

(2012) 01 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Appeal No. 258 of 2010

Bilaspur Raipur Kshetriya Gramin Bank and Others	APPELLANT
Vs	
Ram Prasad Khande	RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 2 CG.L.R.W. 25

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : P.K. Verma, with Mr. Virendra Verma, for the Appellant; Ashish Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the order dated 12th of July, 2010, passed in W.P. No. 970 of 1993. By the impugned order, the writ petition filed by the respondent/petitioner challenging the order dated 26-4-1988 (Annexure-P-1 in the writ petition), whereby the respondent was removed from service, was allowed and the order of removal was quashed and it was declared that the respondent shall be entitled to all the consequential benefits. The respondent was serving as an Officer with the appellant's Bank since 1984. He was served with a charge-sheet dated 3-12-1986. Reply was submitted by the respondent on 13-12-1986. An enquiry was conducted and thereafter, by the impugned order dated 26-4-1988 (Annexure-P-1 in the writ petition), he was removed from service. The respondent filed an appeal against the said order which was rejected by the Board of Directors vide resolution dated 23/24-5-1989 and the decision was communicated to the respondent vide letter dated 26-5-1989.

It was contented before the Writ Court that the charge-sheet does not enclose any list of documents, on which, reliance was placed; it also does not contain any list of witnesses; even after making repeated efforts by the respondent by making representations to the concerned authorities to supply the relevant

documents, the documents were never supplied; the respondent was denied access to the relevant documents, no opportunity was afforded to the respondent to have inspection of the relevant documents and, as such, the respondent was not in a position to reply to the show cause notice effectively; only formal inspection was allowed which was not sufficient for preparation of defence and put forward his case properly before enquiry officer.

The Writ Court recorded the findings that alongwith the charge-sheet and imputation of charges, no list of documents was supplied and, as such, the respondent was not afforded an opportunity to put forward his case in response to the show cause notice alongwith the charge-sheet; even, no documents were supplied alongwith the charge-sheet on the basis of which the charges were framed and the respondent had no opportunity to meet the charges for want of material documents. The Writ Court held that prejudice caused to the respondent was writ large, as in absence of proper material, the respondent was deprived of opportunity to put forward his case in his defence. The order of removal was indefensible. The order of removal, therefore, was quashed.

2. Mr. P.K. Verma, learned Senior Advocate appearing on behalf of the appellants, firstly contended that all the relevant documents were made available for inspection to the respondent during the enquiry; sufficient time was granted to him to prepare his defence; the respondent did not raise any objection relating to non supply of the documents at the time of enquiry; and the Enquiry Officer had afforded full opportunity to the respondent and then only order of removal was passed. Mr. Ashish Shrivastava, learned counsel appearing on behalf of the respondent, opposed these arguments. Mr. Shrivastava took us through the charge-sheet. The charge-sheet was issued on 3-12-1986. On perusal of the charge-sheet it is clear that no document was supplied to the respondent alongwith the charge-sheet. Even list of witnesses was not annexed with the charge-sheet. He also took us through a communication dated 7-5-1987 (Annexure-P-5) issued by the bank to the respondent in response to his letter dated 22-4-1987 relating to supply of the list of witnesses and list of documents. We would like to quote the contents of the above communication dated 7-5-1987, which would make the picture clear. The communication dated 7-5-1987 reads as follows:

3. On perusal of the contents of the above communication and the charge-sheet it is crystal clear that neither the list of documents nor the documents nor the list of witnesses were supplied to the respondent alongwith the charge-sheet and when the respondent made an application for their supply on 22-4-1987, which is clear from communication dated 7-5-87, the appellants did not supply all this to the respondent and contended that those materials will be filed during the course of enquiry and the respondent shall have opportunity to see them and to cross-examine the witnesses. Mr. Verma has also not disputed that the list of documents and list of witnesses, on which the reliance was placed by the bank, were never supplied to the respondent.

4. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, , the Supreme Court held that when a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case. It was further held in this case, vide para 12, as under:-

12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.

A similar view was taken in *Trilok Nath v. Union of India* 1967 SLR 759 (SC). Considering the above judgments and many other judgments, the Supreme Court again reiterated similar view in *State of U.P. and Others Vs. Saroj Kumar Sinha*,

5. We have examined the case of the respondent in light of the above decisions of the Supreme Court. In the instant case various composite charges giving names, details of money and other particulars in tabular form, are contained in the charge-sheet. It is a composite charge-sheet having multifarious allegations against the respondent, quoting various instances in a long span of time, amounting to alleged misconduct. We are of the view that unless the documents relating to the above allegations and the list of witnesses relating to them are supplied, no one will be able to file a reply and to prepare a defence in regard to the above allegations/charges contented in the charge-sheet. We are of the view that on account of non supply of the documents and the list of witnesses, great prejudice was caused to the respondent. Therefore, the learned Single Judge was right in recording the findings that it was a case in which the principles of natural justice were not complied with and the impugned order of removal of the respondent was passed.

6. Mr. Verma next contended that the respondent was removed from service since 1988. He has not done any work since 1988 till date. Therefore, as a

consequence of allowing the writ petition, he may not be awarded full arrears of salary and the impugned order relating to entitlement of consequential benefits, which shall also include the payment of arrears of salary, may be suitably modified. He cited the decision of Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, .

7. In Surjeet Ghosh, the appellant was a Probationary Officer in the bank. He was placed under suspension on 23-3-1982 and a disciplinary proceeding was drawn. Ultimately he was dismissed on 14-11-1985. Aggrieved with the said order, the appellant approached to the High Court by way of writ petition. The learned Single Judge of the High Court dismissed the same and the Division Bench in appeal confirmed the said order. Aggrieved by the decision of the High Court, the appellant filed an appeal before the Supreme Court. On various grounds, the Supreme Court found the dismissal improper and suffering from inherent defect and set aside the same. About the consequential benefits particularly relating to the arrears of salary, the Supreme Court observed and directed vide para 8 & 9 as follows:-

8. The question, however, is what consequential order should be passed in the present case. It will not be fruitful to send the matter back to the Bank for rehearing of the matter by the named disciplinary authority since the appellate authority which is the higher authority has already taken a decision in the matter and it cannot be expected that the lower authority will take a different decision. These proceedings have been pending against the appellant right from the year 1982 till this day and the appellant has been out of employment for all these years. At one stage, the appellant had offered to forego all the arrears of his salary provided he was reinstated in service on the post to which he would be entitled at present on the basis of his continuous service till date. We had suggested to Shri Gupta appearing for the respondent-Bank to take instructions in the matter. The respondent-Bank however, has chosen to reject the offer and has instead suggested that the Bank would like to pay compensation to the appellant since it has lost confidence in him. We have considered the charges against the appellant and we find that apart from the fact that much can be said in favour of the appellant in support of his contention that the charge has been trumped against him. The inquiry also prima facie suffers from defects as pointed out above, though we must add that we have not gone into the merits of the said defects. The appellant is an ex-Army Officer. What is further, the compensation amount, if directed to be paid would come to about Rs. 20 lakhs. The Bank is a nationalized Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this period just because the Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he was nothing to do with the monetary transactions of the Bank, such as the establishment section, etc., even assuming that the Bank has reasons to lose confidence in him.

9. We are informed at the Bar that the post to which he would be entitled be in

Grade Scale IV with the basic pay of Rs. 5350 per month which is on par with the contemporary existing officers of the Bank who have been promoted to Grade Scale IV on and from 29-5-1993. We, therefore, direct as follows (a) the appellant should be paid a compensation of Rs. 50,000/- in lieu of his claim for arrears of salary; (b) he should be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled today on the basis of his continuous service, within four weeks from the date of receipt of this order.

8. In the instant case, the respondent is out of employment since 1988 and a huge amount of arrears of salary would be payable to him, which he will get even without working for a single day. It was stated at Bar (both the counsel) that amount towards the arrears of salary, in the present case, would be more than 40 lakhs as the respondent is out of employment since 1988 till this date. It is an admitted position that the money with the bank belongs to the public and a huge amount cannot be paid to anyone for doing no work. We are of the view that in the above facts and circumstances of the case, lump-sum payment of Rs. 5,00,000/- towards the claim of salary would be just and proper in this matter, which we allow in that account. Except the above modification relating to arrears of salary the respondent would be entitled to all other consequential benefits flowing out of the order dated 12-7-2010 passed by the writ court

9. The appeal is allowed to the extent indicated above. There shall be no order as to cost.