
(1987) 08 KAR CK 0040
In the Karnataka High Court
Case No : W.P. No. 4751/1984

C. Nagaraja Bhat

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Citation : (1987) 3 KarLJ 232

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraja Urs, J.-The petitioner was an employee of the Canara Bank. By an order dated 30-7-1983 passed by the Board of Directors of the said Bank, the dismissal order dated 13-10-1981 made by the General Manager-2nd respondent herein came to be confirmed, as a result of which, the petitioner has approached this Court under Art. 226 of the Constitution inter alia contending that the dismissal order passed by the 2nd respondent and confirmed in appeal by the 1st respondent is vitiated and it is illegal in as much as there was no fair play and observance of rules of natural justice in the enquiry conducted on the alleged charges on the basis of which he was dismissed.

2. Most of the facts are not in dispute. The petition is elaborately documented and therefore affords no difficulty. As evidenced by Annexure-E to the petition, articles of charge were served on the petitioner on or after 18-1-1978, the date the charge-sheet bears. The charge-sheet is signed by the General Manager who is the Disciplinary Authority under the Canara Bank Officer Employees"(Conduct) Regulations, 1976,(hereinafter referred to as the Conduct Regulations). They relate to events that took place on 3-3-1976, 15-12-1975, 19-12-1975, 31-12-1975 and among other things, it specified that the petitioner had acted without honesty and integrity and in a way unbecoming a Bank Officer thereby committing gross misconduct under Regulation 3(1) read with Regulation 24 of the Conduct Regulations. It also contained the statement of imputations. But it was not accompanied by any document. However, the charge memo at the very beginning required the delinquent-officer, the petitioner, to furnish his

explanations to the charge sheet in writing within 15 days of the receipt of the charge memo, as the enquiry was proposed to be held against him.

3. By explanation in writing dated 1st May, 1978 as at Annexure-F to the petition, the petitioner complained of ambiguity in the charge and required some clarification to file his written statement of defence. He was informed by a letter as at Annexure-G to the petition (a true copy) that the charges were clear and he must submit his explanation within 10 days of the receipt of that letter. But, no clarification was furnished. Fifteen questions were addressed to the 2nd respondent by Annexure-H dated 19th July, 1978.

4. The petitioner filed his written statement of defence in detail denying that he had committed the acts of misconduct alleged in the charge-sheet on the various dates which constituted his dishonesty, lack of integrity unbecoming a Bank Officer.

5. By an order dated 2nd August, 1978, the 2nd respondent directed that one B. Ramadas Pai, Manager, Canara Bank, South Circle Branch, Bangalore, should be the enquiry Officer. By an order dated 12-11-1979 one B.G. Kamath, Manager of Kanakapura Branch as the relevant time was appointed as the Enquiry Officer. By the letter dated 1-5-1980 the Enquiring Authority was appointed. He issued notice to the petitioner informing him that enquiry will be held on 14th May 1980 at the Canara Bank at Karkata, and he should present himself, failing which, the enquiry would be proceeded with in his absence. It also informed that the petitioner may be defended by any other officer or employee of the Bank.

6. Thereafter, witnesses were examined in support of the charges. There were as many as five witnesses examined in support of the charges. The petitioner did not adduce any oral evidence on his behalf. He was content, submitting a written statement after the evidence for the employer, had been completed by the Enquiring Authority.

7. Thereafter, the Enquiry Officer submitted his report to the 2nd respondent, General Manager, the Disciplinary Authority. The charges, in the report were held to have been proved. Consequently, the 2nd respondent accepting the report passed the order of dismissal dated 13-10-1981 which was received by the petitioner on 30th October, 1981, having been served by registered post for acknowledgment due. Thereafter, the appeal to the Board of Directors of the 1st respondent-Canara Bank followed which came to be dismissed as per Annexure-A to the petition concurring with the order of the Disciplinary Authority.

8. Though numerous grounds have been urged in support of the prayer for quashing the order of dismissal, what has been really pressed into service is the contention that the Enquiring Authority must be deemed to be biased in as much as all the witnesses for the Management of the employer were examined by him as if he was the Presentation Officer, and after the conclusion of the cross-examination by the petitioner the witnesses were re-examined on points elicited in cross-examination by the Enquiry Officer, the thrust of the argument is that

the Enquiring Authority was both the prosecutor and the judge.

9. It is further urged that after the petitioner-delinquent Bank Officer submitted his written statement in regard to the defence against him, he was himself subjected to cross-examination by the Enquiring Authority far in excess of the authority vested in the Enquiring Authority under Regulation 6(17) of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, (hereinafter referred to as the Discipline and Appeal Regulations). It is therefore contended that there was no fair play at the enquiry and it was clearly opposed to the rules of natural justice in as much as certain documents required to be summoned by the delinquent-officer, the petitioner, were not summoned by the Enquiring Authority.

10. This Court as well as the other High Courts and the Supreme Court have had occasion to examine as to what constitutes fair play in judicial, quasi-judicial, executive and administrative action in a number of cases. My attention was drawn by Mr. S. Ramdas learned Counsel appearing for the respondent-Bank to the case of K.L. TRIPATHI v STATE BANK OF INDIA AND OTHERS [A.I.R. 1984 S.C. 273]. The Supreme Court in that decision has clearly observed that the concept of fair play in action must depend upon the particular list, if there be any, between the parties. It has also observed that the requirements of rules of natural justice would vary from case to case depending on the facts of each case. Apparently, reliance has been placed on that decision, because, in that case, the Supreme Court rejected the appellant's case that there was violation of rules of natural justice in the matter of enquiry that preceded his dismissal. That may not be of much assistance if the facts of this case are not to be held to be in part material with Tripathi's case. In Tripathi's case the whole thing turned on certain admissions made by him. Therefore, some violation of the conventional concept of rules of natural justice, the Supreme Court held, would not vitiate the enquiry as the guilt could be traced to the admission made by the delinquent officer himself. In the instant case, the position is different. Consistently, the delinquent officer has denied the charges. He has even complained that the charges were vague and they required to be clarified. He was denied clarification.

11. What is asserted against the enquiry is the fact that the Enquiry Officer must be deemed to be biased because he acted both as prosecutor and the judge. Annexures M, N, O, P and Q are the depositions of the witnesses for the Management. Those documents reflect the true state of affairs is not disputed by Mr. Ramdas appearing for the Bank. What emerges from a perusal of those Annexures is that the Enquiry Officer himself examined each of the witnesses by asking them questions, some times leading questions. The answers were recorded by him. Thereafter, the cross-examination was permitted and then again re-examination was done by the Enquiring Authority himself.

12. Regulation 6 of the Discipline and Appeal Regulations is captioned "procedure for imposing major penalties" and as many as 21 sub-regulations follow. Sub-regulation(6) of Regulation 6 of the Discipline and Appeal Regulations provides

that where the Disciplinary Authority itself enquires or appoints an Enquiring Authority for holding an enquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge. In this case, no such presentation officer was appointed. Attention of the Enquiring Authority was drawn to this aspect by the delinquent officer. Nevertheless, over-ruling the objections, the Enquiring Authority proceeded to conduct the enquiry in the manner already stated.

13. Mr. S. Ramdas has strenuously contended that sub-regulation (6) of Regulation 6 of the Discipline and Appeal Regulations does not provide mandatorily for the appointment of a presentation officer. The use of the word "may" was indicative that it was directory and mere failure to appoint a presentation officer would not in itself vitiate the enquiry.

14. It is true when similar provision has been found in some other Rules or Regulations concerning disciplinary proceedings, this Court has held that it is not necessary to appoint a presentation officer in every case (See 1980(1) Karnataka Law Journal Short Notes Item 105). What fell for consideration earlier before this Court was sub-rule(5) of Rule 6 of the Karnataka State Police (Disciplinary Proceedings) Rules, 1965. Though Regulation 6 appears to be in pari material with the provisions made in the aforementioned Police (Disciplinary Proceedings) Rules, there are certain provisions in the Regulations which do not find place in the Police (Disciplinary Proceedings) Rules of 1965 and therefore should be treated differently.

15. The Supreme Court in the case of STATE OF UTTAR PRADESH AND OTHERS v BABU RAM UPADHYA [A.I.R.1961 S.C.751] has clearly laid down the tests by which the Court has to rule on the facts and circumstances of each case whether a rule is mandatory or directory. In my opinion, it would be unnecessary to apply those tests to the facts of this case and examine whether failure to appoint a presentation officer vitiated the enquiry. It suffices to give the relief to the petitioner on the sole ground that the manner in which the Enquiring Authority conducted the enquiry does establish that he was biased, as he acted both as prosecutor and the judge in recording not only the evidence but also founding his conclusions on such recorded evidence. This Court in the case of BHARATH ELECTRONICS LTD v K. KASI [I.L.R. 1987 Karnataka 366] clearly ruled that while non-appointing a presentation officer is not fatal to the enquiry not opposed to the rules of natural justice, if Enquiring Authority cross-examined defence witnesses or put leading questions to prosecution witnesses, it would establish bias. Questions for mere clarification could not be held to be unfair.

16. In SHIRAGUPPI L.B. v DEPUTY SUPERINTENDENT OF POLICE, MERCARA AND OTHERS [1977(2) Karnataka Law Journal, 225] a learned single judge of this Court, with particular reference to Rule 6(5) of the Karnataka Police Disciplinary Proceedings Rules, 1965, held that the Enquiring Officer where no presenting officer had been appointed to examine, cross-examining defence witnesses and suggesting that they are giving falsehood was circumstance that proved bias. It

was opposed to rules of natural justice and therefore vitiated the domestic enquiry. Similar is the view expressed by another learned single Judge of this Court in W.P.No. 11210/1977 disposed of on 13th November, 1980.

17. I have already mentioned earlier in the course of this order, that the Enquiring Authority throughout put questions in the examination-in-chief, some of which certainly were leading questions. Specific reference may be made to question put to one Sarvotham Bhat, another employee of the Bank. The questions are:

"Q: Was there the practice of issuing tokens to cash items at the Branch when you were cashier.

A: Yes.

Q: In case there was no token, how did you pay such installments.

A: The staff means no problem. In case of others, I used to ask the concerned Department whether the payment pertained to a person.

Q: In what manner did you pay the voucher in the absence of a token.

A: I called the name. In general I ask the department. I do not remember to whom exactly I have paid. But I have paid the amount."

One of the charges was, the delinquent Bank Officer had prepared two slips debiting certain amounts to the interest paid on account of certain deposits which came to be encashed by certain persons and it was in the light of that charge that among other things, the questions extracted above were addressed by the Enquiring Authority. This Court finds that in more or less in the case of all the witnesses leading questions were put and re-examination was made on points elicited in cross-examination which form the basis for the conclusions reached in the report that the delinquent officer was guilty. Therefore, the examination of witnesses was not in accordance with what this Court would consider fair play in action at a domestic enquiry.

18. Much worse is the denial of an adequate opportunity to the petitioner in examining and inspecting the documents which were required to be confronted to the witnesses. If that was over-ruled without sufficient reason, there could be only two reasons. One is that the Enquiring Authority did not know how to conduct an enquiry in accordance with what has come to be accepted as fair play in action or he was biased against the delinquent officer and therefore prevented those documents from being confronted to the witnesses for the Management or the employer.

19. Mr. P. Vishwanatha Shetty, learned Counsel for the petitioner, has specifically drawn the attention of this Court to sub-regulation(17) of Regulation 6 of the Discipline and Appeal Regulations which is as follows:

"17. The inquiring authority may, after the officer employee closes his evidence,

and shall if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him."

20. Having regard to the limited purpose for which questions may be put by the Enquiring Authority, the cross-examination of the delinquent Bank Officer after he had submitted his written statement in respect of the oral testimony recorded against him, is clearly impermissible.

21. I have therefore no hesitation to hold on the facts of this case that the conduct of the enquiry in the absence of a presentation officer by the Enquiring Authority, as if he was the presentation officer, was clearly opposed to the rules of natural justice and fair play as Courts have now come to understand. If the domestic enquiry was not fair, it vitiates any report which was based on such domestic enquiry was not fair, it vitiates any report which was based on such domestic enquiry. In the result, the action taken by the 2nd respondent and confirmed by the 1st respondent in dismissing the delinquent employee also must be quashed as not in conformity with the rules of natural justice. In the result, they are accordingly quashed. Rule will accordingly issue and be made absolute. Liberty is reserved to the Bank to proceed from the stage of recording evidence or even from the stage of appointing a presentation officer, if they are so advised. But they shall treat the petitioner as having been on duty from 30-10-1981 and pay him such backwages as he is entitled to including the increments to which he would have been entitled to.

22. It is equally useful to observe that after such long lapse of time, whether it will be prudent for the Bank to cause another enquiry to be made, which may or may not prove the charges. Ultimately it is for the 1st respondent to decide and not for this Court.

Writ Petition allowed.