
(2003) 04 AHC CK 0242
In the Allahabad High Court
Case No : C.M.W.P. No. 1590 of 2003

Hari Prakash Singh

APPELLANT

Vs

Member Secretary, Cadre Authority Co-operative Bank
Centralised Services and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Citation : (2003) 5 AWC 4407 : (2004) 1 LLJ 257 : (2003) 2 UPLBEC 1168

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : T.P. Singh and Anupam Kumar, for the Appellant; K.N. Misra and M.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated December 18, 2002 Annexure 10 to the writ petition.

2. We have heard the learned counsel for the parties.

3. The petitioner is senior Manager in Badaun Co-operative Bank Limited, Badaun. It is alleged in paragraph 3 of the writ petition that the petitioner along with two other officers i.e. Rameshwar Prasad and P. C. Misra by an order dated May 21, 1997 issued by the Deputy Registrar, Co-operative Societies, Bareilly Division were entrusted with the work of inspecting Bhojipura Branch of District Co-operative Bank, Bareilly and to furnish report by June 5, 1997. True copy of the order dated May 21, 1997 is Annexure 1 to the writ petition. In paragraph 4 of the writ petition it is alleged that the petitioner wrote to the concerned authority for fixing the programme for this purpose and even the Secretary/ General Manager of District Co-operative Bank Limited directed Rameshwar Prasad to fix the programme vide Annexure 2 to the writ petition. It is alleged in paragraph 6 of the writ petition that no programme was fixed for conducting the inspection and in the meantime Rameshwar Prasad and P. C. Misra made a false

complaint that when they requested the petitioner to accompany them for conducting the inspection on June 3, 1997 the petitioner refused to do so. Hence the Apar Secretary by letter dated August 19, 1997 directed the petitioner to submit his explanation as to why he did not comply with the order of the Deputy Registrar and did not inspect the Bhojipura Branch. True copy of the said letter is Annexure 4 to the writ petition. The petitioner submitted his reply dated September 11, 1997 vide Annexure 5 to the writ petition in which he submitted that he asked Rameshwar Prasad to accompany him for conducting the inspection but the latter had shown his inability by stating that he had to attend the Tahsil meeting. The petitioner again made a request to Rameshwar Prasad but he again showed his inability. Rameshwar Prasad purposely did not fix the date in spite of repeated requests. Despite these facts the respondent by a letter dated June 29, 1998 directed for issuance of charge-sheet against the petitioner vide Annexure 6 to the writ petition. It is alleged in paragraph 10 of the writ petition that the enquiry officer conducted the enquiry without giving proper and reasonable opportunity to cross-examine the witnesses against the petitioner and without supplying him the relevant documents. True copy of the enquiry report dated April 25, 2001 is Annexure 7 to the writ petition. The petitioner has been exonerated on certain charges and found guilty on some of the charges. Thereafter a show cause notice was issued on September 4, 2001 vide Annexure 8 to the writ petition to which the petitioner gave reply dated October 2, 2001 Annexure 9 to the writ petition. The petitioner asked for personal hearing but he was not given the same and instead the impugned order dated December 18, 2002 was passed by which the petitioner had been placed at the initial pay scale and an adverse entry was given to him.

4. A counter-affidavit has been filed and in paragraph 5 of the same it is stated that a three member enquiry committee was formed Including the petitioner, Rameshwar Prasad, ADCO and P. C. Misra, District Accountant, and the petitioner was the only person representing the Bank and he was responsible for getting the enquiry completed by inspecting Bhojipura branch of the Bank and to submit a report by June 5, 1997. In paragraph 6 of the counter-affidavit it is stated the inspection could not be carried out because of non-co-operation of the petitioner himself and hence Secretary/General Manager wrote a letter to the ADCO to complete the inspection. In paragraph 7 of the counter-affidavit it is denied that Rameshwar Prasad had shown his inability to do the inspection. The petitioner was not co-operative and therefore a complaint was made against him by the concerned members of the enquiry committee. The petitioner has wrongly tried to shift his responsibility on Rameshwar Prasad on the ground that Rameshwar Prasad is Inspector Grade-1" and is a Government employee and he ,has no control or right of supervision of the branch of the Bank but he has only right of inspection. In paragraph 15 it is stated that the punishment was just and fair considering the gravity of the offence committed by the petitioner. In paragraph 21 it is stated that the punishment was proportionate to the misconduct.

5. A detailed resolution passed by the Board of Directors is Annexure C.A. 1 to

the counter-affidavit and the matter has been discussed in great detail, therein.

6. We have carefully perused the resolution of the Administrative Committee copy of which is Annexure C.A. 1 to the counter-affidavit. The first charge has been found established against the petitioner i.e. that due to the fact that he did not hold the inspection a sum of Rs. 1,21,40,000/- was illegally and unauthorisedly-distributed. The charge 2(A) has been partly proved and that also relates to irregular distribution of money of the bank to the tune of Rs. 60.70 lacs. Charge 2(C) has also been found proved. It has been held therein that in about four years the petitioner inspected only two branches of the Bank in 1997. Charge 3(A) was also proved. The petitioner did not make inspection of Bhojipura branch from 1993-94 to 1996-97 and in this way indirectly he was party to the irregularity there. Charge 3-B was also proved that he did not make inspection and due to his negligence there was an embezzlement and misappropriation of bank funds. Charge Nos. 4 and 5 relate to insubordination and refusal to do the work assigned to him and revealing confidential documents to the employees thus breaking the discipline and confidentiality of the bank. These are also found to be proved. Charge No. 7 relates to disobedience of the orders of the higher authorities and indiscipline which was found to be proved.

7. The findings in the enquiry are findings of fact and we cannot interfere with the same in writ jurisdiction. The charges proved against the petitioner are very serious, and in fact due to his misconduct, a large number of irregularities have been committed in the bank.

8. Learned counsel for the petitioner submitted that rules of natural justice have been violated because in the enquiry report dated April 25, 2001 the petitioner was exonerated regarding charges Nos. 1, 2-A, 2-B, 5 and 6 but was held guilty of charges Nos. 1, 3-A, 3-B (partly), 4 and 7. It is alleged that the financial irregularity was committed at a Branch where the petitioner was never posted and the petitioner was always posted at the headquarters. Learned counsel for the petitioner submitted that even the findings on which the petitioner was exonerated by the enquiry officer (i.e. regarding charges Nos. 1, 2-A, 2-B and 5) have been reversed by the Principal Secretary (Punishing Authority).

9. No doubt if the enquiry officer finds an employee innocent the disciplinary authority can only reverse the finding after giving notice to the accused but in this case the petitioner was no doubt given show cause notice dated September 4, 2001 copy of which is Annexure 8 to the writ petition. Hence it cannot be said that there has been violation of natural justice. The disciplinary authority has disagreed with the enquiry officer but before recording its own finding it has given opportunity of hearing to the petitioner by means of the said show cause notice dated September 4, 2001. Hence in our opinion the petitioner can have no grievance.

10. Learned counsel for the petitioner has relied on the decision of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, That

decision only says that if the disciplinary authority disagrees with the finding of the enquiry officer he must give opportunity of hearing to the employee. In the present case as already observed above, opportunity of hearing has been given to the petitioner by the disciplinary authority through a show cause notice dated September 4, 2001. In our opinion when the disciplinary authority disagrees with the findings of the enquiry-officer, it is not necessary for the said authority to hold a full fledged enquiry again. He has only to give a show cause notice but it is not necessary to give oral hearing again to the employee concerned. This procedure has been followed in this case.

11. Learned counsel for the petitioner then relied on the decision of the Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra and Another*, wherein it has been held that the disciplinary authority, if he disagrees with the enquiry officer, has to convey to the charged employee its tentative reasons for disagreeing with the finding of the enquiry officer. A careful perusal of the show cause notice dated September 4, 2001 shows that in fact the disciplinary authority has conveyed the tentative reasons for disagreeing with the findings of the enquiry officer. In the show cause notice dated September 4, 2001 detailed opinion of the disciplinary authority regarding each of the charges on which there is disagreement with the enquiry officer have been given, and in our opinion these are adequate for holding that the disciplinary authority conveyed its tentative reasons for disagreeing with the finding of the enquiry officer. It is not the form but the substance which has to be seen to examine whether natural justice has been violated or not, because natural justice itself is a matter of substance and not of form.

12. Learned counsel for the petitioner submitted that the disciplinary authority in the notice dated September 4, 2001 appears to have made up his mind to punish the petitioner. We cannot agree. The opinion of the disciplinary authority in the notice dated September 4, 2001 was only tentative and it was subject to the reply given by the petitioner.

13. We also do not hold that the | punishment was disproportionate to the offence. It is well settled that regarding bank employees higher standards of integrity is required than for employees of other establishments, because a bank runs on public confidence. If the confidence of the public is shaken there can be a run on the bank and it can collapse vide *Civil Misc. Writ Petition No. 7538 of 2001, Prakash Chandra Bansal v. General Manager* decided on December 13, 2001, *Civil Misc. Writ Petition No. 19658 of 2001, K.K. Singh v. Gomti Gramin Bank* decided on December 19 2001 2002 All LJ 480.

14. Thus there is no force in this writ petition and it is accordingly dismissed.