

(2011) 03 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14930 of 2009

Jinder Singh

APPELLANT

Vs

Oriental Bank of Commerce and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 P&H CK 0165

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—The Petitioner, who was serving as Senior Manger in Oriental Bank of Commerce, has been compulsorily retired by way of punishment on account of allegation of misappropriation of the funds to the tune of Rs. 15.00 lacs by rasing two fictitious demand loans for Rs. 5.00 lacs in the account of one Sh. K.S. Johal and Rs. 10.00 lacs in the account of Sh. Balraj Johal against NRE deposits on 25.10.2004. For this, the Petitioner was chargsheeted on 18.4.2006 and a disciplinary proceeding initiated against him.

2. The grievance of the Petitioner is that immediately after receipt of chargesheet, he submitted a letter dated 8.5.2006 praying to supply the copies of the documents for effectively defending himself. The Petitioner also prayed for providing the statement of witnesses. In response the Petitioner was informed that there was no pre-recorded statement of any witness and thus, could not be supplied to him. The grievance of the Petitioner further is that some additional documents were taken on record, which were not part and parcel of the documents supplied alongwith the chargesheet. As many as 53 additional documents were taken on record by the inquiry officer.

3. The Petitioner ultimately was held guilty of the allegations and show cause notice was issued to him. The Petitioner had filed an appeal/representation against this order urging that no additional document could be taken on record by the inquiry officer as per the regulations. His representation, however, was rejected on 28.9.2006. A letter dated 18.11.2006 was received by the Petitioner

asking him to submit list of defence documents and defence witnesses. Through another letter, three days' time was given to the Petitioner for submission of defence documents and defence witnesses. In fact, the Petitioner claims that after the first date of the hearing i.e. 13.9.2006, the presenting officer had given the list of nearly 37 additional documents and there was no occasion for him to submit defence documents and defence witnesses. The Petitioner, accordingly, submitted a letter dated 21.12.2006 (Annexure P-7) for placing on record nearly 38 documents in his defence.

4. Plea is that the Petitioner did not get fair chance to defend. The disciplinary authority on the basis of finding of the inquiry officer holding the Petitioner guilty, passed the order of his compulsorily retirement on 17.4.2007. The Petitioner would allege that the inquiry was conducted in a manner prejudicing his right to defend and in violation of principle of natural justice. Grievance is that his request for placing on record 38 defence documents relied upon by him, was rejected. The appeal filed by the Petitioner was rejected on 2.5.2008. The Petitioner, thereafter, has filed this writ petition to impugn his punishment.

5. The Counsel for the Petitioner contends that the Petitioner was not only denied fair opportunity to defend himself during the course of inquiry, but he was not afforded an opportunity of personal hearing at appellate stage despite the fact that he had prayed for the same. Counsel of the Petitioner submits that even if there is no provision in the statute for grant of personal hearing, the prayer of the Petitioner could not have been ignored and once the prayer of the Petitioner was declined, he could be said to have suffered prejudice on that account. In support of his contention, Counsel has placed reliance on *S.L. Loona v. The Punjab National Bank and Anr.* 1992 (1) SLR 250. This was the primary contention raised in case of *S.L. Loona (supra)* that the petitioner therein was not granted opportunity of hearing while rejecting the appeal. The Division Bench of this Court placed reliance on *S.C. Girotra v. United Commercial Bank* 189 (1) SLR 521, where following observations have been made:

The same infirmity of violation of the principles of natural justice crept in at the stage of disposal of the appeal which was a statutory one preferred by the Petitioner under Regulation 17 of the aforesaid Regulations. It was the duty of the Appellate Authority to hear the Appellant (Petitioner) before dismissing the appeal as an objective consideration is possible only if the delinquent employee is heard and given a chance to satisfy the Appellate Authority regarding the final orders that may be passed in his appeal. This is the requirement of fair play and justice also.

The view taken by the learned Single Judge in *Girotra's case (supra)* is fully supported by the observations of the Apex Court in *Ram Chander v. Union of India and Ors.* 1986 (2) SLR 608 (SC), which are as under:

It is not necessary for our purposes to go into the vexed question whether a post decisional hearing in a substitute of the denial of a right of hearing at the initial

stage or the observance of the rules of natural justice since the majority in Union of India and Another Vs. Tulsiram Patel and Others,) unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given.

6. Thus, the ratio of law laid down by the Apex Court was followed by observing that the appellate authority must not only hear the employee concerned, but has to pass a reasoned order as well. Finding that the Petitioner was not given the opportunity of personal hearing, the writ petition was allowed.

7. The Respondents on the other hand would not only dispute the contention raised by the Petitioner that he was not granted fair opportunity to defend himself during the course of inquiry, but would dispute the proposition that the personal hearing was required to be afforded to the Petitioner at the time of deciding his appeal. Counsel for the Respondents in support has relied upon Ganesh Santa Ram Sirur Vs. State Bank of India and Another, . The Hon''ble Supreme Court in this case has observed that Courts cannot insist that under all circumstances and under different statutory provisions, personal hearing have to be afforded to the persons concerned. It is observed that if this principle of affording opportunity of hearing is extended whenever the statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic condition. It is observed that many statutory appeals and applications are disposed of by the competent authority, which have been vested with the power to dispose of the same. Such authorities are deemed to be quasi-judicial authorities and expected to apply their judicial mind over the grievances made by the Appellants or applicants concerned. In this background, it is observed that it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the Appellants or the applicants as the case may be.

8. Undoubtedly, it cannot be held as inflexible rule as part of principle of natural justice, that appellate authority is under obligation to afford opportunity of personal hearing in all cases while dealing with appeals. It appears that in this case there was no request made for affording an opportunity of personal hearing by the employee. In a case where request for personal hearing is made, then the position may not always be same. Personal hearing is certainly qualitatively different and objective consideration of the issue is ensured through the personal hearing. Even though there is no specific provision brought to my notice requiring to hear the Petitioner personally, in this case, to deny this request one may have to look for some cogent reason. Principle of natural justice cannot always be completely ignored especially so when a person had made a specific request in this regard. No justifiable reasons are forthcoming as to why it was not practicable to afford personal hearing to the Petitioner once he has prayed for the same. The Petitioner would have been in a better position to explain his points if he had been afforded this opportunity of personal hearing. While so observing, I do not intend to hold that opportunity of hearing in all the cases would have to be afforded. It is only in the facts of this case that it is so observed that the Petitioner has made out a case for affording an opportunity of personal hearing at the time of deciding his appeal as he had prayed for the same. Plea here is that the Petitioner was denied a fair hearing to defend during course of enquiry. The Petitioner could have then explained this denial of opportunity, if any, while making submission in appeal. I may hasten to add here that aforementioned observation should not be taken to mean that the Petitioner was denied any opportunity to defend himself during the course of inquiry. It is the grievance of the Petitioner which is noticed and his right to substantiate the same. Rather it is noticed that the request of the Petitioner to place on record the documents and opportunity to produce witnesses had been accepted. Considering the totality of the circumstances, I am of the view that there would be no harm, if the Petitioner is heard and then his appeal is decided. The matter is remitted back to the appellate authority to reconsider the appeal of the Petitioner. For that, there would not be any need to set aside the impugned order passed in appeal. If the appellate authority finds that the Petitioner was not afforded fair opportunity to defend himself during enquiry, then it may pass an appropriate order in this regard and the earlier order passed would then stand modified by the fresh order so made.

9. The present writ petition is disposed of in the light of observations made above. Let the Petitioner move an application before the appellate authority seeking hearing and in response thereto, the appellate authority will give him the date for affording him personal hearing and then re-decide the appeal accordingly.