
(2011) 03 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Petition No. 3790 of 1998

Ganesh Ram Chalak

APPELLANT

Vs

Bilaspur - Raipur Kshetriya Gramin Bank and Another

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311, 311(2)
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468

Citation : (2011) 3 MPJR 60

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prafull N. Bharat, for the Appellant; Pramod Verma with Mr. Sumit Verma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated 6-4-1994 passed by the respondent Bilaspur-Raipur Kshetriya Gramin Bank (for Short "the respondent Bank") by which the petitioner has been removed from his service the petitioner also challenges the order dated 20-2-1995 (Annexure - P/12) by which the appeal preferred by the petitioner has been rejected by maintaining the removal order passed by the respondent Bank. The indisputable facts, in nutshell, as projected by the petitioner, for adjudication of the case are that initially the petitioner was appointed as Clerk-cum-Cashier on 25-8-1981 and posted at Faguram Branch of the respondent Bank in the month of December 1983. The petitioner was transferred and posted in Korbi Branch During his service, show cause notice dated 3-7-1986 (Annexure P/1) has been issued to the petitioner on the allegation of certain irregularities Thereafter, another notice dated 29-9-1986 (Annexure P/2) was issued on the same charges. The petitioner submitted his response on 2-8-1986 (Annexure P/3) & 1-12-1986 (Annexure P/4) to the aforesaid notices.

2. According to the petition, no order were passed on the explanations submitted by the petitioner. However, on 9-7-1987 (Annexure P/5), a memo of charges sheet was issued. The charges read as under:

It is indisputable that along with memo of charges and imputation of charges, no list of witnesses and list of documents were supplied to the petitioner.

3. The petitioner submitted his reply to the aforesaid charges on 20-7-1987 (Annexure P/7), a departmental enquiry was initiated against the petitioner. In the letter dated 12-11-1987 it was mentioned that the reply dated 21.7.1987 submitted by the petitioner was not found satisfactory, in fact, the petitioner has never submitted any response on 21-7-1987 whereas the petitioner has submitted his reply to the charge sheet on 20-7-1987.

4. After issuance of the charges sheet, the petitioner was placed under suspension by order dated 3-8-1988 (Annexure P/8). Thereafter the enquiry officer submitted his enquiry report on 7-9-1992. On the basis of the enquiry report, second show cause notice dated 20-4-1993 (Annexure P/9) proposing punishment of removal was issued to the petitioner. In response to the said show cause notice the petitioner submitted his reply stating that the enquiry report was submitted without affording proper opportunity of hearing to the petitioner.

5. The disciplinary authority i.e. Chairman without considering the replay submitted by the petitioner, passed the impugned removal order dated 6-4-1994. According to the petitioner, the said order has been misplaced, therefore, the same is not annexed with the petition.

6. Being aggrieved by the said order, the petitioner preferred an appeal to the appellate authority i.e. Board of Director of the respondent bank on 27-4-1994 (Annexure P/11). The appellate authority by order dated 20-2-1995 (Annexure P/12) dismissed the appeal of the petitioner and maintained the impugned removal order. Thus, this petition.

7. Shri Bharat, learned counsel appearing for the petitioner, would submit that the enquiry proceedings were initiated behind the back of the petitioner and without affording proper opportunity of the hearing to the petitioner. On 15-1-1989 an FIR was lodged by the respondent bank against the petitioner for the offence punishable u/s 467, 468 and 420 read with Section 34 of the Indian penal Code, therefore, under the apprehension of his arrest the petitioner could appear before the enquiry officer on 8-2-1989. The enquiry officer passed the order for recording of evidence ex parte.

8. Shri Bharat would further submit after obtaining the anticipatory bail form the Court of Sessions judge, Bilaspur in the month of March 1989, the petitioner appeared before the enquiry officer on 9-3-1989. On further dates, the petitioner could not appear before the enquiry officer on the ground of his ill health. The enquiry was initiated in an illegal and arbitrary manner, the petitioner belongs to Scheduled caste category. Even the petitioner made a request before the

respondent authorities by letter dated 2-3-1991 for changing the enquiry officer, but the same did not fructify. The enquiry officer ultimately submitted the enquiry report on 7-9-1992. On the basis of enquiry report, the impugned removal order was passed and the appellate authority confirmed the said removal order without appreciating the facts and circumstances of the case in its letter and spirit.

9. Shri Bharat would also submit that the list of documents has not been supplied to the petitioner, therefore, the petitioner had no opportunity to meet the charges for want of material documents and, as such, on this count alone, enquiry proceedings deserve to be quashed. According to Shri Bharat, the enquiry proceedings were conducted in an unlawful manner, therefore, the same cannot sustain in the eyes of law. The petitioner made specific prayer for personal hearing, but the same was not afforded to the petitioner. The impugned order has been passed by the appellate authority in a mechanical manner. The submissions of the petitioner made in the memo of appeal, have not at all been considered in its letter and spirit. The impugned orders are violative of the provisions of Articles 14 & 16 of the Constitution of India.

10. On the other hand, Shri Verma, learned counsel for the respondent Bank, would submit that admittedly the list of witnesses and the list of documents were not supplied along with the memo of charge sheet, as required order the provisions of law. Even, thereafter, the documents could not be supplied before the documents were examined by the enquiry officer. Documents were supplied to the petitioner at the time of deposition made by the witnesses. Shri Verma would fairly submit that the petitioner did not have proper opportunity to go through the documents referred by the enquiry officer and riled on by the witnesses before cross-examining the witnesses.

11. Having heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto, it is evident that admittedly the list of documents and list of witnesses, which were relied on in the enquiry were not supplied to the petitioner along with the memo of charge sheet.

12. On perusal of the record, it appears that the Bank's representative has exhibited some documents as Ex. P/1 in his examination-in-chief, which was not made available to the petitioner. During enquiry the petitioner has clearly stated that he was neither supplied with a list of witnesses nor list of documents and, as such, the entire enquiry was conducted in an illegal and arbitrary manner.

13. In the entire pleadings, the petitioner has not pleaded the deficiency in enquiry on account of non-supply of list of witnesses and documents, but the same was pointed out orally during the course of arguments. The said contention was not controverted by the counsel appearing for the respondent Bank.

14. It is true that along with the charge sheet and imputation of charges, there was no list of documents and, as such, the petitioner was not afforded an opportunity to put forward his case, in response to the show cause notice along

with the charge sheet. It is crystal clear that no documents were supplied along with the charge sheet on the basis of which charges were framed. The petitioner had no opportunity to meet the charges for want of material documents. Some document were given during departmental proceeding but the relevant documents on the basis of which finding was recorded were not made available to the petitioner Thus, the enquiry is vitiated.

15. The Supreme Court, in *Kashinath Dikshita v. Union of India & Others* (1986) 3 SCC 299 the Supreme Court observed as under:

10. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him In the absence of such copies, how can the concerned employee prepare his defence cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible ?"

16. In *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), , the Supreme Court observed as under:

4. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice required that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defence if findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court.

17. In *The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu*, the Supreme Court observed as under:

9... It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held..

18. Further the Supreme Court, in *State of U.P. and Others Vs. Saroj Kumar Sinha*, , has considered conduct of departmental enquiry, as under:

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the

inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex. parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he could clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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 un rebutted evidence is sufficient to hold that the charges are proved in 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 be 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.

19. This Court in *Ram Prasad Khande v. Bilaspur Raipur Kshetriya Gramin Bank & Others* WP No. 970 of 1993 (decided on 12-7-2010), observed that "prejudice caused to the petitioner is writ large, as in absence of proper material the petitioner was deprived of opportunity to put forward his case in his defence."

20. Reliance of Shri Verma counsel for the respondent Bank, upon the decision of the Supreme Court in *Union of India v. Y.S. Sandhu*, Ex-Inspector that the matter may be remitted back to initiate the enquiry from the stage there was a deficiency, is misplaced in *Y.S. Sandhu* (supra) where the petitioner has no opportunity to submit his reply to the second show cause notice and therefore, it was directed to continue the enquiry from that stage and complete within a period of four months.

21. In the case on hand, initiation of the enquiry, as the memo of charges and imputation of charges was not accompanied by a list of documents and witness, is vitiated. Thus, Y.S. Sandhu (supra) is distinguishable on facts and is not applicable to the case on hand.

22. As an upshot, the writ petition is allowed. The petitioner shall be entitled to all the consequential benefits flowing from this order. There shall be no order as to costs.