
(2011) 09 CAL CK 0129
In the Calcutta High Court
Case No : Writ Petition No. 9324 (W) of 2010

Bistupada Das

APPELLANT

Vs

State Bank of Bikaner And Jaipur

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 396, 397, 412

Citation : (2011) 5 CHN 14

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ashok Sarkar, Nemai Ch. Saha, for the Appellant; Dilip Kr. Dhar, Kaushik Mondal for the respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The Petitioner, Bistupada Das has filed this Writ Petition praying for an Order upon the Respondents to withdraw and/ or cancel the Orders/ Notices/Letters dated 23.02.2008, 15.03.2008 and 31.03.2008 as contained in Annexures- P/7, P/9 and P/12 respectively.

By the Order dated 23.02.2008 (Annexure-P/7), the Notified Disciplinary Authority, while forwarding a copy of the Enquiry Report dated 12.06.2004, informed the petitioner that he differed from the findings recorded therein and accordingly, by his own reasons, held that the charges levelled against the Petitioner stood proved. Having so held, he directed the petitioner to make his submissions within ten days from the date of receipt of the said letter failing which it would be presumed that he had no submissions to make and the matter would be proceeded with further.

By reason of the Letter/Order dated 15.03.2008 (Annexure-P/9), the Notified Disciplinary Authority, having referred to the chargesheet dated 07.04.2003, the Enquiry Report dated 12.06.2004 and the Order dated 27.11.2007 passed by this Court in W.P. No. 10673 (W) of 2006 (Annexure-P/6) and also the reply filed by

the Petitioner against the letter dated 23.02.2008, held the Petitioner guilty of all the Charges and informed him that he had tentatively decided to impose the punishment of "Dismissal from Service without Notice" but before doing so, he asked the Petitioner to file a "show-cause" within seven days explaining as to why the said punishment should not be imposed upon him.

By reason of the Order/Letter dated 31.03.2008 (Annexure-P/12), the Notified Disciplinary Authority, while holding the charges made against the petitioner as proved and observing that although there was nothing adverse in his past records, nevertheless Dismissed him from Service by taking into consideration the gravity of the charges which were proved against him. He also held that the entire period of suspension would be treated as such and apart from the subsistence allowance which he had already received, he would not be entitled to any salary, allowances or other consequential benefits including annual increments. The Notified Disciplinary Authority also gave liberty to the Petitioner to prefer an Appeal before the Appellate Authority.

The petitioner has also prayed for an Order commanding upon the respondents to cancel the Appellate Order dated 24.11.2009 (Annexure-P/17) whereby and whereunder the Deputy General Manager-cum-Appellate Authority dismissed the Appeal, thereby upholding the Order of the punishment of Dismissal from Service without Notice.

2. It appears that the petitioner was suspended for being implicated in a Police Case registered with the Hare Street Police Station being Sessions Case No. 55 of 1997. It also appears that the petitioner was not found guilty in that case by the Criminal Court and was acquitted. The petitioner had earlier come to this Court vide W.P. No. 10673 (W) of 2006. Judgment in that case was delivered on 27.11.2007 and the fact of that Criminal Case was also duly recorded therein at Paragraphs 6 and 7. Those Paragraphs read as follows:-

6. "Let it be recorded here at this stage that so far as the Criminal Case was concerned, the allegations were that on the 22nd day of March, 1997, at about 1.15 p.m. the accused persons were alleged to have committed dacoity in as much as while the Complainant was working in a shop situated at 54A. Old China Bazaar Street, 3/4 miscreants suddenly caught hold of another person and attempt to snatch away a black coloured suitcase from his hand. One of the miscreants was carrying a revolver and another, a razor. The miscreant with the razor hurt the man with the suitcase and then the other miscreant carrying the revolver shot at him as a result of which, he fell down bleeding and then, there was a bomb blast whereafter the miscreants fled with the suitcase. On the basis of a written complaint. Hare Street Police Station Case No. 174 dated 22.3.1997 was lodged and after investigation, chargesheet under sections 396 and 397 IPC was submitted against the petitioner and other accused persons. These facts have been gathered from the judgment of the learned City Sessions Court (Annexure P/2)."

7. "The aforementioned police case then gave rise to Sessions Case No. 55/ 1997 which was tried by the learned City Sessions Court (Vith Bench) at Kolkata and by Judgment dated 8.7.2003 (as contained in Annexure P/2), the Petitioner (Bistupada Das) along with the other accused persons were not found guilty under Sections 396 and 397 of the Indian Penal Code and accordingly, acquitted. (QUOTED)

3. It appears that thereafter an Enquiry Report was submitted on 12.06.2004 holding that the Charges against the petitioner were not proved. The Report of the Enquiry Officer was also noticed in Paragraph 12 of the earlier judgment referred to above and for the sake of convenience the same is reproduced below:

12. "After the above mentioned findings, the Enquiry Officer gave his final conclusions in Para-26 of the Report which read as follows:-

26. CONCLUSION

(a) The regular/final hearing was started on 20.12.2003 only after the order of the Honorable High Court dated 8.12.2003 passed in W.P. 13091(W) of 2003 withdrawing the stay order granted on 25.11.2003 for staying all further disciplinary proceedings (copy enclosed) (Annexure-I)

(b) The regular/final hearing was completed on 24.04.2004 and the written briefs submitted by the Presenting Officer (PO) and the Defence Representative (DR) were duly received by me.

(c) On assessment of the various documentary and oral evidences it is found that all the three imputations are not established and therefore the article No. (i) of charge framed against the Charged Employee (CE) vide Charge Sheet bearing no Region-I/Misc/nil dated 07.04.2003 is not proved.

(d) It will not be out of place to mention that the defence produced a certified copy of the judgment/order passed by the learned City Sessions Court at Calcutta on 08.07.2003 in the original case bearing No. SC 55 of 1997. A study of the judgment/order reveals that Shri BISTUPADA DAS is found not guilty under sections 396 and 397 IPC. (ExD-2/13).

(QUOTED VERBATIM)

4. It appears that thereafter, the Respondents changed the Presenting Officer by appointing one Sudipta Banerjee as the new Presenting Officer and one V.D. Pachlangia (Respondent No. 5) as the new Enquiry Officer.

5. In the earlier writ petition, the petitioner had submitted that such a change of both the Presenting Officer as well as the Enquiry Officer after submission of the Enquiry Report was not proper. His submission was noticed in Paragraph 9 of the earlier Writ Petition which reads as follows:

9. "According to the Petitioner and as stated in Para-8 of the Writ Petition, the Respondents, in spite of the aforesaid developments, proceeded in a "preplanned

and vindictive manner" and the Disciplinary Authority, then "with the sole objective of holding the Petitioner guilty", changed the Presenting Officer by appointing one Sri Sudipto Banerjee, as the new Presenting Officer (Respondent No. 8) and also appointed a new Enquiry Officer, namely Sri V.D. Pachlan, Chief Manager, Vigilance Department, Head Office at Jaipur (Respondent No. 7).

The Petitioner has attempted to support these assertions by stating that it was after the 1st Enquiry Officer had submitted his Report dated 12.06.2004 vide Annexure P-6 holding the Petitioner not guilty that the same Disciplinary Authority passed another Order on 6.10.2004 (vide Annexure P-7) by which, and on the basis of vague reasons, he not only changed the Enquiry Officer by appointing one Sri V.D. Pachlangia, Chief Manager, Vigilance Department, Head Office at Jaipur (Respondent No. 7) to act as the Enquiry Office in place of Sri Sukumar Saha (Respondent No. 5), but also changed even the Presenting Officer by appointing one Sri Sudipto Bangerjee (Respondent No. 8) in place of the earlier Presenting Officer, namely Smt. Sumitra Mondal (Respondent No. 6). These facts are also evident upon a perusal of Annexures P-7 and P-8 appended to the Writ Petition.

(QUOTED)

6. It was thereafter that the same Disciplinary Authority then issued a letter dated 06.10.2004 wherein he stated that a perusal of the Enquiry Report would reveal that certain crucial aspects were overlooked during the course of the enquiry proceedings and therefore he had proceed to appoint V.D. Pachlangia as the Enquiry Officer.

7. This Court, while considering the aforesaid writ petition held that the respondents had acted illegally and accordingly, the writ petition was allowed and the matter was remanded, by Judgement dated 27.11.2007, to the respondents to take a fresh decision in accordance with law from the stage of receipt of the Report of the first Enquiry Officer which was submitted on 12.06.2004. The second Enquiry Report which was submitted on 09.03.2005 by the new Enquiry Officer was set aside.

8. After the Judgment was delivered, the first impugned Notice/ Letter/ Order was issued by the Notified Disciplinary Authority by which he differed with the report of the Enquiry Officer submitted on 12.06.2004 and against each of the imputations, he held that those imputations were proved against the petitioner. The petitioner objected by his Letter dated 07.03.2008 (Annexure P/8) but thereafter on 15.03.2008, the second impugned letter/Order was passed holding the petitioner guilty of all the Charges and taking a tentative decision to Dismiss him from Service.

9. The petitioner was then asked to appear in a personal hearing on 29.03.2008. The petitioner pointed out various irregularities and prayed that the Order be recalled and by the third impugned Notice/Letter/Order dated 31.03.2008 (Annexure P/12), the petitioner was imposed with the punishment of Dismissal

from Service. He then preferred an Appeal which was rejected on 24.11.2009.

10. It is on the basis of the aforementioned facts and circumstances that this writ petition has been filed challenging the four impugned Orders.

11. An affidavit-in-opposition has been filed by the respondent Nos. 1 and 3 wherein it has inter alia been stated that the Notified Disciplinary Authority had duly considered the Report of the earlier Enquiry Officer. It was further stated that the then Disciplinary Authority had noticed that the Prosecution Officer could not produce all material evidence and therefore issued a Letter dated 09.03.2005 by which he stated and gave an observation with regard to the submissions and / or report given earlier on 12.06.2004 by Sri Sukumar Saha in which he had found that none of the Charges against the petitioner had been proved. The said Letter dated 09.03.2005 has been brought on record in the Affidavit-in-opposition as Annexure R/1. These respondents, while relying on the same, have denied the submissions that the then Disciplinary Authority had acted in a vindictive or pre-planned manner or that by changing the Presenting and Enquiry Offices, had acted in a calculated and/or biased manner. The respondents have also stated that the petitioner had worked for about ten years in the N.S. Road Branch and he was present at the site at the time of occurrence. He was an employee who used to carry instruments (both clearing and cash) to and fro the N. S. Road Branch and the Service Branch located in the same house. According to them, the crime could not have been committed without information that a person had withdrawn cash from his present Bank Account. They have also stated that the petitioner was identified and arrested by the police. Considering the aforementioned facts and circumstances and other submissions, the Respondents have denied and disputed the contentions of the petitioner to the effect that the impugned Orders are arbitrary.

12. Having considered the submissions of the parties, this Court is not to interfere. It is well known that a Criminal Case and a Disciplinary Proceeding are two different things and even if an employee is acquitted in a criminal charge, that by itself, would not be a ground NOT to institute/initiate Departmental Proceedings. Even if an accused is not found guilty of Criminal Charges, he can still be proceeded against Departmentally and a Charge can be held to be proved on the basis of "preponderance of probabilities." This view can be found in the Judgment of the Hon"ble Supreme Court passed in the case of Senior Supdt. of Post Offices, Pathananthitta & Ors. vs. A. Gopalan, reported in AIR 1999 SC 1514. Similar view has been taken by the Hon"ble Supreme Court in the case of High Court of Judicature at Bombay through its High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, . In Paragraph 10 of the said Judgment passed in Udaysingh's case, the Apex Court has held that Disciplinary Proceedings are different from a Criminal Trial and that the scope of enquiry in a Departmental Proceeding is totally different from that of a Criminal Trial in which the Charge is required to be proved beyond doubt. In the case of a disciplinary enquiry, the technical rules of evidence have no

application nor does the doctrine of "proof beyond doubt" can be made applicable. It is the preponderance of probabilities and some material on record which would be necessary to be taken into consideration to reach to a conclusion as to whether or not a delinquent has committed a misconduct or not. The test laid down by various judgments is to see whether there is evidence on record to reach a conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion.

13. Considering the aforementioned facts and circumstances, if the Notified Disciplinary Authority gave reasons as to why he differed from the findings of the Enquiry Officers by his first impugned letter dated 23.02.2008, this Court is of the view that under the rule of "preponderance of probabilities", he cannot be faulted if he gave reasons and stated, on the basis thereof, that according to him, those reasons were sufficient to prove that the Charges against the petitioner stood proved. A Disciplinary Authority has the right to give reasons when he differs with the report of the Enquiry Officer.

14. This Court has carefully considered the reasons given by the Disciplinary Authority in his letter dated 23.02.2008. Considering the imputation of Charges which can be found from the Enquiry Report dated 12.06.2004 (Annexure P/5 to this writ petition), it is noticed that from the enquiry findings and the report, the Petitioner had access to the Branch and the means to know of the transactions being effected by customers and therefore it was possible for him to have information of the customer who received payment or deposited money. Consequently, and also considering the statement of one S.K.M. Ojha, the Branch Manager, the Disciplinary Authority correctly stated that it was reasonable to conclude that the Petitioner knew about the style of operation, accounts positions and cash oriented transaction of many customers. The Notified Disciplinary Authority also, on the basis of the offence of Dacoity which had taken place on 22.03.1997, and on the basis of the principles of the "preponderance of probabilities" correctly stated that it was only logical to conclude that the Petitioner had an opportunity to be present at the site because it was established in the Final Report filed by the Police that his name was not only mentioned as an accused but when he was placed in the T.I. Parade, he was actually identified by several witnesses.

15. The judgment of the Criminal Court, on these issues cannot come to the rescue of the petitioner because the acquittal of the petitioner was not on merits but on technicalities. Even otherwise, and as already stated above, an accusation in a Criminal Case has to be proved to its hilt. The observations of the Criminal Court qua the Petitioner is however as follows:

In view of my above discussion, I find that there was some technical defects in recording confessional statement by the Ld. Magistrate. Even if the same be taken as legal, accused Bistu Pada Das cannot be convicted only upon such confessional statement, as there is no corroborative evidence against such

accused person for connecting him in the offence under sections 396 and 397 IPC. I am also satisfied that as persons of different completions, heights, ages were mixed with the accused Suresh Shaw. So, there is irregularity in holding T.I. Parade.

Upon such identification by P. W. 14 during the T.I. Parade, accused Suresh Shaw cannot be convicted.

Thus, the Prosecution has hopelessly failed to prove charge under sections 396 and 397 IPC against all the accused and has also failed to prove the charge u/s 412 IPC against the accused Suresh Prasad.

Thus, the Prosecution Case fails.

Hence, it is.

(QUOTED)

16. Considering the aforementioned facts and circumstances, the Notified Disciplinary Authority was absolutely right when he stated as follows:-

However, it is a fact beyond doubt that a dacoity took place at 22.03.97.

The E.O. has accepted this in his report.

It is also an incontrovertible fact that you were arrested as per the charge sheet/ final report dated 19.08.97 filed at City Civil & Session Court at Calcutta Case No. 55 of 1997. State vs. Bistupada Das which is a Bank's relied upon document. It is also evident from this document that you were arrested because of your involvement in the said dacoity. The fact of your arrest has also been mentioned on the attendance register, which is again a Bank's relied upon document. Thus it is amply established that you were arrested because of your involvement in the said dacoity.

It has been adequately established during the enquiry proceedings that the day on which the dacoity took place was a Saturday and the time was around 1:15 p.m. It has been further established that your duty hours were upto 12:00 noon and no additional work was given to you after 12:00 noon. It has also been established that the place of the incident was 11/2 kilometres away from your place of work. At no point of time you have been able to controvert this fact in any meaningful way.

Thus it is logical to conclude that you had time and opportunity to be present at the said site. As regards whether you pointed out or not one can refer to the Charge Sheet/Final Report filed by the police dated 19.08.97 which is an Exhibit in the Enquiry Proceedings. The said Final Report not only names you as an accused but it also mentions that when placed in the T.I. Parade, you were identified by several witnesses.

This confirms that you were not only present at the site but in some way you were involved in the incident of dacoity that took place at the crossing of Old

China Bazar Street and the Canning Street on 22.03.97 at about 1:15 p.m.

Your involvement as a bank employee can be only in one way i.e. revealing to the miscreants the fact of cash being taken out from the Bank which led to the dacoity.

In fact all the probabilities not only corroborate each other like a jigsaw puzzle but also point in an unmistakable direction namely your indicating to the miscreants in some way, the above fact of cash being withdrawn and carried out. This is possible when you yourself knew about transactions of the customer for which, as mentioned above you have had both time, opportunity and necessary accessibility.

The standard of evidence in Bank's departmental enquiries being "Preponderance of probabilities," I logically infer from the above that you had adequate information regarding the transactions taking place in the constituent's account, which you being present at the site indicated towards the miscreants who were obviously known to you. (It could not have been possible otherwise).

Therefore, I hold this imputation as proved.

(QUOTED VERBATIM)

17. For the foregoing reasons, there was also no obligation on the part of the Appellate Authority to give elaborate reasons while dismissing the Appeal. Based on the aforementioned reasons and principles mentioned above, there is no point now to remand the matter to the Appellate Authority only for giving reasons in support of the Appellate Order save and except to ratify that his rejection of the appeal, in any event, cannot change the fact that there has been no irregularity in passing the impugned Orders.

18. The writ petition is accordingly Dismissed.

19. There shall be no Order as to Costs. Upon appropriate Application (s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.