
(1995) 03 CAL CK 0004
In the Calcutta High Court
Case No : Civil Order No. 18615 (W) of 1993

Bimalendu Mondal

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Citation : (1998) 1 ILR (Cal) 489

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharjee, Rameshwar Bhattacharjee and Kazi Safiuddin Ahmed, for the Appellant; Udayan Sen, for the Respondent

Judgement

Satyabrata Sinha, J.—Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent Bank.

2. The Petitioner in this writ application has, inter alia, prayed for the following reliefs:

a) A Writ in the nature of Mandamus commanding the Respondents authorities to re-call and/or withdraw and/or set aside and/or quash the charge sheet, which is set out as Annexure "C" and "F" to Writ petition. And further commanding the Respondent authorities specially Respondent Nos. 3 and 4 not to proceed with the Enquiry proceeding on the basis of the aforesaid charge sheet.

b) A Writ in the nature of Mandamus commanding the Respondent to give opportunity to the Petitioner delinquent employee to have an access to the relevant papers and documents, Ledger etc. upon which charge is based on for the shake of preparing reply to the charge sheet in terms of the representation submitted by the Petitioner with the Respondent authorities and further commanding the Respondent authorities to give an opportunity to the Petitioner to submit reply to the charges mentioned in the aforesaid charge sheet.

3. Admittedly the Petitioner has been charge sheeted and the departmental

proceeding has been initiated against him in terms of the charge sheet dated February 19, 1993. The Petitioner filed a representation on April 5, 1993 before the Disciplinary Authority. The Petitioner further made representations on May 13, 1993 and June 17, 1993 before the concerned authority asking them not to proceed with the Enquiry proceeding in view of the fact that he was facing a Criminal trial. The Petitioner further prayed for time to file written statement on the ground that the copies of the document mentioned in the charge sheet have not been furnished to him. The Petitioner on June 26, 1993 also filed a representation before the Chief Manager, Personnel Department, Administration Division, for permission to appoint a Lawyer as defence representative to defend him in the aforementioned departmental proceeding.

4. Mr. Bikash Ranjan Bhattacharjee, learned Counsel appearing on behalf of the Petitioner submits that keeping in view the fact that the Petitioner is also facing a Criminal trial, the Departmental Proceeding should be stayed. The learned Counsel submits that in any event the copy of the relevant documents mentioned in the charge sheet should be furnished to the Petitioner in order to enable him to file the effective reply. The learned Counsel next points out that in terms of Clause 521(3) of the Shastri Award the Petitioner is entitled to the subsistence allowance at the enhanced rate but the Bank has denied the same. The learned Counsel also submits that the Petitioner should also be permitted to appoint a Lawyer as defence representative to defend him in the departmental proceedings and in support of his aforementioned contention he has relied upon a decision of the Supreme Court in the case of J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, The Petitioner is under suspension since 1992.

Mr. Udayan Sen, learned Counsel appearing on behalf of the Respondent Bank submits that the Petitioner will be permitted to inspect the relevant documents and papers only at the time of preliminary hearing of the departmental proceedings. It has also stated that the Petitioner is being paid subsistence allowance under the Bi-partite agreement by mistake as the Petitioner is entitled to the subsistence allowance under the West Bengal Payment of Subsistence Allowances Act. The learned Counsel states that the amount paid to the Petitioner can be adjusted and the mistake can be rectified.

5. Mr. Sen, learned Counsel, further submits that the Petitioner is not entitled to the assistance of a Lawyer. He also points out that in fact the Petitioner accepted the payment of subsistence allowance under the West Bengal Payment of Subsistence Allowance Act but now he has prayed for the payment of subsistence allowance under the Shastri Award. The learned Counsel further states that the Bank has no objection to pay the subsistence allowance under the Shastri Award upon adjustment of the excess amount paid to him.

6. The contention of Mr. Bhattacharjee, learned Counsel, that the departmental proceedings should be stayed cannot be accepted.

7. The Respondent in the affidavit-in-opposition has categorically stated that the

Criminal prosecution and the Departmental proceeding are quite different. Moreover the departmental proceedings have been initiated in the year 1992.

8. In this view of the matter, in my opinion, it is not a fit case in which a direction of stay of the Departmental proceedings could be given.

9. In the affidavit-in-opposition the Respondent has clearly stated that the Petitioner would be furnished with the copy of the relevant document and the Petitioner would be allowed to peruse the same in the departmental proceedings.

10. In this view of the matter, in my opinion, the Petitioner should file a written statement within two weeks from date. However, it goes without saying that in the event upon furnishing the copy of the document and/or on inspection thereof the Petitioner thinks it fit and proper to file an additional written statement, the same may also be accepted by the Disciplinary Authority.

11. It is true, as has been contended by Mr. Sen, learned Counsel, that the Petitioner is not entitled to be represented by a Lawyer in the disciplinary proceeding as the representing Officer of the Bank does not have any knowledge of Law.

12. Keeping in view the said statement and in view of the fact that the Petitioner is also facing a Criminal trial, in my opinion, the Disciplinary Authority should have exercised his discretion in accepting the prayer of the Petitioner to be represented through a Lawyer.

13. I, therefore, direct the Disciplinary Authority to allow the Petitioner to be represented by a Lawyer as defence representative.

14. This order, however, shall not create any precedent. In the event the Disciplinary Authority intends to appoint any representing Officer who has a knowledge of Law he may do so.

15. So far as the payment of subsistence allowance is concerned, keeping in view the submission made at the Bar, it is directed that the Petitioner shall be paid the subsistence allowance in terms of the Shastri Award subject to the adjustment of over payment to the Petitioner. In the event any dispute arises the same should be decided by the Chief Manager (Personnel), Administration (Staff) Division.

16. However keeping in view the fact that the Petitioner has been placed under suspension in 1992, the interest of justice will be subserved if a direction be given for early conclusion of the departmental proceeding.

17. In this view of the matter, the Respondents are hereby directed to conclude the departmental proceeding at an early date and preferably within a period of three months from the date of communication of this order.

18. It is made clear that the Petitioner shall render all co-operations with the Enquiry Officer in smooth conduct of enquiry proceedings.

19. In the event the Petitioner does not render his cooperation with the Enquiry

Officer for smooth conduct of the enquiry proceeding, the Enquiry Officer may proceed in accordance with law.

20. In the event the Disciplinary proceeding is not concluded within the aforementioned period despite all co-operations by the Petitioner, the order of suspension as against the Petitioner shall stand revoked.

21. However, it goes without saying that in such an event it will be open to the Respondent Bank not to take any work from the Petitioner, if the Bank so desires, but the Petitioner shall be entitled to the full salary and allowances as admissible.

22. The writ application is disposed of with the aforementioned observations.

23. There will be no order as to costs.