

(2011) 04 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 862 (S/B) of 1994

Dina Nath Chaube

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2011) 5 ADJ 534 : (2011) 2 UPLBEC 1181

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Petitioner, who happens to be the Branch Manager of the Respondent-bank namely Central Bank of India, has approached this Court under Article 226 of the Constitution of India against the impugned order of punishment whereby the Petitioner has been removed from service.

2. Heard learned Counsel for the Petitioner & Respondents.

3. According to learned Counsel for the Petitioner, on the basis of preliminary enquiry report, the charge-sheet dated 20 January, 1990, was served on the Petitioner containing as many as 29 charges. The preliminary enquiry was conducted by one Sri G B. Pandey. After receipt of the charge-sheet, the Petitioner had moved an application for supply of copy of the report of the preliminary enquiry report and other documents. At the face of record, it appears that the same was not provided to the Petitioner. The Respondent-bank claimed privilege with regard to the enquiry report and declined to supply the same. Under these circumstances, the Petitioner could not file reply to the charge-sheet. However, the Enquiry Officer had proceeded with the enquiry and recorded the statements of certain witnesses who were duly cross-examined by the Petitioner. At the defence stage, the Petitioner had moved an application for producing seven witnesses. However, out of seven witnesses, only four witnesses

were permitted to be produced, whose names are Shyam Sunder Pandey, Chandra Prakash Mishra, Nakchhed Pandey and Gorakh Nath. On behalf of the prosecution/Respondent-bank, only one witness namely Sri G B. Pandey, who conducted the preliminary enquiry, was produced. Thereafter, the Enquiry Officer has submitted the enquiry report and in pursuance thereof, the impugned order of punishment has been passed by the Disciplinary Authority.

4. While assailing the impugned order, it has been submitted by learned Counsel for the Petitioner that the privilege claimed by the Respondent-bank with regard to non supply of copy of the preliminary enquiry report which is the foundation of the allegation, is not sustainable and the Disciplinary Authority has got no right to claim any privilege.

5. Submission of learned Counsel for the Petitioner is that since the preliminary enquiry report has been relied upon and the sole witness on behalf of the prosecution is the officer concerned who has conducted the preliminary enquiry, hence, preliminary enquiry report is a material document and non-furnishing of the copy of the preliminary enquiry report had caused serious prejudice to the Petitioner.

6. It has also been submitted by learned Counsel for the Petitioner that because of non supply of documents alongwith the copy of the preliminary enquiry report, the Petitioner could not submit reply to the charge-sheet After receipt of the show-cause notice alongwith the enquiry report, the Petitioner has submitted reply and stated that non supply of copy of preliminary enquiry report has caused serious prejudice. The Enquiry Officer has not called the material witnesses inspite of the application moved by the Petitioner. It has also been submitted that impugned order passed by the Disciplinary Authority is a non speaking one. Neither the reply submitted by the Petitioner has been considered nor the evidence led by the Petitioner in the form of defence witnesses has been taken into account while passing the impugned order of punishment

7. Further submission of learned Counsel for the Petitioner is that there is no allegation against the Petitioner with regard to embezzlement or causing loss to the bank.

8. So far as first submission of learned Counsel for the Petitioner that the impugned order is a non speaking one and non-consideration of objection submitted by the Petitioner, seems to be correct A perusal of the impugned order reveals that the Disciplinary Authority had reproduced the charges in the impugned order and thereafter, referred the observation made by the Enquiry Officer with regard to those charges and thereafter recorded finding, but while doing so, the Disciplinary Authority had not discussed nor referred or taken into account the statements given by the defence witnesses, and how and under what circumstances, the Disciplinary Authority has arrived to the conclusion with regard to finding of guilt of the Petitioner.

9. Now, it is settled proposition of law that it is obligatory on the part of the

Disciplinary Authority to record a specific finding after taking into account the evidence led by the parties and then record a finding.

10. It is also settled proposition of law that non-furnishing of material documents and that too like the preliminary enquiry report vitiates the enquiry proceedings.

11. Learned Counsel for the Petitioner has relied upon the following Judgments reported in:

1. U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others,

2. Rang Bahadur Singh and Others Vs. State of U.P.,

3. Union of India and another Vs. G. Ganayutham (Dead) by LRs.,

4. Yoginath D. Bagde Vs. State of Maharashtra and Another,

5. Kailash Nath Gupta, Ex-Recovery Officer, Allahabad Bank v. Enquiry Officer, Allahabad Bank, Regional Officer, Allahabad and Ors. (2004) 2 UPLBEC 1457.

6. Raj Kishore Yadav v. U.P. State Public Service Tribunal, Indra Bhawan, Lucknow and Ors. (2004) 2 UPLBEC 1461.

7. Union of India and Anr. v. B.C. Chaturvedi (1995) 6 SCC 750.

8. Ganesh Santa Ram Sirur v. State Bank of India and Anr. (2005) 1 UPLBEC 354.

9. Sanjeev Gupta and Others Vs. Union of India (UOI) and Another,

10. Hardwari Lal Vs. State of U.P. and Others,

11. S. Jamaludeen and Others Vs. High Court of Madras and Others,

12. The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others,

13. State of U.P. and Others Vs. Saroj Kumar Sinha,

14. Tamil Nadu Housing Board Vs. L. Chandrasekaran and Others,

15. State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.,

16. The State of Punjab Vs. Bhagat Ram,

17. Smt. Hardeep Kaur and Another Vs. State of Punjab and Another,

12. In the case of Secretary and Curator, Victoria Memorial Hall (Supra), their Lordships of Hon"ble Supreme Court, held as under:

40. It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to

disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."(Vide *State of Orissa v. Dhaniram Luhar* and *State of Rajasthan v. Sohan Lal*)

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide *Raj Kishore Jha v. State of Bihar* SCC 527, para 19; *Vishnu Dev Sharma v. State of U.P.*; *Sail v. STO*; *State of Uttranchal v. Sunil Kumar Singh Negr*, U.P.S.R. T.C. v. *Jagdish Prasad Gupta*; *Ram Phall v. State of Haryana*, *Mohd Yusuf v. Faij Mohammad* and *State of H.P. v. Sada Ram*.

13. In the case of *State of U.P. and Ors.* (supra), Hon''ble Supreme Court while discussing the right and duty of the Disciplinary Authority, held as under:

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 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.

14. In view of above, so far as the submission of learned Counsel for the

Petitioner that the Disciplinary Authority has not exercised its jurisdiction as an independent adjudicator and not considered the objections filed by the Petitioner and also not discussed the evidence available on record except reproducing the observation made by the Enquiry Officer, mechanically, seems to be correct. The Disciplinary Authority should have passed a speaking and reasoned order after considering the evidence led by the parties. It was obligatory on the part of Disciplinary Authority to record finding with regard to Petitioner's objection for non-supply of copy of preliminary enquiry report as well as in not permitting the Petitioner to produce all seven witnesses as demanded during the course of enquiry.

15. The appellate authority has also not applied its mind with regard to aforesaid facts and circumstances while dismissing the appeal mechanically without recording the finding with regard to objection filed by the Petitioner. On the sole ground, the writ petition deserves to be allowed-leaving it open for the Disciplinary Authority to consider the same while passing a fresh order.

16. Supreme Court in a case in Krishna Chandra Tandon Vs. The Union of India (UOI), held that preliminary enquiry report is material piece of evidence, and its non supply should be violative of principles of natural justice. Hence, writ petition deserves to be allowed.

17. A writ in the nature of certiorari is issued quashing the impugned orders dated 16.10.1992,29.4.1993 and 13.3.1994, as contained in Annexure Nos. 3,5 and 6 to the writ petition, with all consequential benefits with liberty to pass fresh order keeping in view the observations made in the body of the judgment

18. Since, the Petitioner has already retired from service, let Disciplinary Authority take a decision, in accordance to law, after taking into account the objection filed by the Petitioner to the enquiry report as well as evidence led by the parties, expeditiously say preferably within a period of three months from the date of receipt of certified copy of this order. No cost