
(2010) 05 P&H CK 0093
In the Punjab And Haryana At Chandigarh

Kishan Chand Dalal

APPELLANT

Vs

Haryana Gramin Bank

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 05 P&H CK 0093

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Appellant, who was working with Haryana Gramin Bank (earlier known as Ambala Kurukshetra Gramin Bank Co-operative Bank Building, Delhi Road, Rohtak) was proceeded against under the Ambala Kurukshetra Gramin Bank Officers & Employees Service Regulations, 2000. The charges framed against him in the charge sheet dated 2.3.2000 are as under:

Charge-1: Sh. KC Dalal in league with Mr. Rajvir Singh, Clerk-cum-Cashier indulged in various fraudulent activities causing pecuniary gains to himself at the cost of the bank and tarnished the image of the bank.

(a) He in league with Mr. Rajvir Singh, Clerk-cum-Cashier embezzled Rs. 1,000/- from the SF A/c No. 824 of Mrs. Lajwanti w/o Sher Singh, R/o Vill. Alahar on 2.8.99. He intentionally overlooked the authenticity of the withdrawal/entry dated 2.8.99 entered by Mr. Rajvir Singh, Clerk-cum-Cashier and thus committed gross misconduct in terms of regulation 19 of AKGB Staff Service Regulation-1985.

Charge-1 (b): He accompanied Mr. Yash Pal, Messenger and visited Dehradun (UP) on 16.10.1996 to 17.10.1996 for recovery in the overdue loan account of Mr. Naresh Kumar S/o Mr. Soran R/o Vill. Alahar who was temporarily residing there and recovered Rs. 5,080/- from the borrower. But he accounted for Rs. 4,000/- in the loan account of Mr. Naresh Kumar on 17/18.10.96 and thus embezzled Rs. 1,080/-.

Charge-II: Mr. KC Dalal worked in a manner, which eroded the credibility and reputation of the Bank and acted in a manner unbecoming an officer of the Bank.

(a) He shielded the misdeeds of Mr. Rajvir Singh, Clerk/Cashier who indulged in various fraudulent activities during his absence and concealed the vital facts from the higher authorities. He was instrumental in refund of the excess amount of Rs. 500/- to Mr. Joginder Singh embezzled by Mr. Rajvir Singh, Clerk/Cashier in liquidation of his father's loan account maintained by BO Alahar in his presence but suppressed the truth from the higher authorities.

Charge II (b): He alongwith Mr. Yashpal, Messenger went to Dehradun (UP) for recovery purpose on 16.10.96 to 17.10.96 but made him to mark his presence in the branch for the said dates in total contravention to the laid down guidelines.

2. An Enquiry Officer was appointed to go into the charges, who submitted his report on 9.1.2002. Upon completion of enquiry, show cause notice dated 28.3.2002 was served upon the appellant asking him to show cause as to why punishment of down grading him by two steps in incremental scale be not imposed upon him as per the rules.

3. As can be discerned from the record, the Enquiry Officer did not find the charges against the appellant proved, which was differed by the punishing authority. The contention raised before the courts accordingly was that the disciplinary authority had not agreed with the finding of the Enquiry Officer and had made adverse observation/findings without giving any cogent and logical reasons. The plea further was that the show cause notice proposing penalty was not based on the findings given by the Enquiry Officer and that the appellant also did not get adequate opportunity to defend himself. Some other submissions were also made on the merits and on appreciation of the evidence, which may not need a notice in detail in view of the limited submission pressed by the counsel for the appellant while arguing the Regular Second Appeal.

4. The plea here basically is that while the disciplinary authority could disagree with the findings returned by the Enquiry Officer, but before recording its own findings, the disciplinary authority was required to afford opportunity of hearing to the appellant. The disciplinary authority had, however, straightway proposed punishment without hearing the appellant while disagreeing with the findings returned by the Enquiry Officer.

5. In reply, the respondent-Bank had raised objection about the maintainability of the suit. It was stated that the work and conduct of the appellant was not satisfactory. Plea regarding denial of opportunity to defend is denied and it is stated that sufficient opportunities were afforded to the appellant to explain his view point and to adduce his evidence. He was also given opportunities of personal hearing when the appellant had made detailed written submissions running into twelve pages in addition to an addendum dated 26.4.2002 and the oral submissions which were also heard.

6. On the basis of pleadings, the following issues were framed:

1. Whether the order of disciplinary authority dated 11.5.2002 and the subsequent decision of Board of directors are illegal, null and void, if so its effect? OPP.

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Relief.

7. The suit filed by the appellant was dismissed. His appeal has also been dismissed leading to filing of the Regular Second Appeal.

8. The only substantial question of law which is pressed into service on behalf of the appellant is whether the punishing authority could give a dissenting note on the findings returned by the Enquiry Officer without affording opportunity of hearing to the delinquent employee.

9. Mr. R.K. Malik in support of this question of law has referred to Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . The Hon''ble Supreme Court in this case dealt with a controversy relating to the disciplinary authority disagreeing with the findings of the Enquiry Officer and to act under Regulation 7(2) applicable to the employees of the Punjab National Bank. Having considered the various provisions and the law, the Hon''ble Supreme Court observed as under:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority record its findings on the charges framed against the officer.

10. In State Bank of India and Ors. v. K.P. Narayanan Kutty 2003 (2) SLR 59, Hon''ble Supreme Court has followed the view taken in Punjab National Bank''s case (supra).

11. The counsel appearing for the Bank, however, would join serious issues with the counsel for the appellant and would contend that principles of natural justice indeed were followed in this case and that the appellant did not suffer any prejudice whatsoever.

12. Main submission when notice was issued was that the dissenting note was

not supplied by the punishing authority to the appellant and, hence, he did not get proper opportunity to defend himself. The counsel for the respondent-Bank has drawn my attention to Annexure A-2, which is the show cause notice issued by the respondent-Bank to the appellant, to urge that this was the dissenting note by the punishing authority and it is well reasoned one. This document has been placed on record by the appellant through a Misc. Application.

13. The perusal of Annexure A-1 would clearly show that the disciplinary authority had recorded in clear and certain terms that it did not concur with the finding of the Enquiry Officers as is mentioned against each charge. Thereafter, the disciplinary authority has dealt with the material and evidence in regard to the charges. The reasons to differ with the findings returned by the Enquiry Officer are based on relevant material and evidence, for which the disciplinary authority would have the powers. The reasoning given by the Enquiry Officer to exonerate the appellant has been considered to come to a different conclusion. Even part of the finding returned by the Enquiry Officer that the payment of the withdrawal was prima facie in order and in due course was concurred with to further observe that there was laxity on the part of the Charged Officer for not checking the entry in the ledger while he had checked all the entries. Charge No. 1 was accordingly held partially proved. In regard to second charge, the statement made by the appellant was referred to observe that he admitted during the enquiry that he had gone to Dehradun in regard to overdue loan account of Mr. Naresh Kumar. Similarly, proper reasoning has been given to disagree with the findings of the Enquiry Officer to treat this charge as also partly proved. Having given his dissent note in this manner and proposing the punishment of down grading, the appellant was given a show cause notice statedly to ensure natural justice to provide him an opportunity of personal hearing. The appellant was, thus, required to attend the personal hearing and was also supplied with the copy of the enquiry report.

14. It is now to be seen if there was any violation of principles of natural justice. Mr. Malik would contend that the disciplinary authority could not have recorded a finding of guilt without first affording opportunity of hearing which was to be afforded after recording its tentative findings. In support, he would heavily rely upon the observations made in Punjab National Bank's case (supra). Though my attention was not drawn to any provision of the Regulations applicable to the appellant which required the disciplinary authority to afford such an opportunity of hearing while recording its findings of disagreement with the Enquiry Officer, yet principles of natural justice may call for some opportunity of hearing when the disciplinary authority disagrees with the findings of the Enquiry Officer. This requirement was read into Regulation 7(2) in the case of Punjab National Bank (supra).

15. Whether not hearing employee before recording disagreement per se lead to violation of principle of natural justice or if any prejudice is to be seen in such like cases may be a question requiring consideration. No specific provision is

brought to my notice which would require hearing by the disciplinary authority. Principles of natural justice may be invoked to invoke this requirement of hearing for recording note of disagreement. Submission is that disciplinary authority is required to record tentative finding and then is to afford an opportunity of hearing before recording disagreement. Hearing in this case was afforded, but the plea is that it was after recording disagreement, which would be no substitute for pre-decision hearing.

16. Enquiry report was supplied with show cause notice issued containing the reasons for disagreement. The delinquent employee was afforded opportunity of personal hearing. In response, he made elaborate written submissions. Though the disciplinary authority had recorded in the show cause notice showing its disagreement partly on two separate paras of charge-1 and charge-II, but yet it could not be pointed out that the appellant was in any manner restricted from making submissions on merits on the view expressed by the disciplinary authority. Can it not be taken that the disciplinary authority had expressed his view tentatively as otherwise there was no requirement of affording opportunity of hearing to the appellant, which, he availed?. The appellant had then made written submissions running into twelve pages, besides making oral submissions. The requirements of fair hearing for recording dissent note to find appellant blame worthy, thus, apparently were complied with. The appellant, thus, did not suffer any prejudice.

17. The personal hearing granted by the disciplinary authority was sufficient hearing even if it be post decisional hearing and would show that natural justice rule was not violated. Support in this regard can be had from the observations made by the Hon'ble Supreme Court in Canara Bank and Others Vs. Shri Debasis Das and Others, . In this case, Sub-regulation did not make any provision for requirement of an employee being granted an opportunity to file written brief. The delinquent Bank Officer had not filed his written brief before the Enquiry Officer on the ground that brief submitted by Presenting Officer was not supplied. The Enquiry Officer without waiting for written brief from the delinquent employee made his report. This report was accepted by the disciplinary authority and dismissal order was passed. In the departmental appeal against the dismissal order, the appellate authority gave personal hearing to the delinquent officer even though such hearing was not statutorily contemplated. The dismissal order was upheld. The order was challenged in the High Court and the writ petition was allowed on the ground that the Enquiry Officer had given opportunity to the Presenting Officer to file written brief and similar opportunity ought to have been given to the delinquent officer. It was observed that there was violation of natural justice rule. The Hon'ble Supreme Court observed that the conclusion of the High Court that there was non-compliance of the regulations leading to prejudice was not correct. It was further observed that the personal hearing given by the appellate authority was sufficient post decisional hearing and, therefore, it could not be said that there was violation of natural justice rule.

18. It may further be noticed that no material has been placed on behalf of the appellant to show as to how he has been prejudiced. It has simply been stated that the appellant was required to be afforded opportunity of hearing before recording a disagreement note and this in itself would lead to prejudice. Requirement to afford hearing before recording dissent is not due to any statutory or other rule or regulation. This opportunity is being asked for by invoking principle of natural justice. Whether it had per se resulted in any prejudice to the appellant may be a question. It can be noticed that the appellant was not only given opportunity of hearing for awarding punishment but was given liberty to make submission on merits and was not placed under any restriction to make submissions. At the most, this can be termed as post decisional hearing. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, but this principle may not strictly apply to the situation in this case considering the factual position noticed above. The reference here may also be made to the observations made by the Hon''ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , where it was held as under:

Hence, in all cases where the Enquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the

employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law.

19. It is to be noted that the plea of prejudice is raised on account of violation of natural justice and not on account of any non-compliance of any provision of rule or regulation. It would not be appropriate to set aside the order as it may then amount to mechanical setting aside of the order. Having considered the facts situation in this case, I am of the view that principle of natural justice rule was not violated in this case. No reasons for setting aside the punishment on this ground is made out. In the facts and circumstances of the case, the hearing at pre-decision stage would not have made any difference. Even if there was any denial of opportunity, the hearing afforded to the appellant, may be at post-decisional stage, has not resulted in any prejudice. The substantial question of law is answered accordingly and the present Regular Second Appeal is dismissed.