

(2015) 11 SC CK 0038
In the Supreme Court Of India
Case No : Civil Appeal No. 1217 of 2011

Brij Bihari Singh	Vs	APPELLANT
Bihar State Financial Corporation and others		RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Bihar State Financial Corporation (Staff) Regulations, 1965 — Regulation 39, 40
Constitution of India, 1950 — Article 311(2)

Citation : (2016) 1 AJR 560 : (2016) 1 AWC 666 : (2016) 1 ESC 1 : (2016) 148 FLR 197 : (2015) GLH 3 757 : (2015) 4 JLJR 510 : (2016) LabIC 48 : (2015) 4 LLJ 513 : (2015) 4 LLN 545 : (2016) 1 PLJR 27 : (2015) 12 SCALE 514 : (2016) 1 SCT 138

Hon'ble Judges : M. Yusuf Eqbal and C. Nagappan, JJ.

Bench : Division Bench

Advocate : Sunil Kumar, Sr. Advocate, Himanshu Shekhar, Rohini Prasad and A.P. Sahay, Advocates, for the Appellant; Harshvardhan Jha, Yugandhara Jha, Abhishek Chaudhary, Chandan Kumar and Prerna Singh, Advocates for Gopal Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Yusuf Eqbal, J—The Appellant was working on the post of Assistant General Manager in the Bihar State Financial Corporation (in short, "the Corporation"). At the direction of State Government, vide letter dated 20th March, 1993, the Managing Director of the Corporation, who is the Disciplinary Authority, put the Appellant under suspension and initiated disciplinary proceedings on the following charges:

1. He recommended release of Rs. 4.33 lakhs to M/s. Koshi Jute Mills Pvt. Ltd., Supaul against purchased machines without deducting the stipulated promoter's margin money, which is evident from the fact that the promoter's margin money was deducted in totality at the time of subsequent release of Rs. 7.80 lakhs to the concern on 19.12.90.

2. He intentionally and in utter violence of delegated powers released Rs. 7.80 lakhs to the concern (M/s. Koshi Jute Mills Pvt. Ltd., Supaul) on 19.12.90 at his own for which he was not the competent authority for disbursing such amount at his own. This irregular act of his is a grave misconduct for his wrongful gain.

3. While making release of Rs. 7.80 lakhs to the concern (M/s. Koshi Jute Mills Pvt. Ltd., Supaul) in utter violation of delegated powers, he did not retain the 15% retention money according to stipulated conditions in the Sanction Order and mutual agreement between the promoter and the machine supplier.

4. While making release to the aforesaid concern he deliberately suppressed the facts regarding observations of the Vigilance and Grievance Cell dated 22.12.89 and mentioned that the dealing of machine supplier is genuine whereas observations of Vigilance and Grievance Cell duly approved by the M.D. available in the loan file shows that the machine supplier is not refunded and that of his connivance with the promoter.

5. He deliberately ignored the further observations of the Vigilance & Grievance Cell duly approved by M.D. to inspect the site of the machine supplier immediately and made release to the aforesaid concern.

6. He deliberately received the payment of Car Allowance for the period from 9.3.88 to 1.10.88 without having a car in his name during aforesaid period.

7. He purchased land at Patliputra Colony, Patna from Dr. Bindeshwari Prasad Singh through three different absolute sale deeds (Registered at Calcutta) showing himself as false profession without disclosing the source of fund arranged.

2. After serving the aforesaid memorandum of charges upon the Appellant some additional charges were served, which are also set out below:

He himself examined the proposal of Delhi based fake promoter of M/s. Divine Cycle (P) Ltd., Industrial Area, Fatwah on promoter's personal guarantee and placed the proposal with recommendation before the Board for sanction of loan to the Company when the residential addresses of promoters were incomplete and official address was subsequently found fake. He should have examined the proposal before recommending the case to the Board which he did not do so as a result the promoter managed to grab the fund from the Corporation and left the unit abandoned. Thus due to his negligence of duties in processing of the loan proposal the Corporation has been put to a huge financial loss.

He, with an ulterior motive did not inform H.O. after getting the site jointly inspected with BICICO representative in Feb. '83 that the unit was running in a rented premises other than that of mortgaged to the Corporation and deliberately did not take any action against the promoter which proves his connivance with the promoter of the company to cause wrongful loss to the Corporation.

3. It appears that one officer of the State Government on deputation was made Enquiry Officer, who conducted the enquiry in respect of the aforesaid charges and submitted enquiry report holding that the majority of the charges have been proved. Consequently, 2nd show cause notice was given to the Appellant which was duly responded. The Appellant was then directed to be personally present for hearing and then the Managing Director, instead of passing final order, recommended the Board of Directors of the Corporation for the punishment to be imposed upon the Appellant. On receipt of the said recommendation, the Board finally passed an order of dismissal of the Appellant from service.

4. The Appellant assailed the order of dismissal by filing a writ petition being CWJC No. 3528 of 1994, which was eventually dismissed by the learned Single Judge of the High Court. The said judgment and order was finally upheld by the Division Bench of the High Court in Letters Patent Appeal No. 51 of 1998.

5. Mr. Sunil Kumar, learned senior Counsel appearing for the Appellant assailed the impugned judgment of the High Court and the order of dismissal of the Appellant mainly on the following grounds:

I. The departmental proceeding was conducted by the Enquiry Officer by merely perusing the files without representing officer presenting the case on behalf of the employer and without recording any evidence in support of the charges.

II. The Enquiry Officer in the departmental proceedings submitted his report merely by perusing the files without the charges being proved by the employer.

III. There is a serious violation of principles of natural justice for the reason inter alia that the presenting officer neither presented the case of the employer nor led any oral or documentary evidence. The Disciplinary Authority, instead of passing a final order on the basis of enquiry report and the explanation submitted by the Appellant, recommended the case to the Board for taking a final decision. The Board, which is the appellate authority usurp the power of the Disciplinary Authority and passed the order of punishment.

6. Before we decide the legality and propriety of the order of dismissal passed by the Respondent, we would like to refer relevant provisions of the Regulations called the Bihar State Financial Corporation (Staff) Regulations, 1965. Regulations 39 and 40 read as under:

39. Penalties: (i) Without prejudice to the provisions of the Regulations, an employee who commits a breach of the Regulations of the Corporation or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct or who is convicted of a criminal offence shall be liable to any or all of the following penalties:

(a) Reprimand;

(b) Withholding or postponement of increment or promotion including stoppage at an efficiency bar, if any,

(c) Reduction to a lower post or grade or to a lower stage in his incremental scale.

(d) Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by the employee,

(e) Fine,

(f) Suspension,

(g) Dismissal,

(h) Discharge, or

(i) Compulsory retirement

(ii) No employee shall be subjected to the penalties in Clauses (b), (c), (d), (e), (f), (g), (h) or (i) of Sub-regulation (i) except by an order in writing signed by the Managing Director and no such order shall be passed without the charge or charges being formulated in writing and given to the said employ so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken down in writing and read to him, provided that the requirements of this Regulation may be waived if the facts on the basis of which action is to be taken have been established in a Court of Law or where the employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to the employee. In every case where all or any of the requirements of this Regulation are waived, the reasons for so doing shall be recorded in writing.

(iii) An employee may, before the initiation of any proceeding Under Sub-regulation (ii) or pending the completion of such proceeding be placed under suspension by the Managing Director. During such suspension he shall receive subsistence allowance equal to two thirds of his substantive pay plus the dearness allowance, provided that if no penalty under any of the Clauses (b), (c), (d), (e), (f), (g), (h) or (i) of Sub-regulation (i) is imposed, the employee shall be paid the difference between the subsistence allowance and the emoluments which he would have received but for such suspension for the period while he was under suspension and that, if a penalty is imposed on him under the said clauses, no order shall be passed which shall have the effect of compelling him to refund such subsistence allowance. The period during which an employee is under suspension shall, if he is not dismissed from the service, be treated as on duty for specific purpose, i.e. as the Managing Director may direct.

40. Right to appeal: (i) An employee shall have a right of appeal against any order passed by the competent authority which injuriously affects his interests.

(ii) No appeal shall lie after the expiration of sixty days from the date of receipt of the order against which the appeal is preferred.

7. Perusal of Regulations 39 and 40 would show the manner and procedure for conducting departmental enquiry. Regulation 40 confers a statutory right of appeal to the employee against an order passed by the competent authority which injuriously affects his interest.

8. It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture and surmises cannot be sustained in law.

9. In the case of State of U.P. and Others Vs. Saroj Kumar Sinha, , this Court held:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the Respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

10. In the instant case, the disciplinary proceeding was conducted in gross violation of Regulation 39 of the said Regulations inasmuch as no reasonable

opportunity was given to the delinquent to place his case in defence. The Regulation imposed a duty on the Authority to give a personal hearing to the delinquent.

11. A right of appeal has been provided by Regulation 40 of the said Regulations against any order passed by the competent Authority. In the instant case as noticed above, the Disciplinary Authority, instead of exercising the power as Disciplinary Authority imposing punishment, referred his recommendations to the appellate authority, namely, Board of Directors for taking a decision and the Board of Directors exercised the power of Disciplinary Authority and imposed punishment of dismissal thereby deprived the Appellant from moving the appellate authority against the said order. Such exercise of power is wholly arbitrary and discriminatory.

12. Curiously enough, the Managing Director being the disciplinary authority prepared his report and referred the matter to the Board of Directors to consider the draft charges, enquiry report, representation filed by the officer concerned and his finding, for taking an appropriate decision in the case. Not only that, when the case was placed before the Board for taking a final decision, he participated in the said meeting and a decision was taken by the Board of Directors to dismiss the Appellant from service. In our considered opinion, such a procedure adopted by the disciplinary authority and the appellate authority is absolutely erroneous in law.

13. In the case of Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, , this Court in similar circumstances, observed:

5...It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the Respondent-Bank that when an appellate authority chooses to

exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside.

14. In *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*, , a similar case came for consideration before this Court. In that case, the Appellant who was an employee of Braithwaite and Company Ltd., a Government of India undertaking, was subjected to disciplinary proceedings. The enquiry committee submitted its report to the disciplinary authority who was the Chairman-cum-Managing Director of the Company. The disciplinary authority passed an order of removal of the Appellant from service. The Appellant moved the Board of Directors who was the appellate authority. When the appeal was taken up by the Board, the said Chairman-cum-Managing Director participated in the deliberation of the meeting of the Board which heard and dismissed the appeal. On these facts, this Court held that the proceeding of the Board was vitiated on account of participation of the disciplinary authority while deciding the appeal preferred by the Appellant. Similar view has been taken in the case of *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, .

15. In the case of *K. Chelliah Vs. Chairman Industrial Finance Corporation of India and Another*, , an employee of the IFCI was dismissed from service. The decision to terminate the employee was taken up by the Chairman who was also a Member of the Board which considered the appeal. The High Court held that the entire proceeding was vitiated by non-observance of principles of natural justice.

16. After giving our anxious consideration in the matter, we are of the definite view that the procedure adopted by the Respondents in removing the Appellant from service is erroneous and suffers from serious discrimination and bias. Further, the Enquiry Officer conducted the enquiry without following the procedure and without giving sufficient opportunity to the delinquent to place his case. Enquiry is also vitiated in law.

17. For the reason aforesaid, we find that the appeal deserves to succeed. The orders passed by the Board of Directors and the impugned judgments passed by the High Court are liable to be set aside. The matter is, therefore, sent back to the Disciplinary Authority to proceed from the stage of the enquiry afresh and pass a reasoned order in accordance with law after giving full opportunity of hearing to the Appellant. Needless to say if the Appellant is aggrieved by the final order that may be passed by the Disciplinary Authority, he shall have a right to appeal before the appellate authority.