

(2007) 01 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28546 of 2004

Daya Singh

APPELLANT

Vs

General Manager (Personnel) Punjab & Sind Bank & Ors.

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0079

Hon'ble Judges : Sushil Harkauli, J and Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—This writ petition has been filed by the petitioner challenging the order dated 662003 (Annexure 20 to the writ petition) dismissing him from service, the appellate order dated 17112003 (Annexure 24 to the writ petition) and the order dated 15/1732004 rejecting his review application (Annexure 29 to the writ petition).

2. We have heard the petitioner in person at considerable length and Sri R.N. Kesari, learned Counsel for the respondent Punjab and Sind Bank.

3. The petitioner was initially appointed as clerk in the Punjab and Sind Bank. After promotion, at the relevant time he was working as the Branch Manager. A departmental inquiry was instituted against him and one Sri Autar Singh Narang, Chief Manager was appointed as Inquiry Officer. The petitioner was issued a chargesheet on 30102000 containing five charges to the effect that he had sanctioned loans against the nonexistent FDR"s to the tune of Rs.16.48 lacs to fictitious persons; he left the Branch on 9th March, 1999 without any authorization and handingover the charge and as such absconded from service; he stood guarantor to the loan sanctioned to M/s. Mark Tube, Gurgaon and has made no sincere efforts to recover the said loan amount; and guaranteed loan taken by his wife from Bank of India in the name of M/s. Tarun Paper Products without obtaining permission from the competent authority.

4. The Inquiry Officer submitted his report on 22102002 holding all the five

charges to be proved against the petitioner, which has been annexed as Annexure 18 to the writ petition. On the basis of the above inquiry report comments of the petitioner were invited, who submitted his reply vide order letter dated 27/2/2002. Thereafter the Disciplinary Authority on 6/6/2003 passed the order of dismissal of the petitioner and for recovery of the loss caused to the Bank from the dues payable to the petitioner. The petitioner's departmental appeal against the aforesaid dismissal order was dismissed by the Appellate Authority vide order dated 17/11/2003 and the subsequent review thereof was also dismissed vide order dated 15/17/3/2004.

5. Having heard the parties and having perused the record, we find that the inquiry report submitted by the Inquiry Officer is too sketchy and it does not contain any reasons in support of the finding holding the charges to be proved against the petitioner. The Inquiry Officer only states that certain documents in support of each of the charges were presented and that the submissions of the petitioner in reply were not tenable and, therefore, the charges stand proved. The documents produced were neither detailed nor their nature has been explained. In the inquiry report there is no discussion much less any analysis of the evidence presented and the manner in which it proved the charges against the petitioner. Thus, it is not clear from the inquiry report as to on what basis the charges were found proved. No specific finding on the basis of the evidence adduced has been recorded to establish the guilt of the petitioner on any of the five charges e.g. in respect of the first charge there is no finding that the FDR's against which loans were sanctioned by the petitioner were not available with the Bank or if available the said FDR's stood expired, matured or revoked and as such were nonexistent or the persons to whom loans were granted were not genuine persons and persons with that names and particulars does not exist. The recording of reasons by an administrative authority serves a salutary purpose of excluding arbitrariness and to promote fairness in the process of decision making. Therefore, in the expanding horizon of the principles of natural justice, the requirement to record reasons unless dispensed with specifically by the statutes has also been regarded as one of the limbs of the principles of natural justice.

6. In view of the above, we are of the view that the inquiry report, which is the foundation for dismissing the petitioner from service is perverse and stand completely vitiated under law. The inquiry report is nonspeaking in nature and the conclusion recorded therein is unsupported by any reasoning whatsoever. Such an inquiry report which is unsupported by reasons is as bad as nonsupply of the inquiry report to the delinquent employee and it certainly deprives him from making an effective representation before the Disciplinary Authority.

7. The inquiry report or the findings recorded by the Inquiry Officer form an integral part of the material before the Disciplinary Authority to come to a conclusion for imposing a punishment. Therefore, if the findings of the Inquiry Officer are perverse i.e. to say have been recorded without considering the

relevant evidence or by misconstruing it or unsupported by it, the decision or the conclusion of the Disciplinary Authority would also be bad in law.

8. The order of dismissal passed by the Disciplinary Authority says that since the Inquiry Officer in his report has mentioned that the charges have not been refuted by the petitioner, therefore, he has no option but to concur with the Inquiry Officer and to pass the order of dismissal from service. The Disciplinary Authority in passing the said order has not all even referred to the reply alleged to have been submitted by the petitioner vide his letter dated 2722002 and as such the order is apparently a one sided order solely upon the inquiry report.

9. The Appellate Authority has dismissed the appeal as the petitioner during personal hearing was unable to reply to the queries made by the Appellate Authority. The appellate order does not describe or even indicate the nature of the queries made and in what manner the nonreply to the said queries adversely affected the petitioner. In the same fashion the reviewing authority rejected the review.

10. Sri R.N. Kesari in reply has submitted that the order of punishment dismissing the petitioner from service passed after following the procedure prescribed for holding the inquiry and after affording sufficient opportunity of hearing to him is beyond the judicial review. In support he has placed reliance upon two decisions of the Allahabad High Court in the case of Sankatha Prasad Singh v. Regional Administrative Committee of U.P. Cooperative Primary Agricultural Credit Centralized Services, (2003) 1 UPLBEC 16, and in case of Subedar Pathak v. General Manager & Ors., 2005 ADJ 477 (DB). There is no dispute to the legal proposition that judicial review against the departmental proceedings is permissible only if there is an error in decision making process. In the case in hand, the inquiry report which is the foundation for passing the order of dismissal, itself stand vitiated under law as held above. Thus, the rulings cited by the learned Counsel for the respondent are of no aid to the respondents.

11. The case of Y.P. Sarabhai v. Union of India & Anr., JT 2006 (11) SC 218, is also of no help to the respondents. In the said case the Supreme Court held that factual findings of Disciplinary Authority are not assailable in Courts unless there is breach of principles of natural justice or violation of any rule or material irregularity. However, in the present case the findings recorded by the Disciplinary Authority are solely based upon the inquiry report, which is not only sketchy but is totally uninformed of reasons. Recording of reasons in support of findings has been recognized as one of the limbs of the principles of natural justice. Therefore, non recording of reasons by the Inquiry Officer in support of the findings holding the charges to be proved is nothing but violation of principles of natural justice and accordingly the order of Disciplinary Authority is not far from judicial review of this Court.

12. In view of the above, the impugned orders dated 662003, 17 112003 and 15/1732006 are hereby quashed. However, in view of the law laid down by the

Apex Court in Managing Director, ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074, as the order dismissing the petitioner passed by the Disciplinary Authority has been set aside, the respondents are directed to hold a fresh inquiry against the petitioner in accordance with law and to pass appropriate orders if necessary accordingly. The petitioner may be treated as reinstated for the limited purpose of holding inquiry afresh.

13. The writ petition is allowed to the above extent with no order as to costs.