
(2010) 11 AHC CK 0343
In the Allahabad High Court
Case No : Special Appeal No. 982 of 2007

Khem Singh

APPELLANT

Vs

District Magistrate/Administrator and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 84, 85
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 85

Citation : (2010) 11 AHC CK 0343

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Judgement

1. We have heard Shri Aseem Kumar Rai, learned Counsel for the Appellants. Shri Manish Goyal appears for the District Cooperative Bank Ltd., Moradabad.

2. Shri Khem Singh, the Petitioner-Appellant in Special Appeal No. 982 of 2007; Shri Rajvir Singh son of Shri Khoob Singh, the Petitioner Appellant in Special Appeal No. 3 of 2000 and Shri Rajvir Singh the Petitioner Appellant in Special Appeal No. 4 of 2009 are aggrieved by common judgment of learned Single Judge dated 22.5.2007 by which he dismissed the Writ Petition Nos. 7366 of 1993; 5382 of 1993 and 5384 of 1983 challenging the orders by which the Petitioners' services as Clerks/ Cashiers in the bank were dismissed on the charges of indiscipline and embezzlement of public money. The Petitioners had challenged the orders on the ground that the charges were based on audit objections in the case of Khem Singh and were not proved for embezzlement in respect of Rajvir Singh son of Khoob Singh, and Rajvir Singh son of Rabhubar Singh. The Petitioners were not shown the documents, which was relied upon in the chargesheet. No enquiry was held in respect of charges, and no evidence was led to prove the allegations. The Petitioners were not given opportunity to cross-examine the witness and to lead defence evidence. The Cooperative Institutional Service Board did not approve the dismissal order both on the ground that the documents relied upon to prove the charges were not given to the Petitioners,

nor any inspection was permitted, and also that the procedure for departmental enquiry as contemplated under Rule 85 of the U.P. Cooperative Societies Service Regulations, 1975, was not followed. The matter was remanded by the Cooperative Institutional Service Board for holding enquiry in accordance with law, but that no enquiry was held thereafter. The Managing Director of the Bank persuaded the Cooperative Institutional Service Board to approve the order of dismissal. The Board, thereafter, without ensuring compliance of the order for holding disciplinary enquiry afresh, after giving opportunity to the Petitioners mechanically approved the order on which the District Magistrate/ Administrator of the District Cooperative Bank Ltd., Moradabad vide his order dated 13th May, 1983 dismissed the Petitioners from service.

3. Shri Aseem Kumar Rai, learned Counsel for the Petitioner-Appellant submits that the learned Single Judge wrongly clubbed all the three cases together and decided them after narrating the charges of only one of the Petitioner namely Shri Rajvir Singh son of Shri Khoob Singh. The matter had earlier come up for hearing before Hon. R.B. Misra, J., who had vide order dated 2.8.2004 dismissed the writ petition, allegedly on statement made by learned Counsel for the Petitioner Shri K.P. Agarwala that the Petitioner has been paid 2/3rd of their dues after retirement and that the writ petition has become infructuous. The orders were challenged in special appeals. The Division Bench found that the writ petition against the dismissal order could not have become infructuous by efflux of time. A perusal of the order of learned Single Judge did not show that it was a consent order or that any statement was made by learned Counsel, who had appeared for the Appellant. The order dated 2.8.2004 was set aside and the matter was remanded.

4. On remand learned Single Judge considered the contentions namely that the principles of natural justice were not followed and the Petitioner was not given reasonable opportunity of hearing in violation of Regulation 85 of the Cooperative Societies Service Regulations, 1975. He, thereafter, straight away proceeded to rely upon certain judgments of the Court namely in Kesari Devi (Smt.) v. State of U.P. and Ors. (2005) 3 UPLBEC 2727 ; Parashu Ram Semwal Vs. Registrar, Hemwati Nandan Bahuguna Garhwal University and others, and Damoh Panna Sagar Rural Regional Bank and Anr. v. Munna Lal Jain (2005) 1 UPLBEC 530 and held that even if the documents relied upon by the department were not given with the charge sheet, since an opportunity was given to inspect the records, which the Petitioner did not avail, they were not prejudiced. Instead of giving reply to the chargesheet, the Petitioner only requested for his reinstatement. Learned Single Judge held that the charged employees were bank officers holding position of trust, in the office in which integrity is the inbuilt requirement of functioning, and it would not be proper to deal with the matter leniently. Learned Single Judge recorded findings that sufficient opportunity was given to the Petitioners to defend themselves, which were not availed by them. They did not deny the charges levelled against them. The charges were serious in nature and thus punishment was not disproportionate nor suffers from any procedural

impropriety or is shocking to the conscience of the Court. The writ petitions were dismissed.

5. Shri Aseem Kumar Rai submits that learned Single Judge has mixed up the facts of the three cases and by taking the worst case as exemplar proceeded to decide all the three matters. He submits that in respect of Khem Singh there was no charges of embezzlement. He was not given documents in support of the charges or the audit reports, inspite of request. No enquiry was held at all to prove the charges. The Petitioner's reply was not taken into consideration by the enquiry officer. No prosecution witnesses were examined to prove the documents and the audit reports, and no opportunity was given to the Petitioner to defend himself. The entire enquiry proceedings were held on the single day and that only 5 days' time was given to reply to the enquiry officer's report. He submits that the Cooperative Institutional Service Board had found dismissal order to be bad in law in as much as the documents in support of the charges were neither given nor allowed to be inspected and that no opportunity as provided under Rule 85 of the U.P. Cooperative Societies Service Regulations, 1975 was given. The matter was remanded to the bank to conduct enquiry in accordance with the Rules. The bank instead of completing the enquiry took no steps whatsoever and after serving upon the Petitioner the same enquiry report dismissed him from service.

6. Shri Rai submits that in Special Appeal No. 3 of 2009 of Shri Rajvir Singh son of Shri Khoob Singh, the U.P. Bank Employees Union, Moradabad had levelled allegations against the then management for having defrauded the bank for more than Rs. 2 crores, on which action was proposed against the Petitioner by serving chargesheet alleging 14 charges.

7. In respect of the Petitioner Shri Rajvir Singh son of Shri Khoob Singh in Special Appeal No. 3 of 2009 the charges in the charge sheet related to irregularities in assigning the legality of the members of the Cooperative Societies and different interest rates given to the account holder causing loss to the bank. The payments were made to 12 members on 28.6.1979 and 22.6.1979, whereas the cheques were not available for making payment causing loss to the bank. The payments were made to some of the members beyond their share without any valid pass book. Some of the payments were made to the wife and son of the members with almost same names on single day without verifying the identity of the persons; loans were given to minors much beyond their share deposited in the bank. There were cutting and overwriting over the dates, when the amount was withdrawn and paid in the accounts of the members.

8. Shri Rai submits that the Petitioner had demanded inspection of documents. A date was fixed for inspection on 29.4.1982, but the inspection was not permitted. Shri Name Singh, the Secretary of the U.P. Bank Employees Union was also present along with the Petitioner and was stopped from inspecting the records. It is alleged that the record was shown on 29.4.1982, whereas the records were not shown. An application was made on the same day once again to give copies

of the record, which were not supplied and in the absence of which the Petitioner did not submit his reply.

9. Shri Rai submits that no enquiry was held in the matter of Jagvir Singh and that non-submission of the reply was taken as acceptance of the charges and enquiry report was submitted on 19.5.1982 recommending punishment of dismissal from service. The Secretary and General Manager, District Cooperative Bank issued show cause notice to the Petitioner to which the Petitioner submitted a detailed reply alleging violation of principles of natural justice. The District Magistrate/ Administrator of the District Cooperative Bank dismissed the Petitioner from service on 23rd April, 1983 without complying with the directions of the Secretary, Institutional Service Board dated 22nd July, 1976.

10. The Institutional Service Board had referred to Regulation 85 (6) (a); Regulation 85 (4) and 85 (6) for giving sufficient opportunity to the delinquent employee in a departmental enquiry of which information should be given to them along with name of the enquiry officer. The chargesheet was to be given only after sufficient evidence was collected and after its approval by the appointing authority. The employee according to the Board was required to be given full opportunity to defend himself. If he had requested for personal hearing, the same should be given to him. The statement should be recorded on each and every charge and that punishment should be given only if the charges were serious in nature and were proved. Without complying with the directions given by the Institutional Service Board of which the approval is required before dismissing the services, the Administrator of the bank proceeded to dismiss the Petitioner. He was not given fresh opportunity to defend himself nor any date was fixed in the enquiry thereafter.

11. In respect of Rajvir Singh son of Shri Raghubar Singh it is submitted by Shri Aseem Kumar Rai that 20 charges were levelled vide charge sheet dated 3.2.1982. He was charged with indiscipline, for having exercised political pressure to get himself transferred back to Amroha from Bahjoi. Charge Nos. 2, 3, 4, 5, 6, 7 and 8 related to acceptance of amounts to be deposited in the accounts of the account holders for which the Petitioner did not make entries in the account books and embezzled the amount. Charge No. 9 related to disbursing the loan without taking thumb impressions of the account holder. Charge No. 10 related to making payments on the dates, when the cheque book was not available in the bank. The remaining charges also related to disbursing the loans without ensuring, furnishing of pass book, solvency, property register availing loan by himself of Rs. 2000/- without following due procedure, issuing cheque books to persons with names, which cannot be identified, issuing cheques without entering the father's name or husband's name of the members of the society and issuing loans beyond the share deposited by the account holders.

12. The facts subsequent to submission of chargesheet in respect of Rajvir Singh son of Shri Khoob Singh and Rajvir Singh son of Shri Raghubar Singh are almost

identical. A date was fixed on 30.4.1982 for inspection of record, but the inspection was not permitted. An enquiry report was submitted alleging that the Petitioner participated in the enquiry and did not submit any reply inspite of extension of time. The Institutional Service Board sent its disapproval on July 22nd, 1976 for non-observance of the procedure. The order of dismissal was, thereafter, passed without carrying out the directions of the Institutional Service Board.

13. Shri Rai submits that in all the three cases the bank had seriously prejudiced the Petitioners by violating the provisions of the Regulations 85 and 87 of the U.P. Cooperative Society Regulation, 1975. Whereas in respect of Shri Khem Singh charges did not relate to embezzlement at all and were based upon audit report, which was never supplied to the Petitioner; in respect of Rajvir Singh son of Shri Khoob Singh and Rajvir Singh son of Shri Raghubar Singh, the enquiry officer did not permit inspections of record and proceeded to conclude enquiry exparte on a single day without proving the documents in support of the charges or allowing the Petitioner an opportunity to cross-examine the prosecution witness and lead defence evidence.

14. Shri Rai submits that the allegations are substantiated by the letter of the Secretary of the Institutional Service Board in which he had found that the enquiry was not held in accordance with the Regulation 85 and 87 and had directed compliance of the mandatory provisions before awarding punishment of dismissal. On going through the record we find that Shri Manish Goyal has not been able to explain to the Court as to why no evidence was led to prove the documents even if it is taken that they were offered to be inspected by the Petitioners. The entire enquiry proceedings were held on single day without examining any witness. The bank did not prove any of the documents by leading any evidence either oral or documentary in proof of the charges nor fixed any other date informing the Petitioner of his right to lead defence evidence. There is nothing to show that the Petitioners were present on the date, when the enquiry is alleged to be held and whether they were given an opportunity to lead evidence.

14. We find considerable substance in the contention of Shri Aseem Kumar Rai that the letter of the Secretary of the Institutional Service board dated 14th September, 1982 in the case of Shri Khem Singh and letter of the same day sent by Shri Shyam Ji Srivastava, Member of the Institutional Service Board to the Administrator of the bank, to allow the Petitioners to inspect the documents in support of the charges or to make the copies thereof available to the Petitioner and/ or permit the inspection of such document and thereafter giving them opportunity of hearing was not followed. The departmental enquiry was held in a slip shot manner completely denying the opportunity of hearing to the Petitioners. We also find force in the submission of Shri Aseem Kumar Rai that the charges must have been proved by leading some evidence to prove the documents and that thereafter an opportunity of hearing should have been given

to the Petitioner in defence of the charges. In spite of reminder issued by the Institutional Service Board, which is approving authority of the disciplinary action, the District Magistrate/ Administrator did not take any steps nor appears to have obtained the approval of the U.P. State Institutional Service Board on 3.9.1982. The contents of the representation made subsequently to the Board has not been brought on record.

15. Learned Single Judge did not appreciate the facts of the each case. He accepted the contents of the counter affidavit that they were allowed inspection and that departmental enquiry was held. He did not meet the arguments that the documents denying the inspection of documents on the ground that the Petitioners were accompanied by the Secretary of the U.P. Bank Employees Union, the enquiry was concluded *ex parte* on the ground that since no reply has been given denying the charges, no further proof is required. Regulations 85 and 87 of the U.P. Cooperative Societies Regulations, 1975 are quoted as below:

85. Disciplinary proceedings-(i) The disciplinary proceedings against an employee shall be conducted by the Inquiring Officer [referred to in Clause (iv) below] with due observance of the principles of natural justice for which it shall be necessary that-

(a) the employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(b) such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires;

(c) if no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary.

(ii) (a) Where an employee is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the employee has absconded and his whereabouts are not known to the society for more than three months; or

(c) Where the employee refuses or fails without sufficient cause to appear before the Inquiring Officer when specifically called upon in writing to appear; or

(d) Where it is otherwise (for reasons to be recorded) not possible to communicate with him, the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

(iii) Disciplinary proceedings shall be taken by the society against the employee on a report made to its effect by the inspecting authority or an officer of the society under whose control the employee is working.

87. Order imposing penalty under Sub-clauses (e) to (g) of Clause (i) of Regulation No. 84 shall not be passed except with the prior concurrence of the Board.

16. Regulation 85 clearly provides that charges have to be proved against the Petitioner and thereafter an opportunity of hearing has to be given to the delinquent employee without which the proceedings cannot be concluded.

17. We, therefore, find that the judgment of learned Single Judge dated 22.5.2007 suffers from error of law and requires to be set aside. We also find that the order of dismissing the Petitioner from service dated 13th May, 1983 were passed in gross violation of principles of natural justice. The order of dismissal, therefore, is also liable to be set aside.

18. Shri Khem Singh; Shri Rajvir Singh son of Shri Khoob Singh and Shri Rajvir Singh son of Shri Raghubar Singh attained the age of superannuation on 30.6.2003; 22.1.2004 and 30.6.2000. Under the orders of the Court they were paid 3/4th of the subsistence allowance. It is admitted in the letter of the Secretary/General Manager, District Cooperative Bank, Moradabad appended to the judgment that from 1982-83 onwards upto 2003-04, all the Petitioners upto the date of their superannuation were paid 3/4th of the subsistence allowance. Since they did not work from the date, when their services were terminated on 13th May, 1993 upto date of their superannuation, are entitled to payment of anything more than the amount, which they have already received.

19. Ordinarily the Court after setting aside the dismissal order, does not award more than half of the back wages but since in the present case 3/4th of the suspension allowance, which amounts to little more than half of the back wages has been paid over, the Petitioners will be entitled to keep the amount and will not be paid anything more.

20. It is not appropriate for the Court after 27 years to direct the Respondents to hold fresh departmental enquiry in the matter.

21. The special appeals are accordingly disposed of with directions that the Petitioners will not be entitled to anything more than the amount which they have been paid. They will, however, be entitled to the terminal benefits, if any, to which they were entitled, to be calculated upto the date of their superannuation including provident fund, gratuity, any other allowance or pension, if it is admissible. The amount payable to the Petitioners shall be calculated within two months, and shall be paid within one month, thereafter.