
(2003) 08 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (C) No. 2492 of 1999

Bichitra Nath Deka

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 — Rule 7(2)

Citation : (2004) 1 GLR 59

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : R.P. Sharma and B. Chakraborty, for the Appellant; A.C. Sarma and A. Deb, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—An order imposing the punishment of reduction 5 stages in time scale with cumulative effect on the writ petitioner is the subject-matter of challenge in the present writ petition.

2. The aforesaid punishment has been imposed on the writ petitioner on the following facts and circumstances.

A memo dated 3.3.1994 was issued by the disciplinary authority of the respondent-Bank levelling certain charges against the writ petitioner and asking him to furnish his written explanation as to why disciplinary action should not be taken against him. The petitioner showed cause and the same having not satisfied the authority, it was decided by memo dated 22.7.1995 that a departmental enquiry ought to be held in respect of the charges against the writ petitioner, the details of which were enclosed to Annexure-1 to the memo dated 22.7.1995. The statement of imputation of misconduct, list of documents, in support of the charges and the list of witnesses were enclosed to the Memo dated 22.7.1995. It must be noticed at this stage that the charges against the writ petitioner were 3 in number. An enquiry was held in respect of the said

charges in which the petitioner participated and at the conclusion of the enquiry a report was submitted holding none of the charges to have been proved on the basis of the evidence, oral and documentary adduced in course of the enquiry. The report of the enquiry was furnished to the disciplinary authority. By memo dated 13.1.1997, the disciplinary authority informed the petitioner that while it agreed with the findings of the enquiry officer in respect of the charge No. 3, it was inclined to disagree in respect of Charge Nos. 1 and 2. In the memo dated 13.1.1997, the specific reasons for which such disagreement was proposed by the disciplinary authority were indicated and the petitioner was asked to show cause. The petitioner submitted his reply on 31.9.1997 and on consideration of the same the disciplinary authority by order dated 29.6.1998, recorded its view, on the reasons assigned that all the 3 charges against the writ petitioner stood proved on the basis of the materials adduced in course of the enquiry. The disciplinary authority proposed to inflict the punishment of reduction to first stage in the time scale of Junior Management Grade Scale-1 on the petitioner while in respect of the 2nd charge, the penalty of reduction of 5 increments in the time scale was proposed, in so far as the 3rd charge is concerned, reduction of four increments in the time scale was proposed. As the first punishment proposed took care of the other two proposed punishments, the disciplinary authority took the view that a consolidated penalty of reduction to first stage in the time scale of Junior Management Grade Scale-1 would be adequate and sufficient. Aggrieved, the petitioner filed a departmental appeal and the appellate authority while upholding the findings of the disciplinary authority, thought it proper to reduce the punishment to reduction of 5 stages in time scale with cumulative effect, on the petitioner. Still aggrieved, the instant writ petition has been filed.

3. I have heard Mr. R.P. Sharma, learned counsel appearing on behalf of the writ petitioner and Mr. A.C. Sarma, learned counsel for the respondent-Bank.

4. Mr. R.P. Sharma, learned counsel for the writ petitioner has based his challenge in the present writ petition primarily on one single issue. Learned counsel by placing before the Court the provisions of the Central Bank of India Officers Employees" (Discipline and Appeal Regulations) 1976, hereinafter referred to as the Regulations, has contended that regulation provides for an elaborate procedure for imposition of major penalties. Placing before the Court, the provisions of the Regulation 7, which deals with action to be taken on the enquiry report, learned counsel has contended that though under Rule 7(2), in case the disciplinary authority disagrees with the findings of the enquiry officer, it is required to record its reasons for such disagreement and thereafter record its own findings in the matter, the requirement of furnishing an opportunity of hearing, though not provided specifically by Regulation 7(2) must be read in the said Regulation, so as to make the said provisions of the regulation compatible with the requirements of natural justice. The opportunity, which is contemplated, according to the learned counsel, is an opportunity of personal hearing ; an opportunity to represent in writing against the proposed disagreement, will not

suffice and meet the requirements of natural justice. Reliance has been placed in this regard on an Apex Court judgment in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another*, As in the present case no opportunity of personal hearing was afforded to the writ petitioner and only an opportunity to show cause in writing was granted, it is the contention of the learned counsel for the petitioner that the eventual order imposing the punishment must be held to be vitiated.

5. Countering the argument advanced on behalf of the petitioner, Mr. A.C. Sarma, learned counsel for the respondents has contended that while it is correct, in view of the decisions of the Apex Court, that opportunity must be afforded to a delinquent employee before any disagreement with the findings of the enquiry officer is finally recorded by the disciplinary authority, such an opportunity cannot be understood to mean a requirement of personal hearing in all cases. According to the learned counsel for the respondents, the law laid down by the Apex Court in the case of *Yogi Nath D. Bagde (supra)* is not an authority for the aforesaid proposition. It is further argued that in the present case an opportunity to show cause against the proposed disagreement was allowed to the writ petitioner by the memo dated 13.1.1997. The writ petitioner showed cause and no opportunity to further present his case by means of an oral and personal hearing was sought by the writ petitioner. In such circumstances, it is argued, the submissions made on behalf of the petitioner are of no avail.

6. A perusal of the judgment of the Apex Court in the case of *Bagde (supra)* would go to show that while the tenor of the expressions contained in the said judgment would be prima facie suggestive of the fact that what the Apex Court has held to be a requirement of principle of natural justice is an opportunity of hearing prior to finalizing the proposed disagreement of the disciplinary authority with the findings of the enquiry officer, yet an attempt must be made to find out the true ratio laid down by the Apex Court, i.e., whether the Apex Court really intended to lay down that the opportunity required to be afforded must be an opportunity of oral or personal hearing.

7. The requirements of the principles of natural justice have time and again been held by numerous judicial pronouncements to be flexible and not to be understood as operating in any straitjacket formula. To what extent such principles should extend and in what manner, have always been understood to depend on the facts and circumstances of a given case. Whether in the facts of a given case an opportunity to represent in writing is adequate or whether such opportunity must be in the form of a personal hearing cannot be decided on the basis of any rule of general application. Much would depend on the facts and circumstances of each case. The Apex Court, in the case of *Bagde (supra)* followed the law laid down in the case of *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, In the case of *Punjab National Bank (supra)*, the Apex Court considered as to what would be the true purport and effect of Regulation 7(2) of the *Punjab National Bank Officers Employees' (Discipline and Appeal)*

Regulations, 1977. Regulation 7(2) of the aforesaid Regulations did not specifically provide for any opportunity to the delinquent employee prior to finalisation of any proposed disagreement of the disciplinary authority with the findings recorded in favour of the delinquent employee by the enquiry officer. The Apex Court on an elaborate consideration took the view that in accordance with the principles of natural justice, before any such disagreement is finalized, an opportunity to represent must be afforded to the affected employee. No opportunity of personal hearing was visualized as necessary. The provisions of Regulation 7(2) dealt with by the Apex Court in the case of Punjab National Bank (supra) is *pari materia* with the provisions of Regulation 7(2) of the instant Regulations governing the writ petitioner. The view of the Apex Court, as contained in paragraph 19 of the judgment would be of considerable assistance to ascertain the true meaning of the words "opportunity of hearing" as appearing in the judgment of the Apex Court in the case of Bagde (supra). The aforesaid paragraph 19 may, therefore, usefully be extracted;

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority, disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority, records its findings on the charges framed against the officer."

8. The further reliance on behalf of the petitioner on a recent judgment of the Apex Court in the case of State Bank of India and Others Vs. K.P. Narayanan Kutty, would stand answered by the above discussions.

9. For the aforesaid reasons, this Court is inclined to hold that the opportunity which has to be conferred on an affected employee before any disagreement with regard to the findings reached by the enquiry officer in his report is finalized by the disciplinary authority, may not in all cases take the form of a personal hearing. No such law of general application can be understood to have been laid down by the Apex Court as contended on behalf of the petitioner. This is, however, not to be understood that the opportunity required to be conferred, excludes, in all cases, the requirement of a personal hearing. In the facts of a given case such an opportunity of personal hearing may be required to be given. However, in the instant case as the proposed disagreement was sought to be made on the basis of materials adduced in course of the enquiry proceedings in which the writ petitioner had participated and further as the writ petitioner had

represented in writing against such proposed disagreement indicating the reasons why such disagreement should not be made final and also as no opportunity of personal hearing was asked for, I am of the view that in the facts of the present case, the opportunity conferred, i.e., to represent in writing was adequate and meets the requirement of natural justice.

10. In view of the foregoing discussion, this writ petition has to fail. It is accordingly dismissed. However, having regard to the facts and circumstances of the case, there shall be no order as to costs.