(2000) 12 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5685 of 1988

E. Chandrasekhara Reddy — APPELLANT

Vs

Chief General Manager and Disciplinary Authority, D.P. Cell, State Bank of India, Hyd. and another — RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:
Constitution of India, 1950 — Article 14, 16
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 15(2), 55

Citation : (2001) 1 ALD 248 : (2001) 1 ALT 500 : (2001) 2 LLJ 609

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. K. Ramakrishna Reddy, for the Appellant; Mr. K. Srinivasa Murthy, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, a former Officer of State Bank of India, was dismissed from service by the orders dated 31-7-1987 pursuant to a departmental enquiry. He preferred an appeal to the 2nd respondent. The appellate authority by the orders dated 26-11-1987 confirmed the conclusions of the petitioner''s misconduct, but modified the penalty to one of removal from service. The petitioner is thus before this Court assailing the disciplinary proceedings.

2. During 1980-85 the petitioner worked as Officer, Tadipatri branch of the respondent Bank. After his transfer to Kadiri branch and while there, by proceedings, dated 7-8-1985 he was placed under suspension in contemplation of initiation of disciplinary proceedings against him for alleged serious irregularities. In a letter dated 9-8-1985 addressed to the Chief Vigilance Officer of the Bank, the petitioner confessed to have prepared, passed and obtained payments for specified fictitious entries including signatures and thumb impressions. By this letter the petitioner also acknowledged having reimbursed in cash the illegal and unauthorised withdrawals by him from the specified Savings

Accounts of the customers. He further substantially acknowledged illegal drawals of fictitious amounts and utilisation of the same by him, as also the alterations in balancing and Day Book. He accepted having committed irregularities on account of what he claimed to be, compelling pressures on account of his sisters'' marriages.

3. By the charge-sheet dated 10-1-1986 two species of misconduct were alleged against the petitioner as under:

"I. You had prepared several spurious debit/credit vouchers, passed for payment several spurious debits and utilised the proceeds for your personal benefit. Further, to cover up these fraudulent transactions, you had also falsified the Bank''s records with an intention of concealing the frauds perpetrated by you.

II. You had opened Agricultural Cash Credit accounts in fictitious names, withdrew certain amounts therefrom and utilised the same for your personal benefit. Further, to cover up these fraudulent transactions, you had resorted to falsifying the Bank''s records".

4. The charge-sheet was accompanied by a detailed statement of allegations. The regular enquiry was initiated after a process of preliminary enquiry. Three other officers also belonging to Tadipatri Branch, were charge-sheeted along with the petitioner. The other three officers were, however, let off with censure and warning memos.

5. In response to the charge-sheet dated 10-1-1986 the petitioner submitted his explanation dated 10-2-1986 denying the allegations.

6. The explanation of the petitioner having been found not satisfactory, disciplinary enquiry was initiated in August, 1986 which was held up to April, 1987.

7. By his letter dated 11-3-1987 the petitioner sought a list of documents stated to be required in his defence at the enquiry. The documents so sought include the report of the official who investigated into the case and statements, if any, obtained from certain individuals specified in the letter of the petitioner, which include statements of the 3 officers who were initially charge-sheeted along with the petitioner, charge-sheet issued to the said 3 officers and their replies thereto and the documents pertaining to crop loan account Nos.33/251, 33/252 and 33/254, in respect of which the petitioner was alleged to have fraudulently withdrawn amounts from the fictitious Agricultural Cash Credit accounts.

8. In response to the petitioner''s request for furnishing of documents, the inquiring authority by the communication dated 14-3-1987 informed the petitioner as follows:

(a) The presenting officer is claiming privilege of the investigation report.

(b) No individual statements have been obtained from the officials/staff as referred by the petitioner.

(c) The charge-sheet issued and the replies submitted by the 3 earlier charge-sheeted officers are not relevant to the enquiry against the petitioner.

(d) The presenting officer has been directed to procure the documents sought by the petitioner in respect of agricultural crop loans, if available and that these documents would be supplied, if available at the branch, at the commencement of the enquiry.

The disciplinary proceedings are assailed on grounds as under:

(A) The four species of documents requested by the petitioner by his letter dated 11-3-1987 were not furnished to the petitioner. These documents were sought by the petitioner on the ground that these documents would have assisted the petitioner in effectively defending his case at the enquiry. The failure of the respondent-Bank to furnish these documents vitiates the proceedings.

(B) The report of the preliminary investigation was denied on the basis of privilege claimed by the presenting officer and that the refusal to furnish the preliminary investigation report vitiates enquiry as no privilege could have been claimed for such a document as its disclosure would have imperilled neither public interest nor the interest of the bank.

(C) The disciplinary authority being different from the enquiry officer a notice ought to have been given to the petitioner prior to the order of dismissal. As a part of this ground it is also alleged that failure to furnish the enquiry report to him prior to passing of the order of dismissal clearly vitiates the enquiry.

(D) Permitting PWs.1 to 3, who were co-charge-sheeted officers along with the petitioner, to participate in the enquiry as departmental witnesses violates the principles of fair play, particularly since their prejudiced testimony contributed to the conclusions of the inquiring authority.

9. Sri K. Ramakrishna Reddy, learned senior Counsel for the petitioner urged that the inquiring authority erred in upholding the presenting officer''s claim of privilege for disclosure and supply of the preliminary investigating report. The claim for immunity is neither a routine administrative plea nor could it be a ruse to avoid inconvenience, embarrassment or with a view to adverse consequences of such disclosure to the case of the bank, is the contention of Sri Reddy. As the petitioner sought the investigation report with a view to effectuate his defence at the enquiry and as the preliminary investigation report could not have contained anything adverse either to the public interest or the interest of the bank, the same ought to have been supplied to the petitioner and refusal to do so violates a basic tenet of natural justice viz., Audi alteram partem vitiating the entire disciplinary enquiry, is the contention. Reliance for this plea is placed on the decisions of the Supreme Court in S.P. Gupta Vs. President of India and Others, and R.K. Jain Vs. Union of India and Others, .

10. Referring to Rule 15(2)(ix) of the State Bank of India (Supervising Staff) Service Rules, it is alleged on behalf of the petitioner that he was entitled to

supply of copies of statement of certain individuals, if any, recorded earlier to the inquiry proper and that such documents as sought by the petitioner by his letter dated 11-3-1987, ought to have been supplied before commencement and examination of the witnesses by the inquiring authority.

11. Relying on the decisions of Constitution Benches of the Supreme Court in State of M.P. v. Chintaman AIR 1961 SC 1623, Tirlok Nath v. Union of India 1967 SLR 759, and the decisions of the Delhi and Calcutta High Courts in Jug Raj Singh v. The Delhi Administration, Delhi, 1970 SLR 400, Dola Gobinda Das v. Union of India 1981 (2) SLR 185 respectively, as well as the decision of the Supreme Court in State of U.P. Vs. Shatrughan Lal and Another, , it is broadly urged that as preliminary enquiry which is invariably conducted behind the back of the delinquent employee may often constitute the whole basis of the charge-sheet, before the person is called upon to submit his reply to the charge-sheet, he must, at a request made by him in that behalf, be supplied with the copies of statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. Further that there has been a violation of principles of natural justice by the conduct of the respondents in declining and failing to supply copies of the preliminary investigation report and the documents sought by him. Relying on the decision in State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., , Sri Reddy contended that failure to supply the statements of witnesses recorded during the preliminary enquiry has resulted in denial of reasonable opportunity to the petitioner and that such denial per se constitute prejudice resulting in invalidity of the enquiry. Reliance has also been placed to delineate the contours of the required parameters of fair opportunity on Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

12. State Bank of India and others Vs. D.C. Aggarwal and another, , was a case involving interpretation of Rule 55 of the State Bank of India (Supervising Staff) Service Rules. Considering the question whether the report of the Central Vigilance Commissioner ought to have been supplied to the delinquent officer, the Supreme Court held in the above decision that non-supply of the recommendation of the Central Vigilance Commission, which was prepared behind back of the employee and without his participation and which was examined by the disciplinary authority and relied upon constituted violation of procedural safeguards and subverted the requirement of a fair and just enquiry. Reliance is placed on behalf of the petitioner on this decision to urge that as the preliminary enquiry report or the statements of the three officers who were charge-sheeted along with him would have certainly weighed with the inquiring authority in coming to the conclusions, non-supply of these material despite the specific request therefore by the petitioner, constitutes prejudice to the petitioner vitiating the enquiry.

13. A careful analysis of the enquiry report dated 2-6-1987 discloses that the

preliminary investigation report formed no part of the material on which the conclusions of the inquiry authority were based. It is also apparent from the record of the inquiry that the transaction sheets and control cards relating to the agricultural cash credit account Nos.33/252, 33/252 and 33/254 were made available to the petitioner. These were the only documents relied upon in the inquiry in respect of the 2nd charge relating to agricultural cash credits. An analysis of the inquiry report discloses that the conclusions as to the petitioner''s guilt has been arrived at on the basis of the clear and categorical confession of the petitioner contained in his letter dated 9-8-1985 addressed to the Central Vigilance Officer of the bank (P.Ex.133) wherein the petitioner admitted to having prepared, passed and obtained bills for the specific fictitious accounts including signatures and thumb impressions in respect of 14 accounts. In this letter the petitioner also admitted to have made fictitious notes in 9 accounts and that except himself no other staff member was involved. He further admitted to false agricultural cash credit accounts having been sanctioned and drawn by him. In his letter dated 11-8-1985, (P.Ex.145), addressed by the petitioner to the Branch Manager of Tadipatri branch, the petitioner stated that he was remitting a sum of Rs.44,714.35 towards the total S.B. Account amounts payable by him and also the loan account amount for the agricultural cash credit crop loans Nos.33/251, 33/252 and 33/254 together with interest. This letter also stated that as the petitioner had to go to Kadiri, his mother Smt. B. Laxmi Narasamma may be permitted to pay the amounts on his behalf. In P.Ex.146 dated 12-8-1985 addressed to the Branch Manager, Tadipatri, the petitioner''s mother Smt. B. Laxmi Narasamma stated that she is remitting Rs.44,714.35 towards the amount payable by her son (the petitioner) towards S.B. Accounts and loan accounts involved. On the basis of P.Exs.133, 145 and 146, which were identified by PW1 S.N. Rama Murthy (the other charge-sheeted officer) taken together with the overwhelming documentary evidence, the inquiring authority came to the conclusion as under:

"Conclusions: By the evidence not before the inquiry both oral and documentary during the period of 25th September, 1984 and 31st January, 1985, the CSO has prepared 15 fraudulent withdrawals from SB Accounts, initialled on appropriate places for postings. He passed some vouchers and got some vouchers passed by his colleagues. P.Ex.25 by M.Radhakrishna, 27 by Y. Bala Subrahmaniam, P.Ex.29 by T.P. Radhakrishnan, 38 by R.S. Krishna Swamy, these are all genuine passings. P.Ex.21 and 232 were passed by CSO out of which P.Ex.21 is a spurious withdrawal. It has been established that the hand writing on some withdrawals resemble that of the CSO. The Savings Bank accounts are fictitious. He has received cash himself as stated by PW5 and the mis-utilisation of the funds thus withdrawn is clearly evident. To cover up his activities he was altering the saving bank day books, and developed the habit of balancing all the unbalanced ledgers himself. He has altered the names of accounts in day books and amounts of balances in ledgers. Many ledger sheets (34) have made up balances which were unauthenticated but posting were in the hand writing of CSO".

14. In coming to the above conclusions the inquiring authority was also persuaded by the testimony of Y. Satayanarayana Reddy PW5, who stated that he made a payment of Rs.20,000 being proceeds of the savings bank withdrawals of P. Ramaranga Reddy to the petitioner at the petitioner''s request and that the petitioner stated to him that the drawer was waiting at the petitioner''s desk. This witness also stated that the withdrawal slip in question was written in the hand writing of the petitioner and also that another withdrawal of Rs.15,000 also in the name of P. Ramaranga Reddy was paid to the petitioner. This witness categorically deposed that the petitioner came to the paying counter and requested payment of cash to himself.

15. In respect of charge 2 the assessment of evidence by the inquiring authority is in the following terms:

"Assessment of Evidence :--The argument of defence is vary dubious. Nobody has prevented the three individuals to tender evidence in favour of the defence as they were listed defence witnesses. As covered by the Presenting Officer PW1 has reported the lapse noted by him, the PW3 and the PW4 to his Controlling Authority. The CSO had ample chance to produce the borrowers or show the Branch Manager and other Officials the documents obtained by him or atleast inform his superior Officer-the ABD Manager-about his disbursing three agricultural loans on 29-4-1985 when they were busy with inspection work. The silence all along of CSO strengthens the conviction of any body about his involvement and motive of material benefit. The CSO has no financial powers to sanction loans of Ag. Segment when Division Manager and Branch Manager are available. He should not sign alone on control card for recitals control card of P.Ex.120 without borrowers signature was attested by him. There were no photographs of borrowers (Q.40 of Presidential Order to PW3) on all the three cards. It is not known how the thumb impression of borrower on P.Ex.56 was authenticated by CSO when there was not one on control card for record and identification.

There was a practice at the Branch of allotting villages to Field Officers (Q.11 of ER to PW4) (The village No.33 given to accounts is that of Tadipatri and does not fall under the control of CSO. The number of accounts are not running numbers)".

15. The inquiring authority recorded the following final conclusion on charge 2 :

"Conclusion: The entire exercise of preparation of control card, account card withdrawal from issuing of tokens, passing of debits was done by the CSO there were no application appraisal and inspection cards. There were no photographs of borrowers and nobody remembers or recollects who they are. The oral evidence of PW.3 and PW4 as well as P.Exs.54, 55, 56 and 118, 119 and 120 conclusively prove that the CSO Sri B. Chandrasekhara Reddy has chosen a busy day when the Branch Manager, Division Manager and other Field Officers were busy with Branch Inspection to prepare and pass these agricultural cash credit sheets, cards and vouchers and check the day books also later keep quiet. The motive could not be but misappropriation of money aggregating Rs.15,000/-. He has admitted in his reply to the charge-sheet as well as in his letters to CSO, Hyderabad LHO dated 9-8-1985 (P.Ex.133) and his letter dated 11-8-1985 P.Ex.No.145 to the Branch Manager to that effect. Even though the defence Counsel avers that these were obtained by coercion, I am convinced that they were given by CSO with his full knowledge and free will and an inclined to treat as such.

Basing on the above the charge II levelled against CSO is proved".

16. In the aforesaid state of record and the reasoning and the conclusions of the inquiring authority it cannot reasonably be held that non-supply of the preliminary investigation report or the charge-sheets and the replies thereto the other initially charged colleagues of the petitioner, caused prejudice to the petitioner to a degree warranting invalidation of the disciplinary inquiry and the consequent punishment inflicted on him. No doubt the petitioner urged that his confession as contained in his fetter dated 9-8-1985 was obtained by coercion. But this plea of his was rejected by the inquiring authority, the disciplinary authority as well as the appellate authority and rightly so.

17. The confessional statement dated 9-8-1985 does not stand-alone. It is supported by his letter to the Bank Manager dated 11-8-1985 (P.Ex.145) and the letter of his mother to the Bank Manager dated 12-8-1985 (P.Ex.146). In the light of this overwhelming evidence it is futile for the petitioner to contend that his letter dated 9-8-1985 P.Ex.133, was the product of coercion and duress. The petitioner could have been found guilty of the misconduct alleged on the basis of his confession alone. But the proceedings of the inquiry disclose that the conclusions thereunder were arrived at on the basis of other clear corroborating evidence also. It is also seen that neither the report of the preliminary investigation nor the statement of the witnesses PWs.1 to 3 said to have been made at such preliminary enquiry, formed part of the inquiry proper nor was any reliance whatsoever placed on such material. The evidence of PWs.1 to 3 tendered at the regular inquiry was alone considered and not their earlier statements allegedly made at the preliminary enquiry. Further in the inquiring authority''s letter dated 14-3-1987, it was specifically stated that no statements, as alleged by the petitioner, were recorded at the preliminary enquiry.

18. The affording of a reasonable opportunity before a person is visited with civil consequences is a basic tenet of our inherited constitutional order. This is not merely a requirement of the principles of natural justice but has by a series of pronouncements of the Apex Court been held to be a part of the States constitutional obligation flowing from the equality injunctions of Articles 14 and 16. The obligation to afford fair and reasonable opportunity is an obligation predicated upon the principle that denial of such reasonable opportunity would tend to arrive at conclusions based on an inadequate or incorrect assumptions of facts. In the cases, however, where the charges are substantially admitted and the misconduct proved on the basis of such admissions, denial of opportunity

cannot per se result in invalidity of the final conclusions. This principle is clear from the decision of the Supreme Court in Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, .

19. In these circumstances it does not appear to this Court that the petitioner suffered any prejudice whatsoever on account of the non-supply of the documents sought by him.

20. The non-issue of any notice to the petitioner and non-supply of the copy of the inquiry report to him prior to the passing of the dismissal order dated 31-7-1987 would not result in invalidity of the inquiry proceedings, in view of the decision of the Supreme Court in Md. Ramazan v. Union of India AIR 1991 SC 20, as well as the decision of the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , since the enquiry against the petitioner was concluded prior to 20-11-1991. As per the decisions of the Supreme Court aforementioned the principles enunicated therein would apply only to the inquiries pending as on 20-11-1991.

21. It has been strenuously contended by Sri Reddy, learned senior Counsel for the petitioner that the failure of the respondent Bank to make available the documents sought by the petitioner by his letter dated 11-3-1987, as is apparent from the inquiry authority''s response thereto by the letter dated 14-3-1987, has occasioned prejudice to the petitioner in putting forth his defence to the charges and that this prejudice should result in invalidation of the inquiry.

22. In Chintaman''s case (supra) the Constitution Bench of the Supreme Court has clearly held to the effect that documents sought by the charged officer which were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him, have to be supplied and that if it appears that the charged officer''s effective exercise of his right to cross-examine the witnesses who have tendered evidence against him has been prevented by denial of such relevant documents to which he is entitled, the inquiry must be considered to have not been held in accordance with the rules of natural justice. Similar view has been expressed in State of Punjab v. Bhagatram AIR 1974 SC 2385, State of U.P. v. Mohd. Sharif (supra), Punjab National Bank v. Kunj Behari Misra (supra) and State of U.P. v. Shatrughan Lal (supra).

23. The petitioner inter alia sought a copy of the preliminary investigation report. This has been denied to the petitioner on the ground that the presenting officer has claimed privilege for this report. Nothing has been urged before this Court to justify such casual claim of privilege. The denial of the preliminary investigation report must thus be held to be without justification. The petitioner may have had no opportunity to more effectively put forth his defence had this document been supplied. The denial of this document therefore, constitutes denial of reasonable opportunity. With regard to statements of officers examined at the preliminary

enquiry, in particular the 3 officers who had been initially charged along with the petitioner, the inquiring authority informed the petitioner that no such individual statements had been obtained at the preliminary enquiry. There was therefore no question of supplying to the petitioner the statements which were not in existence. The charge-sheets issued to the said three officers and their replies thereto are also not of significance as rightly held by the inquiry authority and the petitioner suffered no prejudice on account of denying him those documents. In so far as the documents pertaining to crop loan account Nos.33/251, 33/252 and 33/254, the report of the inquiry shows that the transaction sheets and drawal cards relating to these aspects were made available to the petitioner. No other material either exists or was relied upon in the inquiry in respect of the agricultural cash credit accounts. No prejudice was therefore caused to the petitioner on this aspect of the matter.

24. Though the preliminary investigation report was denied and the petitioner could be said to have suffered technical prejudice and account of such denial, in true effect no prejudice actionable at law was suffered by the petitioner. The conclusions of the inquiring authority are seen to have been arrived at substantially on the basis of the petitioner''s confessional statement dated 9-8-1985. In the light of this admission of the petitioner as corroborated by his letter dated 11-8-1985 (P.Ex.145) and the letter of his mother dated 12-8-1985 (P.Ex.146) the guilt of the petitioner is established without necessity of an independent inquiry into the factum of his misconduct. The petitioner is thus seen to have suffered no real prejudice by the technical infringement of natural justice involved in the denial of the preliminary investigation report to him. The petitioner''s admission as contained in his letter dated 9-8-1985 leads to but one conclusion-that of his guilt. The recent development of administrative law in this area has clearly exemplified the principle that apart from violation of principles of natural justice real prejudice must also be suffered and demonstrated to result in invalidity of the process, viz., S.L. Kapoor Vs. Jagmohan and Others, , K.L. Tripathi Vs. State Bank of India and Others, , State Bank of Patiala and others Vs. S.K. Sharma, , Rajendra Singh Vs. State of Madhya Pradesh and others, , Union Bank of India Vs. Vishwa Mohan, , M.C. Mehta v. Union of India (1999) 6 SCC 23 and the latest decision in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, .

25. In the context of the petitioner''s admission of the factual details of the allegations against him as contained in the charge-sheet as well as of the misconduct alleged and in view of the fact that even before this Court the petitioner was unable to demonstrate how prejudice was caused to him due to non-supply of the preliminary investigation report and that too in the context of his clear admission, in the considered view of this Court no circumstances exist to invalidate the disciplinary proceedings on the technical ground that copy of the preliminary investigation report has been wrongfully denied to him. As pointed out in Vishwamohan''s case (supra) banking business requires absolute devotion, diligence and utmost integrity by every bank employee and the officers in

particular. Failure of these characteristics in an officer would result in erosion of the confidence of the public and the depositors and such erosion would subvert the integrity of the banking system and the economic structure of our national enterprise. The judicial review Court must thus refrain from interfering with the conclusions of guilt of a charged bank employee, rationally arrived at on the basis of the credible evidence, on undue emphasis on technicalities.

26. In the totality of circumstances aforementioned, there are no productive infirmities in the conduct of disciplinary proceedings, no reasons for interfering with the quantum of punishment which is seen to be proportionate with the misconduct duly proved and no merits in the writ petition. The writ petition is consequently dismissed. No order as to costs.

