1. which is Annexure "G" as well as the appellate order of rejection dated May 29, 1991, communicated by covering letter dated October 28, 1991, Annexure "O" to the Supplementary Affidavit affirmed on March 9, 1993, by the petitioner, during the pendency of the writ petition. When the writ petition was moved before this Hon"ble Court, Monoranjan Mallick, J. (as His Lordship then was), by his order dated October 1, 1991, was pleased to admit the writ petition and passed directions for affidavits. Thereafter, the matter appeared before Gitesh Ranjan Bhattacharjee, J. on August 12, 1992.

2. Ultimately, on December 23, 1992, the case came up for hearing before me and it was heard on several dates and on September 17, 1993, written arguments were filed on behalf of both the parties and the judgment was reserved.

3. The case of the writ petitioner, as pleaded in the writ petition is as follows : Earlier the writ petitioner was appointed as Branch Manager and posted at Bongaon branch of United Industrial Bank and after amalgamation of the United Industrial Bank Ltd. with the Allahabad Bank, he was posted at Sodepur Branch and thereafter at Sadar Bazar Branch, Allahabad Bank, New Delhi since January 22, 1990.

4. While, the petitioner was posted at Sadar Bazar Branch, New Delhi, the Assistant General Manager, being the Disciplinary Authority, being Respondent 1 herein, issued a chargesheet, under Office Memorandum No. VIG. GEWL (CR-179)/90-9 dated January 8, 1990, upon the writ petitioner alleging certain imputation of misconduct and the petitioner was also asked to submit his written statement of defence within ten days from the date of receipt of the said chargesheet.

5. Charges incorporated in the said chargesheet are as follows : -

Article - I

That Shri Bhanu Pratap Gossain while functioning as Manager of Bongaon Branch of the erstwhile United Industrial Bank Ltd. during the period from September 1979 to March 1986 acted unauthorised/irregularly in allowing/disbursing advances to 217 borrowers for tractor loans in as much as that he did not follow the terms and conditions of the sanction and thereby committed acts prejudicial to the financial interest of the bank.

Article-II

That Shri Bhanu Pratap Gossain while working as Manager of Bongaon Branch of the erstwhile United Industrial Bank Ltd., during the period from September 1979 to March 1986 acted irregularly/unauthorisedly, in as much as, that he allowed advances without actually obtaining required margin money from 217 borrowers to whom advances were sanctioned/disbursed by him against purchase of tractors. By the aforesaid irregular acts, Shri Bhanu Pratap Gossain acted in a manner prejudicial to the interest of the Bank.

Article - III.

That Bhanu Pratap Gossain while working as Manager of Bongaon Branch of the erstwhile United Industrial Bank Ltd., did not ensure and use of the funds disbursed to 217 tractor loan borrowers. He did not verify the creation of assets out of the Bank's fund lent to the borrowers. He also accepted and held on record photocopy of a false Registration Certificate in respect of tractor No. AD/2274 Registration No. WBQ 6545 purportedly sold to one Shri Rabidas Mondal, whereas the said Registration No. WBQ 6545 was in respect of tractor No. AD/2422 sold to one Shri Gopal Chand Ghosh. The aforesaid acts of Shri Bhanu Pratap Gossain were detrimental to the financial interest of the Bank.

6. After receiving the chargesheet, the petitioner submitted his written statement

of defence on April 20, 1990, denying the said allegations levelled against him and after receipt of such written statement of defence, the respondent No. 1 started departmental enquiry against the petitioner.

7. In the written statement of defence, the writ petitioner inter alia, stated that he was very much relying upon the office noted dated November 28, 1985, wherein approval of the higher authority of the erstwhile United Industrial Bank Ltd, in respect of disbursement of the said loan, has been recorded, and, as such, the petitioner should not be charged in respect of the aforesaid three charges.

8. The petitioner further stated that an unethical attempt has been made by the respondent Bank to connect the margin money of the borrower with the self-drawn cheques of M/s. Mukherjee & Co. and M/s. Girinder Sunder & Co. only to victimise him with a malafide intention and also prayed for dropping of further proceeding which has been initiated on the basis of the impugned chargesheet dated January 8, 1990, without proceeding further in the said regard.

9. During the course of enquiry, the respondent Bank produced as many as 442 documents, which were marked as Exhibit M/1 to M/442 to prove the charges levelled against the petitioner and the petitioner submitted 7 documents, which were exhibited as D/1 to D/4 and E/8, E/9 and E/10, in respect of denial of all charges levelled against him.

10. According to the petitioner, the only management witness on behalf of the respondent Bank was Mr. N.N. Sinha, who joined at Bongaon Branch or erstwhile United Industrial Bank Limited on April 10, 1986, i.e. just after the transfer of the petitioner from the said branch and from his deposition in cross-examination by the Defence Assistant, it has been made clear that the charges levelled against the petitioner have not been proved beyond any shadow of doubt.

11. In this context, the petitioner submitted that the material truth has also been established from the answers of Management witness Mr. N.N. Sinha, against question Nos. 2, 5, 6, 7, 8, 11, 12, 16, 18, 19, 24, 27, 28 and 29 put forward by the Defence Assistant.

Xerox copy of the said cross examination has been annexed as Annexure "C" to the writ petition at pages 35 to 45.

12. According to the petitioner, from the deposition of the defence witness No. 1, Sri Bimalendu Chakraborty, who was the Regional Manager II of erstwhile United Industrial Bank Limited during the period from 1985 to middle of 1987, it was crystal clear that charges/imputations levelled against the writ petitioner, as per Articles of Charges No. I, II and III, have been purportedly set up against the petitioner.

13. The petitioner further submitted that Exhibit E/S. which is Annexure "F" at page 62 of the writ petition, has been well established from the depositions of the defence witness No. 1, wherein appreciation has been made by the higher

Bank authorities of erstwhile United Industrial Bank Limited, in respect of disbursement of loan for 217 tractors and also of recovery of the loan amount from the borrowers.

Xerox copy of the deposition of the said defence witness No. 1 has been annexed as Annexure "D" at pages 46 to 49 of the writ petition.

14. Further, according to the petitioner, the deposition of the defence witness No. 2, Sri Shriguranjan Sen clearly reveals that no irregularity was made in respect of disbursement of loan to the borrowers.

15. After completion of the said departmental enquiry, the petitioner also submitted his written argument before the Enquiry Officer, being the respondent No. 2 and in the said written argument the petitioner had categorically pointed out that the charges levelled against him were baseless and far from truth.

16. Upon completion of the departmental enquiry, the Enquiring Officer, Mr. N.C. Pandey, submitted his report to the disciplinary authority and in his report he came to the finding that the charge No. 1 is "conclusively proved" and the charge Nos. II and III are "half proved".

17. After receiving the report of the Enquiry Officer, the Disciplinary Authority straight way passed the order of removal dated December 31, 1990, which was communicated to the writ petitioner by covering Memo dated January 14, 1992, stated as aforesaid.

18. Being aggrieved by the said order of the Disciplinary Authority, the writ petitioner earlier filed an application under Article 226 of the Constitution of India, which was registered as C.O. No. 2907(W) of 1991.

19. By an order dated March 18, 1991, passed in the said writ petition, Kalyanmoy Ganguli, J. (as His Lordship then was), disposed of the writ petition, inter alia, granting liberty to the petitioner to agitate his grievances before the appropriate forum and with a further direction upon the appellate authority to dispose of the same, within 3 months from the said date, in accordance with law, if such appeal was filed by the petitioner.

20. Thereafter, in terms of the said order of the Hon"ble Court, the writ petitioner filed an appeal before the appropriate authority on March 26, 1991 and when the said appeal was not disposed of within 3 months from the date, subsequently filed a supplementary memorandum of appeal on September 21, 1991.

21. The appellate authority, however, rejected the appeal of the writ petitioner and passed an order of rejection, which was communicated by covering letter dated October 28, 1991, by the "anti dated order" dated May 29, 1991, without giving any opportunity to the writ petitioner of being heard and without considering the contentions of the petitioner canvassed, either in the Memo of Appeal of the Supplementary Memorandum of Appeal.

22. In the meantime, the present petition was moved on behalf of the writ

petitioner on October 1, 1991, challenging the Original Order of removal dated December 31, 1990. The appellate order dated October 28, 1991, containing anti dated order dated May 29, 1991, was disclosed by way of Supplementary Affidavit, affirmed on March 9, 1993, during the hearing of the writ petition.

23. Mr. L.C. Bihani, learned Advocate, appearing on behalf of the writ petitioner formulated several points in challenging the order of removal dated December 31, 1990, as well as the appellate order dated October 28, 1991, containing the anti dated order dated May 29, 1991, disclosed in the said comprehensive supplementary affidavit.

24. In the first place, Mr. Bihani submitted that the petitioner should not be charged after a lapse of 8 years relating to granting of loan and/or disbursement of loan to 217 borrowers for tractor, during the period from September 1979 to March 1986 when the petitioner was working as Branch Manager of erstwhile United Industrial Bank Limited, by way of chargesheet dated January 8, 1990 and as the said charges are too remote and stale no punishment could be inflicted, on the basis of the said stale charges, upon the writ petitioner.

25. In support of his contention, in challenging Article I and Article II of the chargesheet, Mr. Bihani placed strong reliance on a decision of the Division Bench, presided over by Chittatosh Mukherjee and Samsuddin Ahmed, JJ. (as Their Lordships then were) in the case of Subrata Chaki vs. State of West Bengal, reported in 90 CWN page 290.

26. In the said judgment, it has been held by the Division Bench as follows : -

It would depend on the facts and circumstances of each particular case whether because of inordinate delay either to initiate or conclude the disciplinary proceedings, the same ought to be quashed and such proceedings have been delayed because of the conduct of the delinquent himself, where he certainly cannot plead that he had been denied reasonable opportunity because of lapse of time. Again the delay would not be fatal in case the disciplinary authority remain restrained by order of the court or are prevented by any other sufficient cause from concluding the proceedings.

Where there was no injunction on the respondents from proceeding with the enquiries since April 21, 1981, the learned Trial Judge directed that enquiries be completed preferably within three months, the Appellate Court had made observations because the respondents had not taken steps in regard to the disciplinary proceedings, the delay has not been explained by either the Disciplinary Authority or the Enquiring Officer, and the charge was one of holding a violent demonstration sought to be proved by oral evidence, the appellants would be seriously prejudiced if the disciplinary proceedings be allowed to commence.

27. In paragraph 13 of the said Judgment, Chittatosh Mukherjee, J. (as His Lordship then was), observed as follows : -

In the instant case the charges framed in respect of the incident which allegedly occurred at the chamber of the Collector of Calcutta, the respondent No. 2, on 3rd March, 1981. In substance, the charge against the appellants was that they, inter alia, held a violent demonstration. The annexure of the chargesheet indicated that the charges against the appellants were proposed to be sustained by oral evidence of a persons. The chargesheet did not mention any documentary evidence in support of the prosecution case. Presumably, on the basis of the oral evidence, the respondents proposed to establish the said charges against the appellants. The appellants are likely to be seriously prejudiced if the disciplinary proceeding against them is now started. We are not prepared to allow the respondents further time to hold enquiry when they themselves have not explained why they did not hold the disciplinary proceeding for such a long time.

28. Secondly, Mr. Bihani submitted that sanction of loan having been granted with the approval of the higher authority, the petitioner should not be found to be "a scape goat" for disbursing the loan, without actually obtaining required margin money from 217 borrowers, to whom advances were sanctioned against the purchase of tractors.

29. Mr. Bihani in the next place submitted that the writ petitioner cannot be found guilty for acting in violation of Rule 9.1 of the erstwhile United Industrial Bank Ltd Officers" (Service & Conduct) Rules, 1979, which amounts to gross misconduct under Rule 9.2 (iv)(i) of the said Rules.

30. Further, Mr. Bihani submitted that the charges levelled against the petitioner were not being proved in its entirety by the Enquiry Officer himself, as he was not satisfied in respect of proving of the charges No. II and III, no punishment could be imposed by the Disciplinary Authority, on the basis of the said charges.

31. Mr. Bihani further submitted that the charges being "inter-related" and/or "inter-mingled" in nature and not being "severable", if one charge goes, no punishment could be imposed on the basis of the other charges, upon the petitioner and the observations of the Supreme Court in the case of State of Orissa vs. Bidyabhusan Mahapatra, reported in AIR 1963, SC page 779, cannot be applied in the facts of the present case, as the charges levelled against the petitioner admittedly are inter-mingled in nature.

32. In the said case, Supreme Court reversed the finding of the Orissa High Court, holding, inter alia, as follows : -

The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orrisa to reconsider the question.

33. In respect of disbursement of loan twice against one tractor, Mr. Bihani

submitted that the said charge is palpably wrong and not maintainable, since the registering authority, Motor Vehicles Department, Barasat, has already certified that there are "two tractors", against which the said two advances were disbursed, which will be clear from Annexure "P" and "Q" to the supplementary affidavit, filed by the petitioner.

34. In the next place, Mr. Bihani submitted that although the petitioner had canvassed all these points in detail before the appellate authority, but the appellate authority, but the appellate authority, but the appellate authority not having disposed of the appeal within 3 months, as directed by Kalyanmoy Ganguli, J. of the Court, having purported communicated the anti dated order after receiving the supplementary Memorandum of Appeal and moving of the present writ petition on October 1, 1991, by the communication dated October 1, 1991, by the communication dated October 28, 1991, containing the anti dated May 29, 1991, and as such, did not exercise jurisdiction, in accordance with the directions, passed by Kalyanmoy Ganguli, J. of this Court and as such, the said anti dated appellate order dated May 29, 1991, should also be set aside.

35. Mr. Bihani further submitted that the appellate authority did not pass any "reasoned and/or speaking" order and did not deal with the points raised in the Supplementary Memorandum of Appeal, dated September 21, 1991, though admittedly, no appellate order had seen the light of the day before October 28, 1991.

36. Lastly, Mr. Bihani submitted that the punishment of removal from service, imposed upon the petitioner is "disproportionate" and "too harsh" and the same should be interfered with.

37. In connection with this branch of submission, Mr. Bihani has referred to the decision of the Supreme Court in the case of Bhakat Ram vs. State of Himachal Pradesh, reported in AIR 1983, SC page 454.

38. Mr. Durga Sankar Mallick, learned Advocate, appearing on behalf of the respondents, submitted that while the writ petitioner was serving as the Branch Manager of Bongaon Branch of the erstwhile United Industrial Bank, which was subsequently amalgamated with the Allahabad Bank, had unauthorisedly or irregularly allowed or disbursed advances to 217 borrowers and accordingly, the chargesheet dated January 8, 1990 was served against the petitioner for his acts or irregularities.

39. Mr. Mallick further submitted that to ensure simultaneous delivery of the tractor/trailor etc. from M/s. Mukherjee & Company and Girinder Sumander & Company, supplier of the tractor/trailor etc. to the borrower, after importing the same the Manager (the writ petitioner herein) was expected to verify that they should have sufficient stock in their hand and the Branch Manager should ascertain the said fact from the said supplier.

40. Mr. Mallick also submitted before this Court that the Bank has already filed a

suit against the said Mukherjee & Company for recovery of the money advanced to them for delivery of five tractors, but the Bank could not take any legal action against five borrowers, as the tractors were not delivered to them.

41. Mr. Mallick then referred to the Enquiry Officer's report and submitted that according to the Enquiry Officer, the Charge No. I is conclusively proved and the Charge Nos. II and III are partially proved.

42. Mr. Mallick then referred to the decision of the Disciplinary Authority, who has passed the order of removal, after careful consideration and on perusal of the enquiry report, which runs as follows : -

It was also found :

The petitioner, while allowing/disbursing loan amount grossly violated the instructions in the manner that he did not ensure simultaneous delivery of tractor along with release of loan funds to the supplier. He released the funds to the supplier and left it to the supplier to supply the tractor at his own convenience, resulting in supply of tractors from one to 12 months to the borrowers. Moreover, in five cases tractors have not been supplied to the borrowers. Even in certain cases where tractors have been supplied proper supply of inputs have not been made.

This shows that the petitioner favoured the supplier with a view to giving him undue financial gains. He was very much negligent also and did not care to inspect the supply of inputs/accessories which facilitated the supplier to supply less or defective inputs. The petitioner was so much careless that documentation was not properly done and even primary security document "pronote" is defective in certain cases.

He failed to ensure the proper enduse of funds and as a result considerable portion of bank funds remained blocked with no use and the very purpose of advance is defeated.

43. According to Mr. Mallick, the punishment of removal from service is not too harsh and in view of the recent observation of the Supreme Court in the case of Union of India vs. Paramananda, reported in AIR 1989 SC page 1185, in particular paragraph 27, this Court sitting in Article 226 of the Constitution, is not in a position to reduce the punishment following the earlier decision of the Supreme Court in the case of Bhakat Ram vs. State of Himachal Pradesh (Supra).

44. Lastly, Mr. Mallick has referred to the decision of the Supreme Court in the case of State of Haryana and Another Vs. Rattan Singh, in support of the proposition that sufficiency of evidence in proof of the findings by domestic tribunal, cannot be scrutinised by this Court.

45. Therefore, on the basis of the aforesaid submissions made on behalf of the rival parties, it has become necessary for this Court to have a judicial review of the punishment of removal from service, imposed upon the writ petitioner, on the

basis of the aforesaid charges.

46. In any opinion, in view of the conclusion of the Enquiry Officer that charge No. I had only been "proved" and the other two charges, namely, Charge No. II and Charge No. III have been "partially proved", and the charges, being inter related and/or inter mingled in nature, no punishment should be imposed by the disciplinary authority in totality of the charges and the decision in the case of State of Orissa vs. Bidyabhusan Mahapatra, (Supra) cannot apply in the facts of the present case.

47. At the very outset, this Court is of the view that the chargesheet issued against the writ petitioner relating to an incident during the period from September 1979 to March 1986 "is stale" and no proceedings could be initiated on the basis of the said chargesheet dated January 8, 1990, more so when the petitioner having obtained sanction from the higher authorities of the Bank, in the matter of granting advance, referred to above.

48. this Court further is of the view that the disciplinary authority, being the superior officer of the Allahabad Bank, in order to protect their own skin, has found the writ petitioner being the erstwhile Branch Manager of the United Industrial Bank Limited, "a scape goat" only to absolve their responsibility in respect of sanctioning and/or disbursing of the loan.

49. In my view, the punishment of removal from service, on the basis of the afresaid charges, which could not be proved conclusively, is "disproportionate" and "too harsh" and should be interfered with by this Court, on the basis of the cardinal principles laid down by the judgment of the House of Lords, in the case of Council of Service Union vs. Minister of Service for Stale, reported in 1984(3), Weekly Law Reports, Page 1174 (House of Lords), wherein Lord Diplock has observed that "anything disproportionate should be discarded", on the basis of which the earlier decision of the Supreme Court in the case of Bhagat Ram vs. State of Himachal Pradesh (supra), was pronounced by the Supreme Court.

50. In my opinion, the appellate authoirty not having (sic) with all these points, in details, which have been taken in the supplementary Medoran-dum of Appeal, both the order of removal from service dated December 31, 1990 and the Appellate Order dated October 28, 1991, containing anti dated order dated May 29, 1991 passed by the Deputy General Manager of the Bank, are liable to be set aside.

51. Accordingly, the order of removal from service dated December 31, 1990 (Annexure "G" to the writ petition) and the appellate order dated October 28, 1991, containing the anti dated order dated May 29, 1991, are hereby set aside.

52. The petitioner will be entitled to join his service forthwith and to report at the Head Office of the Allahabad Bank to get his assignment and will be entitled to full salary during the period of enquiry, till this date, as the petitioner has not been sustended in the intervening period, and will be entitled to other service

benefits.

53. Let a writ in the nature of Mandamus do issue restraining the respondents from giving any effect or further effect to the order of removal dated December 31, 1990, Annexure "G" to the writ petition and allow the petitioner to join, within 3 days from communication of the plain copy of the operative part of this judgment. The writ petition is allowed, to the extent indicated above.

Let plain copies of operative part of this judgment be handed over to the learned Advocates for the parties, on usual undertaking.