
(2001) 06 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 261 (SH) of 2000

Dr. Prasanna Kumar Agarwal

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Citation : (2001) 2 GLT 398

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : V.K. Jindal and L. Lyngdoh, for the Appellant; G.S. Massar and T.T. Diengdoh, for the Respondent

Judgement

N.S. Singh, J.—1. In this writ petition the writ petitioner, Dr. Prasanna Kumar Agarwal questioned the validity of the impugned suspension order dated 17.11.1989 being VIG/No. 629/89 issued by the General Manager (Operations) of the respondents/Bank as in Annexure 3 to the petitioner ; the related order dated 26.4.2000 issued by the Deputy General Manager (Disciplinary authority) as in Annexure 9 to the petition, initiating disciplinary proceeding against the petitioner and also another office latter/order dated 19.8.2000 as in Annexure II to the writ petition issued by the Deputy General Manager (disciplinary authority) of the respondents/Bank, informing the petitioner that his suspension will continue, by contending inter alia, that after serving more than six years as Medical Officer under the respondents/Bank, the petitioner has been placed under suspension with immediate effect in terms of Rule 50A(i) of the State Bank of India (Supervising Staff) Service Rules as the Bank authority had decided not to allow the petitioner to continue in the active service pending decision of the prosecution case filed by CBI in that regard by virtue of the impugned suspension order dated 17.11.1989. But, the said criminal case was finally disposed of on 24.4.1998 by the Court of the Special Judge, Assam, Guwahati in Special Case No. 23(c)98 thus discharging the petitioner from the charges leveled against him, but he has not been re-instated in service despite the

prosecution has failed to established a prima facie case against him.

2. It is also the case of the petitioner, that in spite of the existence of the discharge of the petitioner from the criminal case, the respondent/Bank initiated disciplinary proceedings in the year 2000 on the same and similar allegations and charges under the impugned order dated 26.4.2000 as in Annexure 9 to the petition by which, the petitioner has been informed to submit his written statement of defence to the charges namely, four charges levelled against him, even with the further information under another impugned office latter/order dated 19.8.2000 as in Annexure 11 to the writ petition that the authority/Bank-respondent had decided that the suspension of the petitioner will continue till the departmental action against him is concluded.

3. The case of the petitioner is resisted by the respondents by filing affidavit-in-opposition and contended inter alia, that the writ petition is barred by the principle of res judicate in view of the judgment and order dated 27.9.1996 passed by this Court in Civil Rule No. 1786/ 94 which was also upheld by judgment and order dated 20.8.1997 passed in WA No. 515/96.

4. According to the contesting respondents, the issuance of show cause notice dated 29.3.1994 after a lapse of seven years is because of the fact that the petitioner had initially filed a suit being TS No. 11(SH)89 against the suspension order dated 17.11.1989 in the court of the Assistant District Judge, Shillong, and the petitioner also obtained an injunction order from the said Court vide order dated 30.11.1989 restraining the respondents from giving effect to the impugned suspension order dated 17.11.1989 but, subsequently by an order dated 24.7.1991, the said suit was dismissed for default and because of the proceedings of Civil Rule No. 1786/94 before this Court and other circumstances, the show cause notice was issued after a few years but there is no delay in the initiation of the departmental proceedings against the petitioner by the respondents. The respondents want on the state that although the petitioner has been discharged from the case by the Special Judge, Assam, in the connected Special Case, it was on technical grounds and not on merit. Apart from that, the Mangement of the respondent/Bank had decided that the suspension of the petitioner will continue to remain in force till departmental proceedings against him is concluded and the petitioner has been reminded on several occasions to submit his explanation to the show cause dated 29.3.1994, and, that as the petitioner is still under suspension and the same has not been revoked, it was decided by the Management that the same shall be in force till the completion of the disciplinary proceedings and, as such, there is no infirmity in the initiation of the disciplinary proceedings against the petitioner even though he has been discharged from the criminal case.

5. It is also case of the respondents that the petitioner was suspended from service under Rule 50A(i) and not under Sub-clause (b) of Rule 50A(i) of the related Service Rules and, as such, there is no infirmity in initiating the departmental proceedings against the petitioner.

6. Mr. V.K. Jindal, learned senior counsel appearing for the petitioner submitted that the related show cause notice (earlier) came to an end in view of the judgment passed by the learned Special Judge and the petitioner was placed under suspension and the departmental proceeding was contemplated against him on account of his involvement in the criminal case which was ended and closed under the related judgment mentioned above and, apart from it, the case of the petitioner is covered up by a decision of the Apex Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, as there has been inordinate delay in initiating the related departmental/disciplinary proceeding which is yet to be concluded. At the hearing, Mr. G.S. Massar, learned senior counsel argued that the delay is not attributed to the respondents-Bank including the departmental authority and mere lapse of years in the departmental proceedings will not cause any prejudice to the writ petitioner as held by the Apex Court in a connected decision reported in Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, and this Court in the related judgment and order dated 27.9.1996 passed in Civil Rule No. 1786/1994 filed by the writ petitioner had expressed the same legal view and, as such, the matter in controversy between the parties was finally decided by this Court in the connected Civil Rule No. 1786/1994 which cannot be re-opened by now by the writ petitioner by filing the present writ petition as it is barred by the principle of res-judicata. The learned senior counsel also relied upon the decision of the Apex Court rendered in Sr. Superintendent of Post Offices v. Sri A. Gopalan reported in AIR 1999 SC 1514 and a decision of this Court rendered in Union of India v. Sri P.R. Das reported in (2000) 2 GLT 188 and submitted that even though the petitioner has been acquitted or discharged from the charges levelled against him, the departmental proceeding can go on as against the petitioner as these two proceedings are quite different from each other. One is the criminal trial and another is the departmental proceeding and, as such, there is no infirmity on the part of the respondents to proceed with the departmental proceedings as against the petitioner.

7. The question of res-judicata will not arise in the instant case in view of the existing facts and circumstances of the case. Therefore, the submission of Mr. G.S. Massar, learned senior counsel that the present writ petition is hit by the principle of res-judicata holds a little water in view of the cause of action of the present case.

8. Now, this Court is to see and examine as to whether the writ petitioner has enforceable legal right in the instant case or not, and whether the petitioner could make out a case to justify the interference with the impugned orders as in Annexures 3, 9 and 11 to the writ petition and, whether he should be entitled to get the relief/reliefs claimed sought for in this writ petitioner or not.

9. Upon hearing the learned counsel for the parties and also on perusal of the available materials on record and, after proper application of my mind in this matter, I am of the view that the writ petitioner has enforceable legal right in the

instant case and could make out a case to justify the interference with the impugned orders as in Annexures 3, 9 and 11 for the following reasons :

(a) The writ petitioner was placed under suspension with immediate effect in terms of Rule 50A(1) of the State Bank of India (Supervising Staff) Service Rules, in the year 1989 vide related suspension order dated 17.11.1989 as in Annexure-3 on the main ground that the authority decided not to allow the writ petitioner to continue in the active service pending decision of the prosecution case filed by the CBI in the related matter. But, it is established that the petitioner had already been discharged from the case as well as from the charges levelled against him in connection with the said CBI case vide, order dated 24.4.1989 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 23(C)88 and after the petitioner was discharged from the case and after a lapse of many years from the date of the impugned suspension order and after the alleged occurrence for which a related FIR was lodged on 30.1.1987, i.e., after more than 13 years from that day, the authority of the respondents-Bank initiated a fresh disciplinary proceedings against the writ petitioner for the same allegation and charges which was levelled against the writ petitioner in the said CBI case vide, impugned order dated 26.4.2000 as in Annexure 9 to the writ petition and the Article of Charges framed against the writ petitioner in that regard were also highlighted in the said impugned order of 26.4.2000 afresh which, in my tentative view, is not permissible in view of the decision of the Apex Court rendered in Capt M. Paul Anthony, Appellant v. Bharat Gold Mines Ltd. and Another, respondents reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, wherein the Apex Court held, thus :

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, "the raid conducted at the appellant" resident and recovery of incriminating articles therefrom". The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to at and.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

Nor the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs. 15,000."

(b) For better appreciation in the matter and also for just determination of the real points in controversy particularly, the stand of the respondents that the petitioner was suspended from service under Rule 50A(i) and not under Sub-clause (b) of Rule 50A(i) of the related service Rules as seen in para 19 of the Affidavit in opposition and apart from the criminal prosecution, the departmental inquiry was also initiated against the petitioner by issuance of show cause notice dated 29.3.1994 the validity of which has been upheld by this Court in Civil Rule No. 1786/94 and, on the other hand, the petitioner urged that he was placed under suspension by invoking Rule 50A(i) of the related Service Rules pending decision of the prosecution case filed by CBI. In that regard, Sub-clause (b) of Rule 50A (i) is applicable, the related provisions of Rule 50A(i) is relevant and material for deciding this issue and, accordingly, the same is quoted below :--

"An employee may be placed under suspension by the Disciplinary Authority:

- (a) where a disciplinary proceeding against him is contemplated or is pending ; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

10. A plain reading of this provision of Rule 50A read with the impugned suspension order dated 17.11.1989 clearly shows that the petitioner was placed under suspension on account of the pending decision of the prosecution case filed by the CBI and, as such, the case of the petitioner shall be covered by the provisions of Sub-clause (b) of Rule 50A(i) of the State Bank of India (Supervising Staff) Service Rules. The case laws/decision of the Apex Court relied upon by the respondents rendered in, Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, does not support the

case of the respondents inasmuch as, in that case the disciplinary proceeding had already been initiated as against the incumbent concerned who was once working as Seed Store Incharge-cum-Secretary, Sahkari Sangh, Raniwan and has been charged for misappropriation and absconding alongwith financial records and necessary memo of charges though issued by the authority it could not be served upon the said incumbent thus causing delay of 16 years while serving the memo of charges since the date of commencement of the disciplinary proceedings and, in such circumstances, the Apex Court set aside the related High Court's order and remitted the matter for disposal afresh. But, in the instant case, the issue is quite different inasmuch as, the present petitioner, Dr. Prasanna Kumar Agarwal, was placed under suspension pending decision of the prosecution case filed by the CBI by invoking Sub-clause (b) of Rule 50A(i) of the related Service Rules and after the petitioner was discharged from the case/charged levelled against him. As the prosecution had failed to establish a prima facie case against him the authority of the respondent/Bank initiated the disciplinary proceedings after a lapse of more than 10 years from the date of the impugned order of suspension vide, impugned order dated 29.4.2000, as in Annexure 9. It is true, that for the same set of facts both disciplinary action as well as criminal prosecution may lie and, according to the nature of the case and ingredients of offence to be proved in the criminal trial qua the ingredients of matters to be proved in respect of a charge levelled in the departmental proceeding and also the method and manner of proof different findings may be recorded by the two forums, i.e., Criminal Court and Disciplinary Authority. This principle of law finds its place in a decision of the Apex Court rendered in, Senior Supdt. of Post Offices, Pathanamthitta and Ors., appellants v. A Gopalan, respondent, reported in AIR 1999 SC 1514. In that case, certain penalty has been imposed on the respondent and the tribunal in exercise of its jurisdiction directed the appellate authority to review the penalty imposed on the respondent and in view of it, the Apex Court was of the view that the tribunal was therefore, in error in holding that in view of the acquittal of the respondent by the Criminal Court, the finding of the related charge in the departmental proceedings cannot be upheld and must be set aside. This decision has been relied upon by this Court in, United Bank of India and Anr., Appellants v. Romode Ranjan Das, Respondent, reported in (2000) 2 GLT 188. According to me, this decision of the Apex Court rendered in Senior Suptd. of Post Offices (supra), as well as the decision of this Court reported in (2000) 2 GLT 188 (supra) do not support the case of the respondents as no penalty was ever imposed upon the present writ petitioner in the instant case either by the disciplinary authority or the appellate authority concerned.

11. The main question and issue which arose in this case is whether the action taken by the respondents/Bank as against the present writ petitioner by invoking Rule 50A(i) of the related Service Rules thus placing the petitioner under suspension pending decision of the prosecution case filed by the CBI can be repeated again by invoking Sub-clause (b) of Rule 50A(i) of the said Rule. The

answer is "No". I make this observation keeping in view of the mandatory provisions of the said Rule 50A(i). By virtue of the said Rule 50A(i). There are two methods or ways for taking action by the authority concerned, in other words, an employee may be placed under suspension by the disciplinary authority : (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial. In the instant case, the disciplinary authority had opted Rule 50A(i)(b) as discussed above and, as such, the disciplinary authority did not take any action of initiation of disciplinary proceedings for a long time. The present case is also covered up by Special Service Rule and beyond that Rule, the respondents/authority could not act and do anything which may cause prejudice to the petitioner. In my considered view, the action of the respondents while passing the impugned orders as in Annexure 9, and 11 is not only defeated by delay or laches, it is also hit by Rule 50A(i) of the related Service Rules.

12. I am also of the view that since the facts in both the proceedings namely, the departmental proceedings (later on initiated) and criminal case as against the writ petitioner were the same without there being any iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and the burden of proof, would not be applicable in the present case. Apart from that, the writ petitioner has been undergoing distress and agony since the last more than 13 years despite having been acquitted by the Special Court in the year 1998 as discussed above, fresh departmental proceedings had been initiated under the impugned order dated 26.4.2000 as in Annexure 9 and follow-up action vide, impugned order dated 19.8.2000 as in Annexure 11 and as such it would not be just and proper on the part of the disciplinary authority-respondent/Bank to proceed with the fresh disciplinary proceedings under the impugned order after many years on the same set of facts for which the petitioner has been discharged from the charges levelled against him and in such peculiar circumstances of the case, I am of the view that these impugned orders deserve to be quashed and, accordingly, these are quashed.

13. For the reasons stated above, this writ petition is allowed thus quashing the impugned order of suspension dated 17.11.1989 as in Annexure 3 the order dated 26.4.2000 and subsequent order dated 19.8.2000 as in Annexures 9 and 11 to the writ petition and also, the entire disciplinary proceeding initiated against the petitioner at a belated stage, with a direction to the respondents/Bank/ competent authority to reinstate and take back the petitioner in service immediately and thereafter, give/afford consequential benefits like seniority, promotion which he ought to have been given had he not been suspended under the related impugned order dated 17.11.1989 and make payment of arrear salary in full for the period of suspension treating it as period spent on duty with all timely increments etc. which he ought to have earned during the period of suspension as per related Rules as early as possible preferably, within a period of

one month from the date of receipt of this order. It is made clear, that the reinstatement of the petitioner shall be done forthwith by revoking the impugned suspension order and issuing necessary order in that regard for which, the petitioner may obtain a certified copy of the order and submit the same to the respondents/authority concerned for doing the needful in the matter, as per order and direction of this Court.

14. Petition is accordingly disposed of but no order as to cost.