

(2008) 05 AHC CK 0092
In the Allahabad High Court

Dhirendra Sahai

APPELLANT

Vs

Assistant General Manager, Union Bank of India and Others

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Constitution of India, 1950 — Article 21, 226
Constitution of India, 1950 — Article 21, 226

Citation : (2008) 4 AWC 3483 Supp : (2008) 4 AWC 3483

Hon'ble Judges : U.K. Dhaon, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

U.K. Dhaon and Narayan Shukla, JJ.—Heard Sri U.K. Srivastava, learned Counsel for the petitioner and Sri P.K. Khare, learned Counsel for the opposite parties.

2. The petitioner being aggrieved by the order of dismissal from service dated 29.5.1981 and the order dated 20.10.1981 passed by the appellate authority by which the appeal preferred by the petitioner against the dismissal order has been dismissed has filed the instant writ petition under Article 226 of the Constitution of India.

3. The brief facts of the case are that while the petitioner was working in the Zonal Office, Union Bank of India as an officer Grade-II, he was served with an order of suspension dated 29.8.1978. A charge sheet dated 13.02.1979 containing four articles of charges along with memorandum of allegations dated 13.02.1979 was served upon the petitioner. Sri K.K. Dhawan the then Superintendent (Enquiries) was appointed as the Enquiry Officer. The management submitted a list of 23 witnesses. Out of 23 witnesses Sri Ashfaq Hussain and Sri Jai Chand Jaiswal were not examined by the Department. The management also filed oral as well as documentary evidence before the Enquiry Officer. The petitioner in his defence examined four witnesses besides his own statement. The Enquiry Officer after conducting the enquiry submitted the

enquiry report dated 20.04.1981. The Disciplinary Authority thereafter passed the impugned dismissal order dated 29.05.1981 against the petitioner.

4. The learned Counsel for the petitioner submitted that the impugned dismissal order dated 29.05.1981 is no order in the eyes of law as the Disciplinary Authority in his order has mentioned that on going through the proceedings of the enquiry and the report of the enquiring authority and all other connected papers, I concur with the findings of the enquiring authority that the charges levelled against Sri Sahai have been proved. He further submitted that the impugned dismissal order is non-speaking, non-reasoned and cryptic in nature. He further submitted that the Disciplinary Authority in a most arbitrary and illegal manner without considering the reply and evidence adduced by the petitioner in defence has passed the impugned dismissal order. The learned Counsel for the petitioner has relied upon the decisions of Hon''ble the Supreme Court in the cases of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, and M.J. Sivani and Others Vs. State of Karnataka and Others, He further submitted that the disciplinary authority has failed to act in accordance with the regulations and rules and the impugned dismissal order was passed in violation of principles of natural justice. He further submitted that the delinquent employee is entitled for an opportunity against the findings recorded by the Enquiry Officer in the enquiry report and in the instant case the order of dismissal has been passed without affording any opportunity to make representation against the enquiry report.

5. Learned Counsel for the petitioner has relied upon the decisions of Hon''ble the Supreme Court in the cases of S.L. Kapoor Vs. Jagmohan and Others, Chandrika Prasad Upadhyaya v. District Inspector of Schools, Jaunpur and Ors. reported in 1983 (1) L.C.D.150, Jagdish Prasad Singh v. State of U.P. and Ors. reported in 1990 (8) L.C.D 486 and S.N. Mukherjee Vs. Union of India, and on the strength of the aforesaid judgment the learned Counsel for the petitioner submitted that the impugned dismissal order as well as the appellate order deserve to be quashed.

6. Sri P.K. Khare, learned Counsel for the opposite parties submitted that there is no illegality in the impugned dismissal order as well as the appellate order passed by the appellate authority. He further submitted that no reply to the charge sheet was filed by the petitioner. He further submitted that the Enquiry Officer on the basis of the material on record has given a finding to the effect that the petitioner was aware that the borrowers whose cases were brought for finance by Sri Srivastava, had already mortgaged their land to the Land Development Bank for obtaining loan and their loans were outstanding and even then the petitioner disbursed the loans to the said borrowers without obtaining no dues certificate from the Land Development Bank. He further submitted that most of the charges levelled against the petitioner were found proved by the Enquiry Officer and it is settled law of Hon''ble the Supreme Court that neither the Hon''ble Hight Court under Article 226 of the Constitution of India nor the

Tribunal can re-appreciate the evidence and act as a Court of Appeal.

7. Learned Counsel for the opposite parties has relied upon the decisions of Hon"ble the Supreme Court in the cases of State of U.P. and others Vs. Nand Kishore Shukla and another, State Bank of India and Others Vs. Samarendra Kishore Endow and Another, and Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, He further submitted that the impugned dismissal order has been passed by the Disciplinary Authority after following the prescribed procedures and there is no violation of principles of natural justice. He further submitted that when an enquiry is conducted regarding the charges of misconduct by a public servant, scope of judicial review is very limited.

8. Shri Khare has relied upon the decisions of Hon"ble the Supreme Court in the cases of Government of India and Anr Vs. George Philip, Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, , B.C. Chaturvedi Vs. Union of India and others, and State of Andhra Pradesh and Others Vs. Chitra Venkata Rao,

9. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

10. It is admitted case of the parties that while the petitioner was posted in the Zonal Office, Union Bank of India as an Officer Grade-II, he was placed under suspension by the order dated 29.8.1978. Thereafter a charge sheet dated 13.02.1979 issued by the Manager (Personnel) was served upon the petitioner on the same day. The petitioner was also served with a copy of statement of allegations dated 13.02.1979. The following charges were levelled against the petitioner in the charge sheet:

1- Shri Dharendra Sahai, while working temporarily as the Branch Manager at Dewa Shariff Branch more particularly from 24th February, 1977, to 30th June, 1978 has conspired with the Agricultural Field Officer, M/s Kumar Mill Stores (Pumpset Dealer), a Legal Advisor Shri H.P. Srivastava and the Fertilizer Dealer M/s Jagdish Narain Potato Co. and cheated the Bank's Customers and the Bank.

2- Shri Sahai, had, thus, failed to take all possible steps to ensure and to protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank officer.

3- Further Shri Sahai had acted otherwise than in his best judgment and had failed to ensure the integrity and devotion to duty on the part of the Agriculture Field Officer, who was for the time being under his control and authority.

4- Moreover, Shri Sahai had acted in a manner prejudicial to the interest of the Bank and was grossly negligent in following the Rules and Procedures of the Bank with regard to sanctioning and disbursement of Loans.

11. The services of the petitioner are governed by the provisions of Union Bank of India Officer Employees" (Discipline and Appeal) Regulations, 1976. Regulation-4 provides the penalties which may be imposed on an officer

employee, for acts of misconduct or for any other good and sufficient reasons. The penalties are specified as under:

Minor Penalties ;

(a) -----

(b) -----

(c) -----

(d) -----

Major Penalties

(e) reduction to a lower grade or post, or to a lower stage in a time scale ;

(f) compulsory retirement ;

(g) removal from service which shall not be a disqualification for future employment;

(h) dismissal which shall ordinarily be a disqualification for future employment.

12. Regulation-5 deals with the Authority to institute disciplinary proceedings and impose penalties and Regulation 6 deals with procedure for imposing major penalties. It is admitted case of the parties that no reply to the charge sheet was filed by the petitioner before the Enquiry Officer and the written brief was submitted by the petitioner on 10.11.1980 before the Enquiry Officer after the close of the evidence of both the parties.

13. The Enquiry Officer after taking evidence as adduced by the parties submitted the enquiry report dated 20.04.1981 before the disciplinary authority. In the enquiry report it was held that the petitioner is guilty of all the articles of charges levelled against him as contained in the memorandum dated 13.02.1979. The disciplinary authority after considering the material on record passed the impugned dismissal order dated 29.05.1981.

14. The petitioner being aggrieved by the dismissal order preferred an appeal under Regulation 17 of the Union Bank of India Officer Employees" (Discipline and Appeal) Regulations, 1976 which was dismissed by the appellate authority. In the appeal a request was made by the petitioner for affording an opportunity of hearing before taking any decision in the matter but the appellate authority has not exceeded the request of the petitioner and has dismissed the appeal without affording any opportunity to the petitioner although, there is no provision under Regulations 1976 for affording an opportunity to the delinquent employee by the appellate authority but the principles of natural justice require that while depriving a delinquent employee from service an opportunity can be given in the interest of justice.

15. In the case of Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and

other, , the question before the Hon''ble Supreme Court was whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. It was further held that the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

16. In the case of State of U.P. and others Vs. Nand Kishore Shukla and another, , the Hon''ble Supreme Court has held that it is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based upon the misconduct proved against him. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order.

17. In the case of State Bank of India and Others Vs. Samarendra Kishore Endow and Another, , it has been submitted that when the appellant joined at the transferred place, he claimed certain amount by way of reimbursement for the expenses incurred by him in shifting his belongings and other articles. An inquiry was made into correctness of receipt and other documents produced by him in that connection and he was subjected under the disciplinary proceeding and after the inquiry there was no finding that the account became irregular or that any loss was incurred by the bank on account of the irregularity committed by the respondent. In light of this fact, the Hon''ble Supreme Court has held that in the circumstances it may be that the punishment of removal imposed upon the respondent is harsh but this is a matter which the Disciplinary Authority or the Appellate Authority should consider and not the High Court or the Administrative Tribunal. The Hon''ble Supreme court expressed its opinion that the proper course to be adopted in such situations would be to send the matter either to the disciplinary Authority or the Appellate Authority to impose appropriate punishment.

18. In the case of Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, , the Hon''ble Supreme court held that at the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/ authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-

observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee.

19. In the case of Government of India and Anr Vs. George Philip, the Hon''ble Supreme Court has held that it is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of the judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravement of the charge.

20. In the case of Om Kumar and Ors. v. Union of India reported in 2001 (2) SCC 386 the Hon''ble Supreme Court has held that the Court while reviewing the punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in extreme and rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

21. The Enquiry Officer in his report has observed as under:

I, However, do not find sufficient evidence on the enquiry record to conclude that the Oil Engine was installed at the farm of Sri Sahai before delivery of the same to the borrower.

In view of the discussion hereinabove, I am not inclined to conclude that Sri Dharendra Sahai with the connivance of Agricultural Field Officer(Sri R.S. Chaubey), Pumpset Dealer M/s. Jagdish Nigam Potato Company cheated the Bank''s customers and the Bank.

22. The Enquiry Officer has also observed as under:

I am not inclined to conclude that as regards the case of Shri Ram Pal, the allegations levelled against Sri Dharendra Sahai of cheating the Bank''s customer and the Bank resorting to misappropriation illegal diversion and transfer of funds; abusing his position as a public servant and granting loans in utter disregard to the norms and procedures for granting such loans and obtaining pecuniary advantage for himself and other people have not been established before me at the enquiry.

23. The Enquiry Officer regarding allegation No. 4 has also held as follows:

In view of the discussion hereinabove, I find that the allegations of accepting

illegal gratification by Sri Sahai for granting loans from the parties on the plea that the same was to be given to higher authorities in the Bank for getting their loans sanctioned as mentioned in account Nos. 1,2 & 3 of Annexure II has not been established at the enquiry. I, however, find that there had been certain irregularities in disbursing the loan amount to S/Sri Niaz Waris, D.P. Mishra and Ashfaq Husain as pointed out hereinabove but these irregularities themselves do not lead to prove that Sri Sahai had accepted illegal gratification from the parties for granting loans to them.

I, accordingly, conclude that the allegation that Sri Sahai exceeded the delegated authority in granting D.I.R. loans and the loans under the erstwhile 20 Point Programme and did not obtain confirmation from the R.O./Z.O. for exceeding the limits has not been substantiated at the enquiry.

24. The disciplinary authority has acted in complete disregard to the law whereby a delinquent employee is entitled to an opportunity against the Enquiry Report which was submitted against him. In the instant case, the Order of Dismissal has been passed without issuing any show cause or without affording any opportunity to the petitioner to make a representation against the Enquiry Report.

25. The appellate authority while dismissing the appeal preferred by the petitioner has not considered the aforesaid findings recorded by the Enquiry Officer in his enquiry report dated 20.04.1981.

26. We are of the view that while deciding the appeal, the appellate authority has not considered the point raised by the petitioner in the memorandum of appeal and the appellate authority on the basis of the enquiry report and the decision taken by the disciplinary authority has dismissed the appeal. The record also reveals that no charge of embezzlement or misappropriation of fund has been proved against the petitioner.

27. The Hon"ble Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., has held that "right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice."

28. In the case of Chandrika Prasad Upadhyaya v. District Inspector of Schools, Jaunpur and Ors. reported in 1983 (1) L.C.D.150 , a Division Bench of this Court while placing reliance on the judgment of S.L. Kapoor Vs. Jagmohan and Others, has held that denial of the opportunity to submit explanation against an adverse material amounts to violation of the Principles of Natural Justice even though no prejudice is caused.

29. We, therefore, have no option except to remit the matter to the disciplinary

authority for decision afresh.

30. In the result, the writ petition succeeds and is hereby allowed and the impugned order dated 29.5.1981 passed by the Disciplinary Authority and the order dated 20.10.1981 passed by the appellate authority are hereby quashed. The petitioner shall be entitled for all consequential benefits. The case is remitted back to the Disciplinary Authority for decision afresh, in accordance with law. The consequential benefits awarded to the petitioner shall be subject to the outcome of the final decision taken by the Disciplinary Authority.

31. The parties shall bear their own costs.