
(2011) 03 GAU CK 0088

In the Gauhati High Court

Case No : Writ Petition (C) No. 256 (AP) of 2010

Boa Penji

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 4 GLR 710 : (2011) 3 GLT 476

Hon'ble Judges : P.K. Mushary, J

Bench : Single Bench

Advocate : U. Bhuyan, Mr. A. Hazarika, Mr. B. Chakraborty and Mr. R.H. Nabam, for the Appellant; S.S. Sharma and Ms. S. Nag, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mushary, J.—Heard Mr. U. Bhuyan, Learned Counsel for the Petitioner. Also heard Mr. S.S. Sharma, learned standing counsel, assisted by Ms. S. Nag, Learned Counsel, for Respondent Bank.

2. At the outset, I must say that the Learned Counsel for the parties, at the conclusion of oral arguments, assured me to provide with written arguments at Principal Seat during my holding of court thereat from 14.2.2011 to 18.2.2011, but till writing of this judgment, they have not submitted the same.

3. The relevant facts leading to filing of this writ petition are that the Petitioner at the relevant time, was serving as Deputy Head Cashier at Itanagar Branch of the State Bank of India. A charge sheet dated 5.3.2001 was served upon the Petitioner levelling certain allegations against him. He submitted reply on 31.3.2001 denying all the charges. The disciplinary authority found the reply unsatisfactory and decided to hold enquiry against him and appointed an Enquiry Officer on 23.10.2001 and also one Presenting Officer on 31.1.2003. On conclusion of the enquiry, the Enquiry Officer submitted his report to the disciplinary authority but the same was not furnished to the Petitioner. However, he could gather that none of the allegations have been found proved and he was

exonerated of charges. The disciplinary authority vide order dated 17.10.2003 directed to hold de novo enquiry against him on the same charges. At the same time, the Petitioner was transferred to Guwahati. The petitioner filed a writ petition before this Court which was originally registered as WP(C) No. 9143/2003 at the Principal Seat and renumbered as WP(C) No. 378(AP)/2003 on transfer at Itanagar Bench, challenging the legality and justification for holding a de novo enquiry. The said writ petition was dismissed vide judgment and order dated 3.6.2005 with direction that the Bank shall complete the enquiry within 3 (three) months from the date of receipt of a certified copy of the order. Against the said judgment and order, the Petitioner preferred a writ appeal, being WANO. 51(AP)/2006, which was disposed of vide judgment and order dated 26.4.2007 holding that the de novo enquiry was not (appropriate and directing the disciplinary authority to hold further enquiry by permitting the parties to adduce additional evidence, both oral and documentary, as may be relevant to prove or disprove the charges.

Thereafter, the disciplinary authority appointed a new Enquiry Officer who was on the verge of retirement. The regular hearing of the fresh enquiry commenced from 28.5.2009 and the said new Enquiry Officer submitted his enquiry report on 27.6.2009 holding 6 out of 9 charges as proved against the Petitioner. On being furnished a copy of the enquiry report, the Petitioner submitted representation dated 11.8.2009 against the findings of the Enquiry Officer. The enquiry authority passed an order on 10.9.2009 against the Petitioner imposing penalty/punishment of removal from service. He submitted an appeal on 5.10.2009 before the appellate authority against the; penalty imposed by the disciplinary authority but the same was rejected by the appellate authority vide order dated 10.3.2009.

4. Mr. Bhuyan, Learned Counsel, submits that the enquiry authority proceeded with fresh enquiry in violation of the order of the Division Bench of this Court by way of appointing a new Enquiry Officer and the said Enquiry Officer conducted and concluded the fresh departmental proceeding in extreme haste as he was at the verge of retirement. Moreover, in the process, all fairness and principles of natural justice were given a go bye and there were gross procedural lapses in conducting the said enquiry. The new Enquiry Officer submitted his enquiry report dated 27.6.2009 on the eve of his superannuation. The Petitioner, at the preliminary hearing held on 6.2.2008, raised serious objection to appointment of new Enquiry Officer replacing the earlier one, but he received no satisfactory reply from the Respondent authorities. The Petitioner's defence representative requested the Enquiry Officer on 10.1.2008 and 27.1.2008 to allow him to inspect all the relevant documents/files relating to the case with a view to make specific pleadings. He also requested the authority concerned for photostat copies of those documents/files for defending the Petitioner's case effectively but his request was not accepted by the Bank authorities. Similarly, the proceedings/records and the enquiry report submitted by the first Enquiry Officer were not made available to the Petitioner. The defence representative along with the

Petitioner visited Itanagar Branch of the State Bank of India on 23.1.2008 and 1.10.2008 to verify the documents presented by the Presenting Officer but one of the Bank Staff snatched away the documents furnished by the Chief Manager of the said Branch from him. The Enquiry Officer was informed about the same vide letter dated 10.10.2008. Again on 8.12.2008, the defence representative went to Itanagar Branch of the State Bank of India to verify the documents produced by the Presenting Officer with the original documents but out of the listed documents, only 2 original documents, namely the Cash Payment Register and the Cashier's Cash Delivery Book, were produced. It has been alleged in the writ petition that the defence representative submitted a list of documents on 19.12.2008 containing 14 items to be procured from the said Branch of the State Bank of India as defence documents but he was furnished with a few photostat documents, and that too, without supplying these photostat copies of the Pass Book of the corresponding Debits/Credits, etc., adversely affecting the defence of the Petitioner. Even the most vital document/letter dated 23.8.1999 written by Sri Karduo Taipodia, Ex-Minister and MLA, Arunachal Pradesh, who was the central figure of the entire episode, addressed to the Assistant General Manager of Itanagar Branch of SBI, was not supplied/ furnished to the Petitioner. It was rather informed by the Chief Manager of the said Branch that they received no such letter. However, the Petitioner obtained a copy of the aforesaid letter from the said Branch on 17.6.2009. The said document was not allowed to be exhibited and the new Enquiry Officer at the time of preparing the report completely ignored the same. According to Mr. Bhuyan, this vital document/letter should have been allowed to be produced as an additional document and the Petitioner should have been allowed to prove it and lead oral evidence by examining the witnesses inasmuch as the Division Bench of this Court in the aforesaid judgment and order granted liberty to the parties to adduce additional evidence during the course of further departmental enquiry. The act of the Enquiry Officer disallowing the Petitioner to produce and prove the said vital document is wholly illegal and it has caused serious prejudice to him. It has also resulted into unfairness and irregularity in conducting the departmental proceeding and violation of principles of natural justice vitiating the entire proceeding and the enquiry report.

5. The following cases have been relied upon by the Learned Counsel for the Petitioner in support of his submissions:

- (1) K.R. Deb Vs. The Collector of Central Excise, Shillong,
- (2) (2003) 3 LLJ 557 SC Union of India v. K.D. Pandey and Anr.
- (3) Kanailal Bera Vs. Union of India (UOI) and Others,
- (4) State of Uttaranchal and Others Vs. Kharak Singh,

6. Mr. Sharma, learned standing counsel, defending the enquiry-proceeding as fair and in conformity with the established procedure and principles of natural justice, submits that the disciplinary authority did not resort to fresh or de novo

enquiry as alleged by the Petitioner. The petitioner was provided with opportunity to produce relevant documents and adduce evidence in his defence. According to him, there were certain documents sought to be verified by the Petitioner and the same could not be made available to him as those documents were already seized by the CBI and it was not possible on the part of the Bank Authorities to produce the originals and whatever originals were available to them, were duly shown to the defence representative and the photo copies of the documents seized by the CBI were made available to the Petitioner. Regarding the letter dated 23.8.1999 purportedly written by one Sri Kardu Taipodia, Ex-Minister and MLA, Arunachal Pradesh, the Petitioner was informed in writing vide letter dated 21.05.2009 that no such letter was available in the said Branch and the photo copies of the said letter claimed to have been obtained by the Petitioner from the Bank cannot be acceptable inasmuch as it was not attested/certified/authenticated and endorsed by any Bank official to the effect that a copy of the same was ever issued to the Petitioner from the record of the Bank. Moreover, availability of such letter written by Sri Taipodia was not mentioned by the Petitioner at the initial stage of the enquiry proceeding and it has been disclosed only at a later stage of inquiry in a bid to improve his case.

7. As regards the appointment of a new Enquiry Officer, it has been submitted by the learned standing counsel that there is no legal bar to appointing a new Enquiry Officer. No fault could be found in the expeditious completion of enquiry by an Enquiry Officer only because he was appointed at the verge of retirement and submitted the enquiry report just before his superannuation unless a specific case of bias or mala fide is made out against him. According to him, the Petitioner has failed to make out a case of irregularities in conducting the enquiry proceeding and illegality in awarding punishment against the Petitioner and as such, the impugned action and orders passed by the Bank Authorities are not liable to interference.

8. Mr. Sarmah, learned standing counsel, has produced the records pertaining to the enquiry proceeding, I have carefully gone through the same. After the passing of judgment and order by the learned Division Bench of this Court, the Disciplinary Authority appointed one Sri N.R. Kar, SMGS-IV, Chief Manager (Administration), Zonal, Office, Guwahati, as Enquiry Officer and one Sri Abhijit Khound, MMGS-III, Branch Manager, Dergaon Branch, as Presenting Officer in place of earlier Enquiry Officer Sri R. Phuntsok and Presenting Officer Sri Ranjit Kr. Bose. The petitioner raised an objection to the effect that the Enquiry Officer and Presenting Officer cannot be replaced in such a manner without assigning any reasons. Moreover, the Petitioner pointed out that the disciplinary authority made a complaint against the earlier Presenting Officer to the effect that he failed to present the case of the Bank before the Enquiry Officer and he could not effectively cross-examine the defence witnesses. Even in such a case, according to the Petitioner, the disciplinary authority cannot replace both the Enquiry Officer and Presenting Officer. At the most, the disciplinary authority could have replaced only the earlier Presenting Officer. In my considered view, the

appointment of a new Enquiry Officer and Presenting Officer and/or replacement of earlier Enquiry Officer and Presenting Officer is not the real question involved in this case and objection in this regard may not be taken so seriously as it is the prerogative of the disciplinary authority to appoint and/or replace both the Enquiry Officer and Presenting Officer at any stage of the enquiry for the purpose of completing the disciplinary proceeding. What is to be taken seriously is whether in the garb of changing/replacing the Enquiry Officer and Presenting Officer, the disciplinary authority has resorted to de novo or fresh enquiry violating the directions issued by the learned Division Bench of this Court.

9. On examining of records, it is found that there is no new charge added to the earlier charges. The charges are same and after the direction issued by the learned Division Bench, the Enquiry Officer conducted several rounds of preliminary hearing from 26.11.2007 to 19.5.2009, and thereafter, conducted regular hearings on 28th, 29th and 30th of May, 2009. During preliminary hearing, the Petitioner engaged one Sri Bidyut Kr. Deb as his defence representative who at the initial stage accepted the responsibility but due to some personal difficulties, declined to act as the defence representative. Subsequently, one Sri Mukti Agarwalla was engaged by the Petitioner as his defence representative who discharged the functions as defence representative till the end of the enquiry. The Presenting Officer submitted a list of documents before the Enquiry Officer along with a copy of documents duly authenticated by the Branch Manager, IB, State Bank of India, which he would rely on to prove the charges during the 6th preliminary enquiry held on 18.4.2008. In the 7th preliminary hearing held on 16.5.2008, the Enquiry Officer directed the defence representative to finalize his list of witnesses as well as defence documents on or before 18.6.2008 whereupon the Presenting Officer shall make arrangement for the defence representative to examine and take copies thereof. It was also directed by the Enquiry Officer that the process should be completed before 30.6.2008. The aforesaid process could not be completed within 30.6.2008. The Enquiry Officer in the 9th preliminary hearing held on 12.8.2008, directed the defence representative to finalize his list of witnesses as well as defence documents he may need for his defence. The defence representative extended the date for the same till 31.8.2008. In the 10th preliminary hearing held on 21.10.2008, the defence representative apprised the Enquiry Officer that he went to Itanagar Branch of State Bank of India on 30.9.2008 and 1.10.2008 but he could not verify the documents as the concerned officials were not cooperating with him in verifying the original documents. He also apprised that he went to Regional Office, Itanagar, but failed to procure any documents related to the case. In such a situation, the Enquiry Officer once again directed the defence representative to finalize and submit the list of witnesses as well as defence documents he may need for his defence within 10 days and communicate the same to the Enquiry Officer.

10. In the regular hearing held on 11.12.2008, the defence representative requested the Enquiry Officer to allow him further time to submit the list of

witnesses as well as defence documents. The said request was accepted by the Enquiry Officer allowing time till the next regular hearing to be held on 19.12.2008. Accordingly, the defence representative could submit the list of witnesses as well as defence documents in the regular hearing held on 19.12.2008. In the said hearing, the Presenting Officer was directed to make arrangement for collection of the defence documents and to complete the process by 12.1.2009. From the aforesaid proceedings of hearing, it is found abundantly clear that the Petitioner/defence representative could submit the list of witnesses as well as defence documents within the time permitted by the Enquiry Officer himself on different dates and the same were handed over to the Presenting Officer without any objection from him (Enquiry Officer). In my considered view, the Petitioner cannot have a grievance of not providing him with adequate opportunity to submit the list of witnesses as well as defence documents before the Enquiry Officer and committed procedural irregularities in this regard. It appears from the record that the defence representative vide his letter dated 21.5.2009 requested the Enquiry Officer to obtain a copy of the letter dated 23.8.1999 written by said Sri Kardu Taipodia, Ex-Minister and MLA, Arunachal Pradesh, addressed to the then AGM, Sri Suresh Sarkar, State Bank of India, Regional Office, Itanagar. The Chief Manager of the said Branch vide his letter dated 25.5.2009 informed that there is no such letter available with the said Branch. However, the defence representative claimed that a copy of the said letter could be obtained by him on 17.6.2009 from the said branch of State Bank of India itself and from the same, it is found that said Sri Kardu Taipodia, Ex-Minister and MLA, Arunachal Pradesh, withdrew the entire amount from the Bank Branch and assured that he would refund the money within 15 days from the date of writing the letter. It was claimed that if the foresaid document was called for and proved, the innocence of the Petitioner could have been easily established. It has been specifically pleaded by the Petitioner that the defence representative incorporated the contents of the said letter in his brief and also annexed a copy of the said letter to his brief but, in spite of that, the Enquiry Officer did not take them into consideration and thereby, the Enquiry Officer totally ignored the said vital piece of material evidence of the defence.

11. The enquiry proceeding concluded on 30.5.2009 and the enquiry report was submitted on 27.6.2009. From records, it is found that the defence representative submitted his defence brief on 23.6.2009, i.e., after completion of the enquiry proceeding and in the said defence brief, the aforesaid letter dated 23.8.1999, on the basis of which the Petitioner was trying to prove his innocence, was annexed thereto. It is discernible from the enquiry proceeding and enquiry report that the aforesaid vital document/letter dated 23.8.1999 was not accepted as a piece of evidence inasmuch as it was submitted after conclusion of the enquiry report and just 9 days before the enquiry report was submitted by the Enquiry Officer. Whether it was proper on the part of the Enquiry Officer to reject the said document as a piece of evidence as it was proved and exhibited during the enquiry proceeding. In the strict application of

law of evidence, the documentary evidence cannot be adduced after conclusion of the enquiry proceeding and such document cannot be taken into consideration by the Enquiry Officer while preparing the report and in that view of the matter, no fault can be attributed to the Enquiry Officer. In the eye of law, the Petitioner has failed to establish a case of commission of irregularities in conducting the enquiry proceeding and make an allegation that the enquiry report is based on no evidence. The writ court in exercising the power of judicial review, is not authorized to examine the correctness of the enquiry report and also correctness of the decision taken by the disciplinary authority on the acceptance or rejection of the enquiry report and agreement or disagreement of the disciplinary authority with the enquiry report of the Enquiry Officer, inasmuch as it is within the exclusive domain of the disciplinary authority. In the enquiry report, the Enquiry Officer found certain charges proved and not proved. The disciplinary authority has accepted the report and on the basis of the same, the impugned award of removal of the Petitioner from service with superannuation benefits. It was admittedly upheld by the appellate authority. So far, I find no ground for setting aside and quashing the impugned enquiry report, award of penalty and the impugned order of the appellate authority affirming the award of penalty.

12. I may now deal with the question seriously raised by the Petitioner as to whether the disciplinary authority in fact resorted to de novo or fresh enquiry. To answer this question, one has to turn back to the 1st enquiry proceeding conducted on different dates by the Enquiry Officer and Presenting Officer. The preliminary hearings were held on 27.2.2003, 15.5.2003 and 5.6.2003. Thereafter, the final rearing was held on 25.6.2003. After conclusion of hearings, the PO submitted his brief on 9.7.2003. The defence representative also submitted his written brief on 1.8.2003. On the basis of the aforesaid enquiry proceeding, the Enquiry Officer submitted his enquiry report on 8.8.2003. The Enquiry Officer found none of the charges proved. In this respect, reference may be made to judgment and order dated 3.6.2005 passed by the learned Single Judge of this Court in WP(C) No. 378(AP)/2003 wherein it was held that de novo enquiry proposed to be held is in fact not a second enquiry and it is in continuation of earlier enquiry itself, although termed as de novo enquiry. It was also observed that the earlier enquiry has not been completed and no enquiry report has been published. In the judgment and order dated 26.4.2007 passed in WA No. 51(AP)/2006, the learned Division Bench of this Court, clarified/ modified the aforesaid position as under:

10. Considering, therefore, the matter in its entirety and in the interest of justice, we allow the Respondents, as Disciplinary Authority, to hold, further enquiry and adduce such additional oral or documentary evidence as may be required and which the Disciplinary Authority may consider relevant and necessary for the purpose of sustaining the charges levelled against the Appellant. At the same time, we also permit the Appellant to raise objection, if any, as and when any document is sought to be produced or any witness is sought to be examined on behalf of the Disciplinary Authority on the ground of

prejudice and if such an objection is raised, the Inquiry Authority shall consider such objection and pass appropriate order(s) in accordance with law after considering the Disciplinary Authority's reply to the objection, which may be raised by the Appellant.

We also make it clear that the Appellant shall be at liberty to adduce any additional evidence, both oral as well as documentary, as may be relevant to the charges leveled against him.

13. As discussed earlier, the disciplinary authority framed no new charges against the Petitioner. It may be noted that in the 1st enquiry proceeding, the Presenting Officer, as reflected from his enquiry report dated 8.8.2003, did not produce any witness for the Respondent Bank. However, in the subsequent/second enquiry proceeding, the Presenting Officer adduced 3 witnesses, namely, Sri S.K. Dev (PW-1), Sri T. Thugkhung (PW-2) and Smt. Rupali Sarkar (PW-3). During the said enquiry proceeding, the defence representative raised no objection to production of the aforesaid witnesses by the Bank. The defence representative, instead, actively participated in the second enquiry proceeding and never complained that the disciplinary authority was indulging in de novo or fresh enquiry. During the said enquiry proceeding, the defence representative also raised no objection to filing of additional documents and proving them for the Bank. Under such facts and circumstances, the Petitioner is precluded from raising a point of de novo or fresh enquiry in the matter. Moreover, it is an established position of law that a plea not raised in the enquiry proceeding cannot be raised before the High Court. The Apex Court has held so in *Ex-Constable Ramvir Singh Vs. Union of India (UOI) and Others*,

14. Now, I come to the cases cited by the Learned Counsel for the Petitioner.

In *R.K. Deb's case* (supra), the Enquiry Officer held an enquiry and submitted a report holding that the charge was not proved. The disciplinary authority was not satisfied with the said enquiry report because the Enquiry Officer did not record any evidence of the prosecution witnesses and therefore, another Officer was appointed as an Enquiry Officer to conduct what is called the "supplementary open inquiry". The authority of the Disciplinary Authority to appoint another Enquiry Officer to enquire into the charges after previous Enquiry Officer had submitted report in favour of the delinquent, was challenged by the Petitioner. It was held by the Apex Court that if there is some defect in the enquiry, the disciplinary authority can direct the Enquiry Officer to conduct "further inquiries" but it cannot direct a fresh enquiry to be conducted by some other Officer. It was held therein that there is no provision for completely setting aside the previous inquiries on the ground that the report of the Enquiry Officer does not appeal to the disciplinary authority. In such a case, the disciplinary authority has enough powers to re-consider the evidence itself and come to its own conclusion. In the case at hand, it is verified from the records that the Presenting Officer examined no witness. The delinquent examined himself and 2 other witnesses but the Presenting Officer declined to cross-examine the DWs. The Presenting Officer

also took no attempt to prove and exhibit any document fled by the Bank. It is quite apparent that the Presenting Officer failed to discharge the duties and responsibilities reposed on him by not examining any PW and also not cross-examining the DWs which caused serious prejudice to the prosecution. Failure of the Presenting Officer to examine PW, cross-examine the DW and prove the documents of the prosecution is altogether a different thing from the lapse on the part of the Enquiry Officer to record the evidence or consideration of the evidence on record. On the face of the attending facts and circumstances of the present case, I would hold a view that the benefit of aforesaid judgment would not be available to the Petitioner.

15. K.D. Pandey's case (supra) is a case where after enquiry, the Enquiry Officer submitted a report to the effect that none of the charges against the delinquent stood proved. The disciplinary authority examined the matter and found that some of the charges could be substantially proved beyond doubt on the basis of available documentary evidence on record and so the matter was remitted for further enquiry. In the said case, it was held that where the enquiry report contains some specific findings in respect of each of the charges after discussing the matter, the disciplinary authority if not satisfied with the said report, cannot remit the matter to the enquiry authority for further enquiry and if it is done so, it would mean a second enquiry and not a further enquiry in same matter. Such a practice if allowed, as held therein, would be an abuse of process of law. As observed earlier, in the present case, the Presenting Officer miserably failed to examine any witness and exhibit any documents submitted by the prosecution for which the Enquiry Officer also failed to give substantial findings on each charge. The said law enunciated in the above referred case could be applied more appropriately in favour of the Respondent Bank, and not in favour of the Petitioner, because unlike the Pandey's case (supra), the enquiry proceeding in question, the required specific finding on each charge is lacking in the present case. In such differing facts and circumstances, the Petitioner, in my considered view, cannot be a beneficiary of the judgment rendered in the above cited case.

16. The Kanailal Bera's case (supra) involves altogether a different question. It has been held therein that in a given situation, further evidence may be directed to be adduced but the same would not mean that despite holding a delinquent to be partially guilty of the charges levelled against him, another enquiry would be directed to be initiated on the "selfsame charges which could not be proved in the first enquiry." The first enquiry proceeding in the present case was not conclusive and it cannot be said that the charges could not be proved in the first enquiry for which the further enquiry was allowed by the learned Division Bench of this Court. I am afraid that the aforesaid cited case could render any assistance to the Petitioner. In the cited case Kharak Singh (supra), the Apex Court mandated that the Departmental Enquiry should not be an empty formality. The guidelines required to be followed in the departmental proceeding have been reiterated. Those are not in dispute. It was a case where the delinquent was not furnished with the required documents and the

department's witnesses were not examined in his presence. The issues involved are not similar to the ones required to be answered in the present case. The petitioner cannot gain anything from the aforesaid case to further his case.

17. The most important ground that may be taken by the Petitioner for setting aside or quashing the enquiry report or award of penalty is the question of prejudice and violation of principles of natural justice. The burden is on the Petitioner to establish that due to certain irregularities committed by the Enquiry Officer in the enquiry proceeding, prejudice has been caused to him. The question of prejudice as it appears from the pleadings of the Petitioner has not been raised during the enquiry proceeding inasmuch as no objection was raised on production/exhibition of documents by the Bank and examination of witnesses as stated earlier. The objection raised by the Petitioner is only in respect of the refusal of the Enquiry Officer to accept the letter dated 23.8.1999 written by Sri Kardu Taipodia, Ex-Minister and MLA, Arunachal Pradesh, for which he has allegedly been prejudiced greatly and thereby he has been deprived of the chance to prove his innocence. Apparently, his objection sounds very strong but as discussed earlier, the Petitioner could produce the letter in question only after the enquiry proceeding was concluded. The aforesaid discussion leads to a logical conclusion that there was no de novo or fresh enquiry in the enquiry proceeding in question in violation of the direction of the learned Division Bench of this Court, rather the Enquiry Officer proceeded for further enquiry and concluded the same accordingly as per the said directions.

18. For the above reasons and discussions, I find no merit in this writ petition and accordingly, the same is dismissed. Parties are ordered to bear their own costs.

19. Records be returned through Ms. S. Nag, learned standing counsel of the Respondent bank.