
(2004) 01 PAT CK 0113
In the Patna High Court
Case No : C.W.J.C. No. 10811 of 2003

Keshwar Manjhi

APPELLANT

Vs

The State Bank of India and Others

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

State Bank of India (Officers Service) Rules, 1992 — Rule 67, 67(1), 68(2), 68(3), 68(4)

Citation : (2004) 2 PLJR 125

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Navin Sinha, Dhananjay Kumar Upadhyay and Anshuman Singh, for the Appellant; S.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

The Petitioner was put to certain charges and he faced a departmental enquiry. In the departmental enquiry the enquiry officer observed that four charges were partly proved while the 5th charge was fully proved. He referred the matter to the disciplinary authority. The disciplinary authority thereafter issued a notice to the Petitioner contained in Annexure-3 dated 22.2.2002 to the Petitioner recording its disagreement with the findings of the enquiry authority in respect of the allegation No. 1, 2, 3(a)(1), 3(a)(ii), 4 and 5. In the notice it was informed to the Petitioner that all the allegations in fact are proved and the disciplinary authority was of the opinion that in accordance with the findings punishment commensurate to the guilt should be awarded. It was observed that if the Petitioner intend to make any submission/representation on the finding of the enquiry as well as the points of disagreement enumerated in the said notice, he may do so within 15 days of receipt of the letter. Annexure-3 further states that no extension of time will be granted to the Petitioner and in case the disciplinary authority does not receive the submissions within the stipulated period, it would

be presumed that he has no submissions to offer and the disciplinary authority/appointing authority shall take the decision as he may deem fit.

2. Undisputedly beyond this notice no further notice was given to the Petitioner. Even after recording the disagreement and recording the final findings no notice showing proposed punishment was given to the Petitioner nor he was informed that disciplinary authority was of the opinion that the disciplinary authority may refer the matter to the appointing authority as in the opinion of the disciplinary authority a penalty/major penalty specified in Clause (e), (f), (g) or (h) of Rule 67 deserves to be awarded.

3. It appears from the record that after receiving the say to the Petitioner the matter was referred to the appointing authority with the recommendations of the disciplinary authority that the Petitioner deserves to be terminated from the services. It is not in dispute before me that after, receiving the complete records the appointing authority did not issue any notice to the Petitioner either in relation to the disagreement of the findings or the proposed punishment. It simply proceeded to pass the final orders contained in Annexure-5 the letter dated 13th June, 2002. It accordingly accepted the recommendations and awarded the penalty of removal from services as provided in Rule 67(1) of State Bank of India Officers Services Rules. The Petitioner being aggrieved by the said order took up the matter in appeal and also submitted a review appeal before the appellate committee but as he could not get any relief either from the appellate authority or the review authority he has come to this Court.

4. learned Counsel for the Petitioner submits that a fair perusal of Rule 68(3)(i), (ii), (iii) and (iv) would make it clear that if the disciplinary authority is of the opinion that a major penalty is to be imposed upon the delinquent officer then it would submit. its recommendations regarding the penalty and, though the Rule does not prescribe, the appointing authority must issue a notice to the Petitioner, give him the opportunity of hearing and after considering the case should pass final orders and impose penalty.

5. On the other hand learned Counsel for the establishment submits that a fair perusal of the proviso appended to Clause (iii) of Rule 68(3) would make it clear that once the disciplinary authority records its satisfaction that a major penalty is required to be imposed then it simply has to refer the matter to the appointing authority and the appointing authority is required to pass a final order. According to him as the Rule does not provide for an opportunity of hearing by the appointing authority the appointing authority would be justified in. passing the final order.

6. I have heard the parties at length Rule 68(3)(i) reads as under:

The Disciplinary Authority, if it is not itself the Inquiring Authority, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority-whether the Inquiring Authority is the same or different for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further

inquiry according to the provisions of Sub-rule (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagree with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(iii) If the Disciplinary Authority, having regard to its findings on all or any of articles of charge, is of the opinion that any of the penalties specified in Rule 67 should be imposed on the officer, it shall notwithstanding anything contained in Sub-rule (4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the major penalties specified in Clauses (e), (f), (g) and (h) of Rule 67 and if it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority the records of the enquiry specified in clauses (xxi)

(b) of the Sub-rule (2) together with its recommendations regarding the penalty that may be imposed and the appointing authority shall be imposed and the Appointing Authority shall make an order imposing such penalty as it considers in its opinion appropriate.

(iv) if the Disciplinary Authority or the Appointing Authority, as the case may be, having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer concerned.

7. The proviso appended to Clause (3) says that where the disciplinary authority is of the opinion that a major penalty specified in Clause (e), (f), (g) and/or (h) of Rule 67 is to be awarded then in that case the disciplinary authority being lower in rank to the appointing authority has to submit the complete records of the enquiry to the appointing authority together with its recommendations regarding the penalty that may be imposed. At this stage the question would arise that after receiving the records and the recommendations, is the appointing authority obliged to issue a notice to the delinquent officer that he proposes to impose a particular major penalty as recommended or otherwise as provided in the said Rules. In the considered opinion of this Court issuance of second show cause notice to a delinquent officer is not empty formality. In the present matter the disciplinary authority did not issue any notice as to what punishment is proposed. The disciplinary authority simply issued the notice saying that it records its disagreement on certain charges/issues and if the delinquent officer wants to say something in relation to the disagreement it may submit his case. The delinquent officer does not know nor is it clear from the records that he was ever informed that the proposed disagreement came to any final conclusion and after recording the satisfaction the said disciplinary authority had recorded fresh findings. In a case where fresh findings are recorded either disagreeing with or ignoring the findings recorded by the enquiring authority then the disciplinary

authority/appointing authority is obliged to issue a second notice to the Petitioner proposing the penalty/punishment. In the present matter the matter was straight way recommended to the appointing authority and the appointing authority even without telling the delinquent officer that fresh findings were recorded or not and what was the specific reason for making the recommendations for major penalty proceed with the matter.

8. In the matter of Punjab National Bank v. Kunj Bihari Mishra (1988) 7 SCC 84 the Supreme Court has observed that even if the rule does not provide for issuing a notice to the delinquent officer then too principles of natural justice will have to be read into the particular regulation. In the said matter Rule 7(2) of the Rules under consideration did not require that a notice be issued to the delinquent officer in relation to the disagreement. In the present matter placing reliance upon the rules though the learned Counsel for the Respondent submits that the appointing authority was not required to issue a notice in relation to the fresh findings of imposition of the major penalty but in light of the judgment of the Supreme Court in the matter of Kunj Bihari Mishra (*supra*). I am of the considered opinion, that principles of natural justice are required to be observed in toto.

9. As the disciplinary authority while making its recommendation to the appointing authority did not inform the Petitioner that it is making recommendations to the appointing authority for imposing a major penalty nor the appointing authority informed the Petitioner that the findings were re-recorded and the Petitioner was required to submit his show cause in relation to the proposed punishment, the order passed by the appointing authority stand vitiated. It deserves to and is accordingly quashed. Consequently the orders passed by the appellate authority and reviewing authority are also quashed. The matter is remitted back to the appointing authority with the direction that it shall issue a notice to the Petitioner to show cause against the proposed penalty, while doing so it shall also send the copy of the re-recorded findings enabling the Petitioner to submit his case and raise defences as are available to him. The petition is allowed.