
(2002) 08 MP CK 0036
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1760/99

Kamlesh Kumar Kaurav

APPELLANT

Vs

Chambal Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Regional Rural Banks Act, 1976 — Section 13(2), 14, 3

Citation : (2002) 5 MPHT 317 : (2002) 2 MPJR 504

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Madhukar Rao, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

The petitioner, working as Branch Manager in the Chambal Kshetriya Gramin Bank, Branch Noorabad, District Morena, has filed the present petition challenging the orders of punishment dated 14th Jan., 1994 (Annexure P-16), 12th Dec., 1996 (Annexure P-20), 6th Feb., 1998 (Annexure P-22) and 12th Feb., 1999 (Annexure P-23) respectively.

The petitioner was working as Branch Manager in the respondent Bank which is a Regional Rural Bank constituted u/s 3 of the Regional Rural Bank Act, 1976. A charge-sheet dated 31-3-1993 (Annexure P-1) was issued to the petitioner and it was alleged in the said charge-sheet that the petitioner had committed certain misconducts during the period 13-5-1991 to 25-11-1992. The charge-sheet was amended vide Annexure P-2 and subsequently supplementary charge-sheet dated 23-9-1993 was issued vide Annexure P-4.

It is the case of the petitioner that he prayed for extension of time to give reply to the charge-sheet by applications dated 11th Jan., 1993 and 15th June, 1993 but without considering the same and without giving him opportunity of submitting a reply enquiry officer was appointed on 21-6-1993 vide Annexure

P-8 and subsequently the Enquiry Officer was changed and vide Annexure P-3 dated 13-7-1993 one Shri M.L. Mangal was appointed as Enquiry Officer. The Enquiry Officer conducted the enquiry on various dates and submitted his report holding the petitioner guilty of charges levelled against him. Annexure P-15 dated 4th Dec., 1993 is the copy of the enquiry report. Thereafter vide order Annexure P-16 dated 14th Jan., 1994 punishment of dismissal from service was imposed on the petitioner. Being aggrieved by the aforesaid order of punishment an appeal was filed and the appellate authority vide order dated 12th May, 1994 (Annexure P-18) interfered with the order of punishment and directed for reinstatement of the petitioner in the lowest of the pay scale after recording a warning.

The aforesaid proceedings were concluded by passing of the order Annexure P-18 dated 12th May, 1994, petitioner filed writ petition bearing W.P. No. 580/1994 before this Court and the said petition was disposed of on 29-3-1996 vide Annexure P-19 and the matter was remanded back to the appellate authority with a direction to reconsider the appeal after giving opportunity of hearing to the petitioner. Accordingly the appeal was heard by the Board afresh. The petitioner was afforded opportunity of personal hearing on 5-12-1996. Thereafter the appellate authority by the impugned order Annexure P-22 dated 6th Feb., 1998 has confirmed the punishment earlier imposed, i.e., reinstatement, fixing pay in the lowest pay scale and confirmation of the period of suspension. The present petition has been filed challenging the aforesaid order so also the show-cause notices dated 6th Feb., 1998 (Annexure P-22) and dated 12th Feb., 1999 (Annexure P-23), issued thereafter.

It is the case of the petitioner that the enquiry was not properly conducted and therefore the entire action is vitiated. During the course of hearing the following grounds were raised in support of the contention :--

(i) The enquiry was not conducted in accordance with law in as much as no witnesses were examined and merely by presenting documents the charges were held to be proved.

(ii) Opportunity of engaging a defence assistant was not given.

(iii) Shri M.L. Mangal was an officer on deputation from the Central Bank of India and is therefore incompetent to be appointed as Enquiry Officer.

(iv) The appellate board was not properly constituted, the Chairman who was the disciplinary authority had nominated Shri T.R. Verma to preside over the board which was not proper. Constitution of the board is said to be contrary to Sections 14 and 13 (2) of the Regional Rural Bank Act, 1976.

(v) The learned Counsel at the time of hearing referred to the proceedings of the enquiry and the findings recorded against the petitioner and submitted that the same are perverse and in violation of the principles of natural justice.

It is therefore urged that the entire proceedings are vitiated. In support of the

contention the learned Counsel has relied upon the following judgments:--

Institute of Chartered Accountants of India Vs. L.K. Ratna and Others,).

S. Parthasarathi v. State of Andhra Pradesh (1974) 3 SCC 549.

Yashpal Singh Jar v. Chambal Kshetriya Gramin Bank and Ors. 1992(2) MPJR 516.

The aforesaid contentions are refuted by the respondents and it is submitted by them that after the order passed in the earlier Writ Petition No. 580/94 by this Court the petitioner cannot challenge the order as he had given up all the grounds raised and the only ground which was pressed in the earlier petition was the fact of not granting him opportunity of hearing by the appellate authority. It is submitted that after the order was passed in the earlier petition the scope of interference and grounds are limited, consideration can be only with regard to the decision of the appellate authority taken after the order was passed in the earlier petition.

Even on merits it is submitted that the petitioner has not made out any case warranting interference by this Court. Perusal of the enquiry proceedings as contained in Annexure P-11 would indicate that full opportunity of defence was extended to the petitioner, no prejudice was caused to him. He had participated in the enquiry and therefore there is not illegality. Shri Mangal is an officer of the Bank and is competent to be appointed as Clause 30 (3) of Services Regulation. The appellate Board has properly constituted and there is not illegality in the same.

I have heard learned Counsel for the parties. As far as objection of the respondent Bank to the effect that in view of the order passed by this Court in the earlier petition the scope of interference is limited cannot be accepted because after the matter was remanded back to the appellate authority, the order of the appellate authority and the proceedings, Annexure P-20 indicates that the entire matter was reconsidered by the appellate authority which included the grounds of challenge to the departmental enquiry and other grounds, That being so after the order was passed by the appellate authority on 12th Dec., 1996 wherein all these grounds were considered again, the matter is reopened for agitation and the grievance of the petitioner can be considered in this petition, That being so the objection that the petitioner is estopped from challenging validity of the enquiry and appointment of enquiry officer cannot be accepted.

The first question that requires determination is as to whether the petitioner was afforded reasonable opportunity of defence to participate in the enquiry or is the enquiry vitiated because of the grounds raised by the petitioner, i.e., denial of reasonable opportunity of defence and violation of the principles of natural justice.

A perusal of the proceedings of the enquiry Annexure P-11 indicates that the first sitting of the enquiry was held on 5-10-1993 on which date the petitioner

appeared and at his request the enquiry was adjourned by 15 days to 20th Oct., 1993, to enable him to nominate a defence representative. The prayer made by the petitioner for engaging an Advocate was rejected and the petitioner was given opportunity to engage a defence representative. On 20th Oct., 1993 the petitioner appeared in the enquiry without any defence representative. The Presenting Officer produced 53 documents which were marked as Exhibits M-1 to M-53, copies of these documents were given to the petitioner and at the request of the petitioner 15 days time was granted to him to prepare the case and enquiry was adjourned to 8-11-1993.

On 8-11-1993 the petitioner appeared and participated in the enquiry. He raised some objection with regard to non-production of original documents and proving of the same. On the basis of the documents the Presenting Officer indicated the allegations against the petitioner are to be established and no other document or witness are being produced by the prosecution. The documents in question were mainly applications of the petitioner for grant of leave, documents with regard to his unauthorised absence and the irregularities committed by him in sanctioning of loan. The Presenting Officer explained the allegations against the petitioner by referring to the documents and submitted his written brief in support thereof. A detailed submission was made by the parties concerned which included cross-examination of the Presenting Officer by the petitioner with regard to the documents, the petitioner was also given opportunity to give his written objections, was afforded opportunity to produce his defence witness or documents but the petitioner has not produced any such evidence or document. On the basis of the documents which were brought on record, the findings has been recorded by the enquiry officer vide Annexure P-15 holding the petitioner guilty of the charges levelled against him.

From the aforesaid it would be clear that the entire enquiry is based on the documents, produced by the presenting Officer and as the charges pertain to allegations against the petitioner with regard to his unauthorised absence from the Bench and the irregular manner in which loans were sanctioned to him. The documents on record were the evidence in support of the allegations levelled against the petitioner. Merely because no witness was examined by the Bank that cannot be a ground for holding that the charges are not proved as witnesses were not examined. As far as grant of opportunity is concerned, the records indicate that full opportunity of defence were extended to the petitioner and the petitioner did not avail the opportunity of appointing a defence representative and on the contrary the proceedings indicate that the petitioner had himself effectively participated in the departmental enquiry and therefore it cannot be said that opportunity of participating in the enquiry was not given to the petitioner. The contention on behalf of the petitioner to the effect that he was not permitted to engage a legal practitioner cannot be accepted as Regulation 30 (3) clearly prohibits engagement of a legal practitioner in the enquiry. Reliance placed by the petitioner on the judgment of this Court in the case of Yashpal Singh (*supra*) to contend that the enquiry was not conducted properly and that

the enquiry is vitiated only because no witness was examined cannot be accepted in the facts of the present case.

In the case of Yashpal Singh (supra) this Court was inclined to interfere in the matter because the entire enquiry was conducted in English, when the petitioner in that case had specifically requested for conducting enquiry in Hindi. That apart the entire enquiry was conducted ex parte when the petitioner Yashpal Singh was absent and without producing any witness, on the basis of some documents produced ex parte behind the back of the employee concerned, the enquiry was conducted. It was on this ground that the enquiry was held to be vitiated as principle of natural justice were not followed. Present is not a case where documents were taken on record behind the back of the petitioner. On the contrary the documents were produced in the presence of the petitioner, they were taken on record, he was given more than 18 days time to study the documents and give his say in the matter and it was only after opportunity was given to the petitioner to study the documents that the enquiry was proceeded with. In view of this it cannot be said that the enquiry is vitiated. That apart it has been held that merely because the evidence in the enquiry is based on certain documents it cannot be said that the enquiry is vitiated. In this regard the law laid down by the Supreme Court in the case of Tara Chand Vyas v. Chairman and Disciplinary Authority (1997) 4 SCC 564, is relevant, wherein it has been held that the charges can be proved on the basis of the documentary evidence also. That apart it is a well settled principle of law that when a departmental enquiry is challenged on the ground of opportunity not being granted or violation of procedural provision merely because some procedural provision is not followed it will not automatically vitiate the enquiry held or the order passed. The requirement of law is that the employee concerned should have received a fair opportunity of representing his case. When a person receives a fair hearing, it cannot be said that the enquiry is vitiated. Violation of the procedure has to be viewed in the light of the prejudice caused to the employee. If it is found that no prejudice has been caused or if no prejudice is established then no interference is called for. The law on this count stands settled in the case of State Bank of Patiala and others Vs. S.K. Sharma, . The principle has been summarized in the aforesaid case and in para 33 it has been held that when an order passed or a punishment imposed on an employee is challenged and when it is contended that the enquiry is held in violation of rules or regulations Courts should not automatically set aside the order of punishment. The Courts should first see as to whether the violation is substantive in nature or procedural in characteristic. In case violation is of procedure then interference can be made only in cases of no enquiry, no notice, no opportunity and no hearing category, otherwise it has to be seen as to whether any prejudice was caused because of violation of the procedure. If no prejudice is caused or established no interference is called for. Viewed in the light of the aforesaid principle the only allegation is with regard to certain procedural aspects not being followed and in the present case as already indicated hereinabove it cannot be said that no

opportunity of hearing was given to the petitioner. The case does not fall in the category of no opportunity or no hearing. On the contrary opportunity of hearing was given to the petitioner. The petitioner has neither pleaded nor established or demonstrated the prejudice caused to him. In such cases the matter has to be examined from the stand point of substantial compliance. Orders passed in violation of such provisions can be set aside only when such violation has occasioned prejudice to the employee, as no prejudice has been caused to the petitioner, and as no prejudice has been demonstrated before this Court, The contention that the enquiry is vitiated cannot be accepted. Accordingly the said objection has to be rejected.

It is then contended that Shri Mangal was incompetent to hold enquiry because he is a person on deputation from some other bank and according to Clause 30 (3) of the Staff Regulation the enquiry has to be conducted by an officer and the word "officer" is defined in Sub-clause 2 of Clause 3 of the Regulation which reads as under :---

"The inquiry under this regulation and the procedure with the exception of the final order, may be delegated, in case the person against whom proceedings are taken is an officer to any officer who is a senior to such officer and in the case of an employee to any officer. For purposes of the enquiry, the officer or employee may not engage a legal practitioner."

A perusal of the aforesaid indicates that an officer includes a Chairman, a General Manager and other person by designation mentioned there. Shri Mangal is designated as General Manager and there is nothing in the definition of officer which indicates that the person on deputation from other Bank is not an officer. The definition is inclusive in nature and provides that a General Manager is an officer. Shri Mangal being a General Manager in the respondent/Bank will be an officer and merely because he is on deputation from some other Bank he will not cease to be an officer of the Bank. As there is nothing in the definition to indicate that the officer on deputation from other Bank is excluded from the definition. The argument with regard to competency of Shri Mangal to be an Enquiry Officer is therefore unsustainable and is liable to be rejected.

As far as the constitution of Board and in decision on the appeal is concerned, the Regional Rural Bank Act, 1976 provides for meeting of the board in Section 14. According to Sub-clause (2) of Section 14 normally the Chairman of the Bank has to preside over the meeting and in his absence any other director may be authorized by the Chairman to regulate the meeting on his behalf. A perusal of the meeting of the Board which took place in the present case indicates that the proceedings were presided over by Shri T.R. Verma who is a Director in the Bank and who was authorized by the Chairman to preside over the meeting of the appellate board alongwith other five members. The constitution of the Board and the meeting has taken place as per the norms and statutory rules and there cannot be any dispute that the same is vitiated in any manner whatsoever. The contention of the petitioner that Shri T.R. Verma was earlier associated with the

petitioner's appeal and has treated the subsequent proceedings also as a substitute of the earlier cannot be accepted. Presence of Shri Verma does not vitiate the proceedings of the appellate Board merely because he was a member of the earlier appellate Board or nominated by the disciplinary authority, i.e., Chairman. The proceedings of the Appellate Board which took place indicate that the Board has considered the matter afresh. It had permitted the petitioner to appear on 5-12-96 and the proceedings of the Board which took place on 5-12-96 indicate that the petitioner was heard on each and every point, his grounds were considered and it is only after giving him personal hearing and considering the submission given by him, the decision was taken. A perusal of the proceedings of the Board held on 5-12-96 indicate that Board has conducted its proceedings properly after giving due opportunity of hearing to the petitioner. From the aforesaid it cannot be said that the proceedings of the Board are vitiated in any manner whatsoever. The Board has been properly constituted in accordance with the rules and decision to impose the punishment has been taken only after considering the submission made by the petitioner and after giving him personal hearing in the matter. That apart the very fact that the board has interfered with the order passed by the disciplinary authority and modified the punishment order indicated the application of mind and attitude of the board.

From the aforesaid it is clear that the petitioner was given reasonable opportunity of hearing, the enquiry was conducted as per the principles of natural justice. Shri Mangal was competent to discharge the duties of Enquiry Officer and Appellate Board has also given full opportunity of hearing to the petitioner and the decision was taken only after considering the submissions of the petitioner.

It has to be taken note of that initially the punishment of dismissal from service was imposed on the petitioner. It is only after hearing him that the Appellate Court interfered with the order of disciplinary authority and directed for reinstatement of the petitioner with certain modifications in the punishment. The petitioner's contention that the action of the respondents are biased or prejudice cannot be accepted as the appellate authority has interfered with the order of Disciplinary Authority. The scope of judicial review in such matter is very limited. While exercising the power of judicial review in to administrative decision and disciplinary proceedings this Court cannot sit over the orders of the disciplinary authority as an appellate authority and reappreciate the entire proceedings or findings. The orders and decision taken by the competent authority can not be reviewed by this Court as if it is discharging the duties of the appellate authority. When it is found that the orders of the disciplinary authority and appellate authority are based on same evidence or is reasonable this Court cannot substitute the finding of said charge with its own finding. In this regard the scope of judicial review has been considered by the Supreme Court in the following cases :--

(i) B.C. Chaturvedi Vs. Union of India and others, .

- (ii) Government of Tamil Nadu and another Vs. A. Rajapandian, .
- (iii) Union of India and another Vs. G. Ganayutham (Dead) by LRs., .
- (iv) Apparel Export Promotion Council v. A.K. Chopra 1999(1) LLJ 962.

Considered in the light of law laid down by the Supreme Court in the aforesaid cases with regard to judicial review in such matter action there cannot be any doubt no case for interference is made out in the present case, because on the basis of material and evidence available on record the disciplinary authority and appellate authority have held that the petitioner guilty of the charges levelled against him and on due consideration of the material the appellate authority has interfered with the order of the disciplinary authority and passed appropriate order after giving proper opportunity of hearing to the petitioner. In such cases the scope of judicial review by this Court is not akin to that of an appeal. This Court can only review the manner in which the decision was arrived at. This Court cannot substitute its own finding for that of the administrative authority. It is not permissible for this Court to reappreciate the evidence and come to a different conclusions. Once it is held that the appellate authority and the disciplinary authority have considered the matter properly in accordance with law, rules and regulations and once it is held that the delinquent employee has received a fair and proper hearing and the findings recorded against him are not perverse or contrary to the evidence on record or is without any evidence no interference can be made in to such an action.

Considering the totality of the facts and circumstances of the case and viewed in the light of the discussion made hereinabove this Court is of the view that no case warranting interference in to the action of the respondent Bank is called for. Accordingly there is no merit in the contention raised by the petitioner in the petition.

The petition is, accordingly, dismissed.