
(2008) 12 DEL CK 0123

In the Delhi High Court

Case No : LPA 70 of 2007

K. Raj Arora

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2009) 120 FLR 794

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : I.C. Kumar, S.N. Jha and K.K. Misra, for the Appellant; Sanjay Kapur, Rajiv Kapur and Neha S. Verma Advs., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appellant rose from the rank of a clerk in the respondent No. 1-Bank to the position of a Branch Manager. The travails of the appellant began when departmental action was proposed against him on receipt of a Special Inspection Report dated 01.05.1986. The appellant was suspended on 19.08.1987 and the result of the Promotion Board was also kept in a sealed covered. The appellant submitted his explanation and the respondent No. 1-Bank served a charge sheet on the appellant ultimately on 17.12.1991 after receipt of the advice from the Central Vigilance Commission ("CVC" for short) as a vigilance angle was involved in the matter.

2. The statement of imputation of charges was on account of the alleged failure of the appellant to discharge his duties with utmost devotion and diligence while working as a Branch Manager from October, 1980 to November, 1982 at Sarai Khawaja Branch (Faridabad). It was not only unbecoming of a bank official but highly prejudicial to the interest of the Bank. The company in respect of which such charges were made were the family of Sh. V.P. Khanna and his two sons. The Inquiry Officer submitted a report dated 29.09.1993 holding that the three charges were proved, two charges partially proved while four charges were not proved. The Inquiry Report was served on the appellant on 16.02.1994.

3. The Disciplinary Authority, however, tentatively disagreed with the findings of the Inquiry Officer and the reasons for the same were communicated to the appellant on 02.04.1994 giving an opportunity to the appellant to represent his case. The appellant submitted a reply dated 11.04.1994. The appellant, in the meantime, filed a WP(C)4997/1994 before this Court on 26.11.1994. The Disciplinary Authority imposed a punishment of dismissal from service on the appellant on 20.12.1994 and the said writ petition was thus dismissed with liberty to the appellant to avail of the alternative remedy of departmental appeal.

4. The appeal filed by the appellant on 06.01.1997 was not favourably considered by the Appellate Authority vide its order dated 29.11.1997 and the review filed by the appellant also met with a similar fate on 23.09.1999. It is thereafter that the appellant filed a WP(C)154/2000 before this Court. The learned Single Judge of this Court by the impugned order dated 08.09.2006 has dismissed the writ petition.

5. Learned Counsel for the appellant, conscious of the limitation of the scrutiny by a judicial forum in respect of the departmental proceedings, and more so, in view of this Court exercising jurisdiction as a letters patent court, rightly confined his submissions to certain aspects. The submissions were thus on the following aspects:

- i) Delay vitiating the disciplinary proceedings;
- ii) Whether a personal hearing was mandatory before the Disciplinary Authority on account of the Disciplinary Authority disagreeing with some of the findings of the Inquiry Officer; and
- iii) Disproportionality of punishment.

6. It may be noticed at this stage that the impugned judgment of the learned Single Judge is a detailed one dealing with the different submissions advanced by the learned Counsel for the parties.

Delay in Initiating Disciplinary Proceedings

7. The thrust of the argument of the learned Counsel for the appellant was that the appellant remained under suspension for over four years without even commencement of disciplinary proceedings. However, it cannot be lost sight of that the matter had a vigilance angle for which there was certain advice sought from the CVC which itself took considerable time. An important aspect to be considered is whether the delay caused any prejudice.

8. Learned Counsel for the appellant relied upon the judgments in:

- i) Mohan Bhai Dungarbhai Parmar v. Y.B. Zala and Anr. 1979 (3) SLR 130
- ii) State of Andhra Pradesh Vs. N. Radhakishan,
- iii) M.V. Bijlani Vs. Union of India (UOI) and Others,

On the other hand, learned Counsel for the respondent referred to the pronouncements in P.D. Agrawal Vs. State Bank of India and Others, and Punjab Water Supply Sewerage Board and Another Vs. Ram Sajivan and Another, . The ratio which undoubtedly emerges from the aforesaid judgments is that as to whether a particular delay is too long or not would depend on the facts of each case and that prejudice should have been caused to the Delinquent Officer.

9. The second aspect is apparent from the judgment in Addl. Supdt. of Police v. T. Natarajan 1999 SCC (L&S) 646, which principle stands reiterated in P.D. Agrawal v. State Bank of India and Ors. case (supra). The appellant had full opportunity to defend himself before the Inquiry Officer and subsequently before the Disciplinary, Appellate and Review Authorities (subject to plea of adequacy of hearing dealt with hereinafter) and thus it cannot be said that the delay has caused such a prejudice as to quash the Inquiry proceedings itself. The aforesaid plea of the appellant is thus rejected.

Whether a personal hearing was mandatory before the Disciplinary Authority on account of the Disciplinary Authority disagreeing with some of the findings of the Inquiry Officer.

10. It is a settled principle of law that where the Disciplinary Authority differs with the findings of the Inquiry Officer, the Delinquent Officer must have an opportunity to represent himself since the findings are in his favour before the Inquiry Officer. The Disciplinary Authority is required to indicate to the Delinquent Officer tentative reasons for disagreeing with the report of the Inquiry Officer so that the Delinquent Officer has adequate opportunity to meet the point. Learned Counsel for the appellant in this behalf has referred to the judgments in:

- i) Punjab National Bank and Ors. v. Kunj Behari Misra AIR 1988 SC 2713;
- ii) Yoginath D. Bagde Vs. State of Maharashtra and Another, ; and
- iii) Ram Niwas Bansal v. State Bank of Patiala and Anr. 1998 (4) SLR 711

11. Learned Counsel for the appellant also relied upon the observations made by the Supreme Court in Ram Chander Vs. Union of India (UOI) and Others, to the effect that an objective consideration is possible only if a Delinquent Officer is heard and given a chance to satisfy the Disciplinary Authority regarding the final order that may be passed on his appeal. In this behalf, learned Counsel has sought to emphasize that the meaning of the expression "hearing" necessarily mandates a chance to speak and thus an opportunity to merely make a representation would not suffice. In this behalf, learned Counsel relied upon the judgment in Ramdas Shankar Rae Digraskar v. Union of India 2007 (2) Mh.L.J. 211.

12. We have gone through the aforesaid judgments and we see no reason to differ with the conclusion arrived at by the learned Single Judge in this behalf. The judgment in Punjab National Bank and Ors. v. Kunj Behari Misra case (supra) has been appreciated in the proper perspective. The factual matrix of that case

was that the Disciplinary Authority had disagreed with the Inquiry Officer and straightway proceeded to impose the penalty of dismissal on the charged officer. It is in that context that the question arose about an opportunity to be made available to the charged officer by the Disciplinary Authority and the Supreme Court had observed that the natural justice would demand an opportunity of hearing to be given. However, the observations made in para 18 and 19 of the judgment throw light as to what the Supreme Court meant while observing that an opportunity of hearing should be granted. It is in that context it was observed by the Supreme Court that in any such situation, the charged officer must have an opportunity to represent himself before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. To the same effect are observations in para 19 of the judgment of the Apex Court that the Disciplinary Authority must give tentative reasons for disagreement and give an opportunity to the Delinquent Officer to represent himself before it records its findings. This aspect has been succinctly dealt with in para 12 of the impugned judgment. The ratio which thus emerges is that an opportunity to the Delinquent Officer must be given to represent himself before findings are recorded by the Disciplinary Authority. Undisputedly the appellant did have an opportunity to make a representation after the tentative reasons were communicated to him and it is only thereafter that the Disciplinary Authority has recorded its findings and imposed the punishment. We thus find no merit in this ground.

Disproportionality of punishment.

13. The aspect of disproportionality of punishment was emphasized by learned Counsel for the appellant in the context of there not being any financial loss to the Bank as alleged. Learned Counsel for the appellant submitted that even the Disciplinary Authority observed the likelihood of loss of Rs. 70,31,234.19. Learned Counsel for the appellant further submitted that no such loss was caused then, nor was such loss caused subsequently and the Bank continued to deal with the customers. On the other hand, learned Counsel for the respondents has drawn the attention of this Court to the averment made in the counter affidavit in para 1 of the parawise reply where there is an averment about such financial loss. It is also the stand of the respondents that as per the available records, the respondent No. 1-Bank is not dealing with the firms. In respect of one of the firms Ms. Chinta Mani Metal Udyog alone the bank suffered a loss and could not recover Rs. 23.33 lakhs. It has already been noticed above that this aspect has been emphasized while dealing with the aspect of proportionality of punishment. Learned Counsel for the appellant emphasized that the appellant had a blemishless career of 28 years and the punishment must be commensurate with the gravity of the offence. Learned Counsel referred to various pronouncements on this aspect, which are:

- i) Bhagat Ram Vs. State of Himachal Pradesh and Others,
- ii) Ranjit Thakur Vs. Union of India (UOI) and Others,

- iii) Ram Chander v. Union of India and Ors. case (supra)
- iv) Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others,
- v) S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and others,
- vi) Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others,
- vii) Harjit Singh and Anr. v. State of Punjab and Anr. 2007 (2) SCC (L&S) 997; and
- viii B.C. Chaturvedi Vs. Union of India and others,

14. A dismissal on trivial charges of negligence which resulted in no loss was held to be disproportionate and excessive. The punishment should not be vindictive or unduly harsh so as to shock the conscience of the Court; yet, it cannot be lost sight of that this Court does not sit as a Court of appeal in respect of any departmental proceedings including on the aspect of punishment. It is in this perspective that it has been observed in State Bank of India and Others Vs. Ramesh Dinkar Punde, that it is impermissible for the High Court to re-appreciate the evidence which has been considered by the Inquiry Officer, Disciplinary Authority and the Appellate Authority.

15. In order to appreciate the plea of disproportionality of punishment, the aspects which have been found against the appellant must be taken note of. The allegations proved are of grant of clean overdrafts beyond discretionary powers, grant of credit facilities while he was under transfer without obtaining tangible collateral security, consideration of a limit on the basis of pending orders when no confirmed orders were in hand. Not only that in respect of the facilities granted to Ms. HMAc, the appellant is stated to have ignored categorical instructions of the Controlling Authority. The drawing was to be permitted only for purchase of raw material after ensuring that the first charge over assets of the company was registered. This condition was violated. There were irregular drawings permitted to Ms. RSHM. An equitable mortgage of the Immovable property was stipulated by the Controlling Authority, which condition was not complied with. Not only that the appellant while posted as a Branch Manager, Ballabgarh reviewed/permitted sanction of Ms. PCEL, a unit enjoying facilities at Sarai Khwaja Branch, where the same persons who were partners of Ms. RSHM were the Directors. The important allegation substantiated which has a colour of a personal favour is the purchase of a car by the appellant from Smt. Reeta Khanna wife of Rajendra Khanna, one of the sons of Sh. V.P. Khanna. The said purchase was when the loan proposal was in the process of sanction and the purchase took place without prior permission from the Controlling Authority which is contrary to Rules. Not only that Smt. Khanna did not own or possess the car when it was sold to the appellant, but was transferred in her name on 26.10.1982, the same date when the transfer was effected in the name of the appellant.

16. The aforesaid are thus not individual irregularities but are recurring

irregularities in respect of one group of companies managed by the same family. It is this which seems to have been the basis for a harsh punishment imposed by the Disciplinary Authority.

17. The aforesaid incidents cannot be said to be trivial or merely on account of negligence. They are repeated incidents and by a person like a Bank Manager who has a fiduciary capacity and knows the significance of caution in commercial transactions. It is in view of the aforesaid factual position that learned Counsel for the respondents referred to the judgments in:

- i) Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik,
- ii) Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another,
- iii) State Bank of Indore Vs. Govindrao, ;
- iv) V. Ramana Vs. A.P.S.R.T.C. and Others, and
- v) Ramesh Chandra Sharma Vs. Punjab National Bank and Another, .

to emphasize that a more stringent norm is applicable while dealing with the Bank. A Bank Officer has thus to observe the prescribed norms and discipline and where such a person holds a position of trust where honesty and integrity are inbuilt requirements, the matter cannot be dealt with leniently. Thus, a Bank cannot permit flouting of its existing Rules.

18. If the matter is considered in the aforesaid conspectus, it cannot be said that aberrations were of trivial nature. There is, however, some doubt about the aspect of financial loss as there is no material placed on record before us of such financial loss and at the initial stage only a prospect of loss was discussed.

19. It is trite to say that in view of the aforesaid principles, unless the punishment is shocking to the conscience of the Court, the same would not call for any interference.

20. In the end, learned Counsel for the appellant had made an impassioned plea that the appellant had a blemishless career of 28 years and has nothing to fall back upon on account of the punishment of dismissal from service. The appellant is stated to have suffered a paralytic stroke during the pendency of the proceedings in the year 2006-07.

21. In view of the aforesaid all that we can observe is that the Appellate Authority may have a relook at the matter limited to the aspect of reduction of sentence to a punishment where the appellant may be entitled to pensionary benefits or part thereof if no excessive financial loss has been caused to the respondent No. 1-Bank. The decision in this behalf may be taken within a period of three months from today.

22. The appeal is dismissed with the aforesaid directions.