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(1995) 08 OHC CK 0002

In the Orissa High Court

Case No : O.J.C. No. 2397 of 1993

Dilip Kumar Naik APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 07-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 3 LLJ 454

Hon'ble Judges : D.P. Mohapatra, J;B.N. Dash, J

Bench : Division Bench

Advocate : C.A. Rao, S.K. Purohit, S.K. Behera and P.K. Sahoo, for the Appellant; Bijan Ray, B. Bal C. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

B.N. Dash, J.—The petitioner, an employee of the State Bank of India, has assailed in this petition under Articles 226 and 227 of the Constitution of India the order dated March 13, 1992 of the disciplinary authority i.e. the Assistant General Manager, Region III, State Bank of India (opposite party No. 3) dismissing him from service, copy of which is Annexure-7 as also the appellate order of the Deputy General Manager, State Bank of India (opposite party No. 2) confirming the order of the disciplinary authority (Annexure-11).

2. The petitioner Dilip Kumar Naik having been appointed as Cashier-cum-Clerk after being selected in the competitive examination from the Scheduled Caste quota, as per Annexure-1, joined service. While he was serving as Cashier in the Agricultural Development Branch of the State Bank of India, G. Udayagiri in the district of Phulbani, a disciplinary proceeding was initiated against him in the year 1986 in CRM/DAC No. 352 alleging gross misconduct in securing appointment in the bank by making false declaration that he was member of the Scheduled Caste being ''Pano'' by caste. The charge-sheet dated August 18, 1986 is Annexure-2. As required, the petitioner submitted his explanation that his declaration as to caste was correct and that he changed over to Christianity

much later on January 24, 1982. One Sri V Ram Das being appointed as Enquiry Officer, conducted the enquiry on January 10, 1990 and May 25, 1990. In course of the enquiry, the Presenting Officer produced three documents namely, letter No. 4121 dated December 12, 1985 received from the Officer-in-charge, General and Misc. Section, Collectorate, Phulbani addressed to the Regional Manager, Region- III, State Bank of India, Bhubaneswar intimating that the Tahasildar, G. Udayagiri conducted enquiry which revealed that Sri D.K. Naik professes Christianity; letter No. 4610 dated July 3, 1986 received from the Tahasildar, G. Udayagiri by the Regional Manager, Region-Ill, Bhubaneswar intimating that Sri D.K. Naik, son of Rama Naik of village Badanaju, P.S.G. Udayagiri is a ''Pano'' and professes Christianity which does not belong to Scheduled Caste. It was, therefore, concluded in that letter that the certificate issued vide R.M.C. No. 691/77 could not be considered now as per the present verification report; and letter No. 1296 dated April 24, 1987 of the Additional District Magistrate, Phulbani addressed to R.M. III, S.B.I., Bhubaneswar intimating that as per the enquiry conducted by the S.D.O., Baliguda it was beyond all doubts that Sri Naik was ''Pano'' by caste and professes Christianity. On that basis, the Additional District Magistrate was of the view that Sri Naik did not belong to Scheduled Caste and the Scheduled Caste certificate issued in his favour in M.C. Case No. 691/77 might be a misrepresentation of the fact.

The delinquent petitioner, in support of his case, produced the caste certificate issued to him in M.C. Case No. 691/77 (Annexure-3) accompanied by the report of the Revenue Inspector, G. Udayagiri dated November 4, 1977 indicating that the petitioner is a member of the Scheduled Caste, being ''Pano'' by caste according to the Constitution (Scheduled Caste and Scheduled Tribe) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes (Lists Modification) 1958. He also filed letter No. 2422 dated May 25, 1990 issued by the Tahasildar, G. Udayagiri to the Branch Manager stating that the petitioner was a member of the Scheduled Caste and was subsequently converted to the Christianity with effect from April 24, 1982 as stated by the local public and gentries and the father of Sukanda Catholic Church as also the certificate dated February 12, 1989 issued by Fr. Alexandere of Catholic Church, Sukanda, G. Udayagiri indicating that the petitioner was baptised on February 24, 1982.

3. On a consideration of the aforesaid documents, the Enquiry Officer recorded the findings (i) that Sri Dilip Kumar Naik was a Hindu while applying for the certificate; (ii) that an enquiry was conducted by the Revenue Authority who on being satisfied about the caste of the petitioner issued the certificate in his favour in 1977; (iii) that the petitioner applied for the bank service and having got the employment on October 9, 1980 i.e. after about three years of the issue of the certificate, the possibility of the petitioner''s obtaining the certificate for the purpose of securing bank job is fully ruled out as after three years of the issue of the certificate he joined the service; (iv) that the petitioner was converted to Christianity on February 24, 1982 but did not intimate that fact to the Bank C.O.; (v) that the Bank''s reference and enquiries started in the year

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1985 by which time Sri Naik had already professed Christianity; and (vi) that the letters of Government authorities merely say that Sri Naik professes Christianity.

With such findings, the Enquiry Officer came to hold that the petitioner was Hindu at the time of taking employment in the bank and he was a member of the Scheduled Caste and as such, he could not be guilty of the charge levelled against him. The report of the Enquiry Officer is attached to the Writ Petition as Annexure 4 and when the same was placed before the disciplinary authority (opposite party No. 3) he was of the view that the charge of gross misconduct had been duly proved and accordingly, he issued notice to the petitioner to show cause as to why he would not be dismissed from service. A copy of the notice is annexed to the writ petition as Annexure-5. The notice does not indicate that any other document not referred to by the Enquiry Officer was taken into consideration by him and no reason has been assigned therein as to why he took a decision contrary to that of the Enquiry Officer. After the petitioner showed his cause as per Annexure-6 the impugned order as per Annexure-7 dismissing the petitioner from service was passed. Thereafter, the petitioner preferred appeal before the Deputy General Manager (opposite party No. 2) against the order of dismissal and the copy of his memorandum of appeal is Annexure-8 which was followed by the other impugned order, Annexure-11 dismissing the appeal merely observing that on perusal of the relevant papers and after going through the enquiry report and the written submission of the petitioner, it was found that there was no valid and convincing reason justifying a lighter punishment.

4. It is contended by Mr. C.A. Rao, learned counsel for the petitioner that on the facts and in the circumstances of the case, the disciplinary and appellate authorities were absolutely unjustified in taking a view contrary to that of the Enquiry Officer. Mr. Bijan Ray appearing for the opposite parties has invited our attention not only to the documents relied upon by the Enquiry Officer but also to the letter dated January 3, 1991 from the Headmaster of Hubback High School, G. Udayagiri, Phulbani addressed to the Regional Manager, S.B.I., Berhampur, Ganjam, copy of which is Annexure-A, intimating that the religion of the petitioner was ''Pano Christian'' as per entry in the School Admission Register dated July 22, 1968; the letter dated January 8, 1990 addressed by the Principal, Steward Science College, Cuttack to the Regional Manager, S.B.I, Zonal Office, Berhampur, Ganjam intimating that when the petitioner was admitted to his college on August 21, 1972 to the 1st year I.Sc. Class, he had furnished an application form for admission mentioning therein his religion as Christianity and caste as ''Pano'' (Annexure B), and the application of the petitioner while taking admission into the Stewart Science College, Cuttack, copy of which is Annexure B/1, and has submitted that in view of such letters and application form which were considered by the disciplinary and appellate authorities, there can be no manner of doubt that the petitioner on his own showing, had adopted Christianity much before he applied for the job in the State Bank of India and, therefore, the ultimate conclusion of the Disciplinary and Appellate authorities are not liable to be interfered with.

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5. As seen above, these letters from the Headmaster, Hubback High School and the Principal, Stewart Science College, Cuttack and the application form were not produced before the Enquiry Officer at the time of the enquiry. They were also not brought to the notice of the petitioner either by the disciplinary authority or by the appellate authority inasmuch as their impugned orders do not disclose, as stated earlier, the reasons for coming to their conclusions contrary to that of the Enquiry Officer. So the question arises whether the disciplinary and the appellate authorities can take into consideration any material which was not produced before the Enquiry Officer particularly when the attention of the delinquent is also not drawn to those documents by them. In State of Madras Vs. A.R. Srinivasan, it has been held as under:

"... It is conceivable that when the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case it is not necessary that the reasons should be detailed or elaborate."

(Quoted from the placitum)

6. The case of Union of India v. Krishna Kumar, reported in Vol. 59 1982 (1) S.L.R. 359 fits into the case at hand. In that case, the Enquiry Officer had exonerated the employee and the disciplinary authority while issuing show-cause notice to the employee for removal from service did not give any reason therein and ultimately passed orders removing him from service. The employee carried appeal and the appellate authority also without giving reasons dismissed the appeal. It was held by the High Court that the order removing the employee passed by the disciplinary/appellate authority was cryptic and as such, the order was bad.

In State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., the dismissal order passed against a constable was set aside on the ground that the charge-sheet having not furnished necessary particulars and the statements of witnesses recorded during preliminary enquiry having also not been furnished, there was denial of opportunity to the delinquent to defend himself.

7. It is, thus, clear that in a disciplinary proceeding the delinquent should be given all opportunities to defend himself or else it is liable to be held that he is denied of the Rule of natural justice. As stated earlier, the charge-sheet against the petitioners is devoid of the detailed particulars constituting the charge of mis-conduct. The disciplinary and appellate authorities were greatly weighed by the letters of the Headmaster, Hubback High School and the Principal of Steward Science College, Cuttack and also the application form for admission allegedly furnished by the petitioner in taking their ultimate conclusion, but those documents had neither been produced before the Enquiry Officer nor they were shown to the petitioner by the concerned authorities to enable him to explain away the same. Thus, there can be no manner of doubt that there was denial of

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the Rule of natural justice and as such, the impugned orders of the disciplinary authority and appellate authority are not sustainable.

8. It is strenuously urged by Mr. Bijan Ray for the opposite parties that the High Court in its writ jurisdiction cannot alter the finding of fact reached by the disciplinary and appellate authorities. Narayan Mohapatra v. General Manager, S. E. Rly 1969 Lab IC 896 it was held by this Court as under:

"... The High Court may undoubtedly interfere where the departmental authorities have held the proceeding against the delinquent in a manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of the enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant consideration. The High Court can also interfere where the conclusion reached by the departmental authority on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The High Court can also interface where the conclusion is not supported by any evidence at all."

(Quoted from the placitum)

In Union of India (UOI) Vs. H.C. Goel, one of the two questions that arose for consideration was whether the High Court dealing with the writ petition filed by the Government Officer who has been dismissed from the Government service is entitled to hold that the conclusion reached by the Government in regard to misconduct is not supported by any evidence at all.

9. In view of the decision of the Apex Court and the decision of this Court with which we are in respectful agreement, the contention raised on behalf of the opposite parties must fail.

10. On the aforesaid analysis, our considered opinion is that the impugned orders of the disciplinary authority and appellate authority (Annexures 7 and 11) are not sustainable and as such, the Writ application is allowed, the said orders are quashed and petitioner is entitled to reinstatement with all financial benefits. However, this decision will not debar initiation of a fresh proceeding by the bank in accordance with law, if so advised. In the peculiar circumstances of the case, there shall be no order as to costs.

D.P. Mohapatra, A.C.J.

11. I agree.

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