(1992) 07 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24720 of 1991

K.L. Sharma APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1992) 4 AWC 1 Supp

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant;

Judgement

R.B. Mehrotra, J.—Petitioner was working as Officer Junior Manager Grade, Scale I in the State Bank of India and was posted as a Branch Manager, Landour Cantt. Branch of the State Bank of India, Mussoorie from October 1983 to September, 1986. Thereafter the Petitioner was transferred to Branch Office, Chakisain. Subsequently the Petitioner was transferred to Dehradun Zonal office of the State Bank of India in September, 1987.

2. The Chief General Manager by his order, dated 16-9-1987 suspended the Petitioner consequent upon disclosure of certain serious irregularities committed by the Petitioner during the course of his posting as Branch Manager, Landour Cantt. Branch. Mussoorie. The suspension order was passed in terms of Rule 50-A(1)(a) of the State Bank of India (Supervising Staff) Service Rule (hereinafter referred to as the Rules). Immediately on Petitioner''s suspension on 25-11-1987, a show cause notice was sent to the Petitioner by registered post, acknowledgment due, apprising him of the serious irregularities committed by the Petitioner during the tenure as Branch Manager, Landour Cantt. Branch Mussoorie and Petitioner was asked to submit his explanation within 15 days of the receipt of the aforesaid notice. The Petitioner refused to receive the said notice and notice was returned with the remark of the postal authority that despite being told time and again not meeting, therefore, returned (BAAR BAAR

BATANE PAR BHI NAHI MILTE, ISLIYE WAPIS). The Bank thereafter sent another copy of the show cause notice on 29-12-1987 under postal certificate. The Petitioner, however, did not reply to the aforesaid show cause notice.

3. In the aforesaid circumstances, the Bank authorities decided to refer the matter to the Central Bureau of Investigation, Dehradun, vide letter, dated 19-3-1988, In the letter addressed to the Central Bureau of Investigation, it was stated that the matter is being referred for detailed investigation and it was requested that a regular case may be registered against the Petitioner since he has committed irregularities in giving advances to various persons while working as Branch Manager, Landour Cantt. Branch of Mussoorie.

4. The vigilance Department took some time in completing the investigation. The Petitioner did not reply to the show cause notice instead asked for a copy of the said notice. Another copy thereof was sent to the Petitioner, vide letter, dated 19-11-1990.

5. On the basis of the investigation made by the Central Bureau of Investigation, a first information report was lodge against the Petitioner on 19-12-1990. The Petitioner replied to the show cause notice on 18-2-1991. Thereafter a chargesheet had been served on the Petitioner on 11-4-1991. Subsequent thereto the Petitioner filed a writ petition in this Court being Civil Misc. writ petition No. 22234 of 1991 whereby the Petitioner sought to challenge the departmental enquiry initiated against the Petitioner on the ground that Criminal case and departmental proceedings both cannot go on simultaneously against the Petitioner. In the aforesaid background, a learned single Judge of this Court stayed the departmental proceedings} before the Inquiry officer if they relate to the charges to be investigated by the criminal Court. In view of the interim order passed by this Court initially the disciplinary authority wrote to the Inquiry officer that by way of abundant caution, the enquiry proceedings may remain in abeyance till further instructions and clarifications are issued in this behalf. However, clarifications were sought for by the Bank authorities from their counsel at Allahabad and on receiving instructions, the Disciplinary authority, vide letter dated 2-1-1992 modified and amended the chargesheet originally issued to the Petitioner as to only proceed against those charges did not form subject matter of the criminal proceedings pending before the Central Bureau of Investigation.

6. By means of the present writ petition under Article 226 of the Constitution of India, the Petitioner has sought for quashing of the amended charge-sheet on the ground that there had been inordinate delay in submitting the chargesheet and due to which the Petitioner has been severely prejudiced in his defence and has also sought quashing of the suspension order on the ground that departmental proceedings are pending against the Petitioner for last 5 years. There is absolutely no justification for continuing the suspension order passed against the Petitioner long back in the year 1987.

7. Before examining the contention regarding delay in filing the charge-sheet, it

is necessary to examine the nature of the charges framed against the Petitioner. A detailed chargesheet has been filed against the Petitioner. The preface of the chargesheet stated that Petitioner, while posted as Branch Manager at Landour Cantt. Branch, failed to discharge his duties with utmost devotion and diligency and acted in a manner unbecoming of a Bank Official and highly prejudicial to the Bank''s interest in violation of Rule 32(4) of the State Bank of India (Supervising Staff) Service Rules as per his acts detailed in the enclosed Statement of imputations of misconduct. In the enclosed statement, the details of misconduct were given out. For proper appreciation of the controversy involved in the writ petition, these details are being reproduced herein-below :

STATEMENT OF IMPUTATIONS OF MISCONDUCT IN RESPECT OF SHRI K.L. SHARMA OFFICER JMGS-I (UNDER SUSPENSION).

While posted a Branch Manager at Landour Cantt. Mussoourie Branch Shri K.L. Sharma officer JMSS-I is alleged to have committed the following lapses :

(i) He bestowed undue favour to Shri Kundan Singh and his four sons by granting various loans in violation of Bank''s instructions although they were not independently engaged in the business/occupation for which these loans were granted. These loans were granted without properly asessing the means of the borrowers and also ignoring to assess the overall liability of Shri Kundan Singh, who guaranteed most of such accounts at the time of acceptance of his guarantee. A few such instances are shown in Annexure ''A''

(ii) With a view to cover up the overdrawings he enhanced instead of reducing the each credit limit sanctioned to Shri Kundan Singh from Rs. 20,000/ -- to Rs. 40,000/- on 21-8-86 without appraisal/proper assessment of working capital requirements contrary to the Regional Office instructions vide L.L. Nos. 6/5537, dated 18-6-85 and 6/9687 dated 19-9-85.

(iii) He permitted liberal overdrawings/drawings to Shri Kundan Singh and Shri Madan Sing without obtaining any stock statements from the borrowers (Maximum drawings allowed to Shri Kundan Singh was Rs. 52,574/- 98 on 28-6-86 and to Shri Madan Singh was Rs. 39,. 450/11 on 11-3-86).

(iv) He also sanctioned M.T. Ls. to Shri Kundan Singh and Shri Sumer Singh without obtaining Technical Reports regarding usefulness of the machinery, did not ensure and used of funds and and allowed the proceeds to be utilised for reduction of outstandings in their Cash Credit Accounts.

(v) while permitting overdrawings, he did not ensure to enter the relative cheques in the Cheque referred and Returned Register. A few instances are as under :

(a) Cheque no. 558823 for Rs. 10,000/- paid on 19-2-86 ;

(b) Cheque No. 558835 for Rs. 10,000/- paid on 28-4-86.

(vi) with a view to conceal the position of the accounts at the end of the year, he did not incorporate certain accounts in the Yearly Returns, transferred amount from other accounts without the authority of the account holders. A few instances are as under :

(a) A sum of Rs. 9,000/- was debited to the Cash Credit A/C of M/s. Devinder Kumar on 30-12-85 without their confirmation and proceeds credited to the account of Shri Madan Singh.

(b) A sum of Rs. 9,500/- was debited to current A/C No. 95 of Shri Satish Kumar Mittal and Lakshmi Devi on 30-12-85 without their confirmation and credited the proceeds to account of Shri Madan Singh, whereas there were no business dealings between Shri Mittal and Shri Madan Singh.

2. He granted loans to the undernoted borrowers beyond the discretionary powers, vested in him.

Name of the borrowers Nature of loan Date of sanction Amount of loan Sh. Madan Singh ATL 8-3-85 10,000/- Sh. Sumer Singh ATL 2-4-84 10,000/- Sh. Anjan Singh ATL 18-5-85 10,000/- 3. (i) He granted loans to 43 borrowers (details given in Annexure ''B'' who were either residing outside the area of operation of the Branch or had not furnished addresses or given fictitious addresses on the loan applications.

(ii) He did not ensure end use of funds lent to these borrowers as the assets purchased with the Bank''s finance could not be made available for verification by the Bank''s Inspecting Staff.

(iii) He granted loans to the undernoted borrowers who are not traceable at their recorded addresses :

Name of the borrower Address Nature and amount Date of of Loan sanction Satish Kumar Mittal Spring Villa C/C 30-05-1985 Mussoorie Rs. 15,000/- Sanjaya Jain and C/o S.P. Goyal C/C Landour Cantt. Rs. 20,000/- 15-11-84 S.S. Suryal Landour Rs. 20,000/- Bazar,Mussoorie 14-04-1986 Mast Ram C/o R.S. Rau-thon, Landour Bazar C.T.L Rs. 20,000/- 28-03-1985 Gorakh Chand Village Bhatta C/C Rs. 20,000/- 10-4-1986 Dhanesh Chand Landour Bazar C.T.L. 28-03-1985

(iv) He granted loans to the undernoted borrowers who have either denied to have obtained loan or have any knowledge of loan sanctioned in their favour :

Name of the borrower Date of Sanction Nature of loan Amount of loan Pramod Kumar 17-07-1984 C/C 25,000 Munshi Ram and Co. Hathi Paoon Mussoorie. 29-12-1984 MTL 20,000/- Jameel Ahmad 28-08-1986 MTL 20,000/- Clock Tower

(v) He granted loans to S/Shri Mast Ram and Dhanesh Chand, who are reported to be real brothers of Shri P.R. Dhtani, the then Branch Manager, LBSNA Branch and did not advice these facts to the Controlling Authority.

(vi) He granted Cash Credit limits of Rs. 15,000/- to Shri Satish Kumar Mittal on

30-5-85 and the amount was transferred to his over draft Account without getting the debit voucher confirmed from him.

(vii) He misutilised his official position by asking Shri Prem Singh, to guarantee the Cash Credit A/c of Shri J.S. Suiyal, whom he did not know.

4. He sanctioned limits/Terms loan to the units which either did not exist or where end use of funds was not ensured. A few of such instances are given in Annexure ''C''.

5. (i) He granted loans to the borrowers for purchase of animals under D.I.R. Scheme, who were actually residents of villages situated at a distance of 30/35 K.Ms. but furnished fictitious addresses on the loan applications. A few of such instances are given in Annexure ''D''.

(ii) Some of these accounts he got guaranteed from Shri Kundan Singh and his sons ignoring the fact that keeping milk animals was prohibited in the area and these applications were not sponsored by any Govt. Agency.

(ii) He did not get these animals insured and certificates from the vetenary Doctor in respect of the catties were obtained between 1-7-86 to 6-8-86 even though these loans were disbursed in 1984 and 1985.

(iv) (a) He in connivance with Shri Kundan Singh Panwar cheated the borrowers at S. Nos. 1, 7, 23, 25, 26, 27, 28, 30, 31, 32, 33, 35, 37, 40, 43, 44, 45, 46, and 47 of Annexure ''D'' obtained blank loan documents from them and granted loans in their names but the borrowers have denied to have received the loans. As such he did not ensure end use of funds.

(b) S/Shri Purna and Maghu Ram at SI. Nos. 1 and 40 have complained to the District Magistrate, Dehradun that they have neither received any loan nor deposited any amount towards repayment/liquidation thereof.

(c) S/Shri Darshnu, Jhabru, Hukam Singh and Hagru at SI. nos. 35, 37, 43 and 47 have stated that the loan amount though received in cash by them was taken over by Shri Kundan Singh Panwar at his instance/in his presence.

6. He purchased D. Ds (details as per Annexure ''E'') from S/Shri Pramod Kumar and Kundan Singh which were received back unpaid and delibeartely not responded to promptly. These were responded to after a considerable lapse of time.

8. The original charges were modified as to confine the said enquiry only to those charges which do not form the subject matter of the criminal proceedings. Those charges which were deleted are as under ;

Delete : Alleged lapses

1. (i to. vi)

2.

3. i and 3(ii)

3. (iii) S.S. Suryal -- Landonr Bazar

Mussoorie -- C/C Rs. 20,000/-

14-4-86.

4.

5. (i to iv).

9. After dropping of the aforesaid charges, Charge no. 3-(iii) except S.S. Suniyal Landour Bazar, Mussoorie, C.C. Rs. 20,000/- dated 14-4-1986 (iv), (v), (vi) and (vii) and Charge no. 6 remain for which departmental proceedings are being carried out. The Supplementary counter affidavit discloses that the amount involved even in these charges for which the enquiry has been confirmed works out to Rs. 2 lacs.

10. I have heard Sri S.P. Gupta, the learned Senior Advocate for the Petitioner and Sri S.N. Verma, learned Senior Advocate for the Respondents.

11. Rule 32(4) of the State Bank of India (Supervising Staff) Service Rules for violation of which the Petitioner was charged is as under :

(4) Every Employee shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official.

Rule 48 of the aforesaid Rules says-

A breach of any of the provisions of these rules shall be deemed to constitute misconduct punishable under rule 49.

Rule 49 of the Rules provides --

without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an employee, for an act of misconduct or for any other good and sufficient reasons :

Minor penalties

(a) censure,

(b) withholding of increments of pay with or without cumulative effect,

(c) withholding of promotion,

(d) recovery from pay or such other amount as may be due to him.

of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

Major penalties

(e) reduction to a lower grade or post, or to a lower stage in a time scale,

(f) compulsory retirement,

(g) removal from service,

(n) dismissal.

12. Sri S.P. Gupta, learned senior Advocate, relied upon the following decisions in support of his contention that since there is an inordinate delay in submitting the chargesheet, the chargesheet should be quashed. Sri Gupta has also contended that the departmental instructions dated 5-1-1987 require that the departmental proceedings should be completed within six months from the date of the misconduct is brought to the notice of the Bank Since in the present case, the chargesheet has been submitted after lapse of 3 1/2 years, the departmental proceedings deserve to be quashed on the basis of the departmental instructions also as there had been inordinate delay in submitting the chargesheet.

(1) M.N. Qureshi v. Union of India 1989(9) ATC 500 wherein the central Administrative Tribunal Ahmedabad has taken the view :

It is true, whether or not the State Government, in a given case, is guilty of inordinate delay, vitiating the departmental proceedings, must necessarily depend on the facts and circumstances of the case. The gap between the date of the alleged misconduct and the commencement of the enquiry by the Government has to be explained satisfactorily. The commencement of an expeditious departmental inquiry and its completion, like expeditious disposal of a criminal case is primarily in the interest of the department and the delinquent and a mandate of Article 21 of the Constitution of India. It is expected that such disciplinary action has to be taken at least expeditiously and not after so much unexplained delay.

(2) C.N. Ramaswamy v. The Chief Engineer, Distribution, Tamil Nadu Electricity Board Madras 1981(2) SLR 469. The Madras High Court has held :

It is true that the delay in the initiation of the disciplinary proceedings by itself will not in all cases constitute a denial of a reasonable opportunity to show cause.

However in the facts of that case, the Court held that the Petitioner has been put to prejudice by the delay in the initiation of the disciplinary proceedings against him. This factor has to be taken note of while testing the tenability or otherwise of the orders passed by the Respondents.

(3) Shri Kundan Lal v. The Delhi Administration, Delhi 1976(1) SLR 133 , The Delhi High Court has held as under :

Elementary fairness to a public servant would require that the sword of Democles should not be allowed to hang over him longer than necessary; otherwise there is the likelihood of degeneration into an engine of oppression. Whether the departmental action taken against the Petitioner in this case was legal or illegal, minimum fairness required that the said action was taken at least expeditiously and not after so much unexplained delay as has been unfortunately happened in this case.

13. A survey of the aforesaid decisions make out that an unexplained delay in initiating the departmental proceedings is fatal, but individual cases are to be examined on their own facts and on the basis of the facts if the Court is satisfied that the department had, without any explanation, caused inordinate delay in initiating the departmental proceedings which has caused prejudice to the delinquent officer in the matter of his defence, the delay in initiating such departmental proceedings is fatal.

14. In Dr. S.S. Ahluwalia v. G.B. Pant University of Agriculture and Technology 1991 (62) FLR 49, a Division Bench of this Court held that the disciplinary proceedings initiated after 4-5 years were not stale or very old and conduct of enquiry was held to be justified in the circumstances of the case.

15. Looking into the nature of the charges sought to be investigated against the Petitioner particularly in the circumstances of the case that the Petitioner himself was avoiding to give any explanation to the show cause notice served on him expeditiously, it cannot be said at this stage that there had been unexplainable delay in submitting the chargesheet. In the cases cited above by Sri Gupta, on the facts of those cases, it was found that the Petitioner has been prejudiced by the delay in submitting the chargesheet and on the aforesaid basis the order of punishment itself was set aside. Ultimately if the Inquiry officer or the disciplinary authority comes to the conclusion that the delay in submitting the chargesheet has prejudiced the Petitioner in producing his defence, he will take a lenient view of the matter and he may pass orders according to the circumstances of the case. The Petitioner can very well agitate this question in this explanation, in reply to the chargesheet served on him and can take the aforesaid ground in his defence, it is pre-mature at this stage to say that there had been inordinate unexplained delay in submitting chargesheet, so the chargesheet itself should be quashed. The Department has submitted a reasonable explanation for submitting the chargesheet after a lapse of 3 1/2 years and in the facts of the present case, I am of the opinion that at this stage, it is not appropriate to quash the chargesheet as it cannot be said that there had been unexplained delay in submitting the chargesheet after a lapse of 3 1/2 years.

16. The second submission of Sri Gupta in this connection is that since the Petitioner was suspended on 16th of September, 1987 and almost 4 1/2 years have elapsed since then and departmental proceedings have not yet commenced, it is fit and proper that the suspension of the Petitioner should be revoked. Sri Gupta has also contended that after deletion of the original chargesheet, the left out charges are of not such serious nature which constitute misconduct of the Petitioner and in support of the aforesaid contention, he relied upon Union of

India (UOI) and Others Vs. J. Ahmed, , wherein, the Hon''ble Supreme Court held that the nature of the charges were of such character that they did not constitute the misconduct. The case has no bearing in the present matter as in the present matter the charges are specific ones and that of violation of Rules 32(4) and 48 of the Rules and any violation of the aforesaid rules would constitute misconduct, there is no scope for the submission *hat the charges do not constitute misconduct.

17. In support of his contention that the suspension should not be continued against the Petitioner, Sri Gupta relied upon the following decisions :

(a) Baboo Ram Verma v. State of U.P. (1992) 1 UP LE EC 23. In this case a learned single Judge of this Court quashed the suspension order on the basis that no chargesheet was submitted for a period of 9 months. In the facts of the case, the Respondent did not file the counter affidavit despite time having been granted to Respondent for explaining as to why the chargesheet is not being served. It was a case on its own peculiar facts and no general principle of law has been laid down for revoking the suspension on the ground that if there is a delay in nine months in submitting the chargesheet the suspension order should be revoked.

(b) Brij Kishore Singh v. Government of Bihar (1990) 12 ATC 501. In this case, the Central Administrative Tribunal, Patna quashed the suspension order on the basis that the question of continuance of the suspension was examined by the 1st Respondent, and at more stages than one, the concerned officers recommended revocation of the suspension. Even the Chief Secretary to the State Government had minuted in unequivocal terms that continuance of suspension of Shri B.K. Singh would be violative of the existing instructions of the Government both Central and the State Government. In view of the peculiar facts of the aforesaid case, the Central Administrative Tribunal was satisfied that there was no justification for continuing the suspension of the Petitioner. That case does not lay down any general proposition that if the departmental proceedings are delayed for any reason, the suspension of the delinquent officer should necessarily be revoked. Likewise in R. Perumal v. Union of India (1990) 12 ATC 551 in the peculiar circumstances of the case, the Central Administrative Tribunal, Madras revoked the suspension order on the basis that criminal trial and departmental proceedings have taken for five years and there does not seem to be likelihood of those being concluded in a short time.

(c) Kamal Kishore Prasad v. Union of India (1990) 13 ATC 853. In this case the Central Administrative Tribunal, Delhi held that there is ample authority for the proposition that suspension for a prolonged period is not legally sustainable, particularly when there cannot be apprehension that the government servant can influence the witnesses or tamper with the records.

18. In the present case, the departmental enquiry is yet to be completed and it is premature to say that the suspension of the Petitioner should not be

continued. In the counter affidavit it has been disclosed that the suspension of the Petitioner has been reviewed by the disciplinary authority who at its own level has taken a decision to continue the suspension till the enquiry is completed. Since the enquiry has not yet been completed, I do not think that any case has been made out by the Petitioner for revoking the suspension order. However, in the circumstances of the present case when an amended chargesheet has been served on the Petitioner on 2-1-1992, the Petitioner may file his reply to the amended chargesheet without taking any technical objection to that and the enquiry against the Petitioner should be completed, within four months from the date of delivery of this judgment. It is expected that the Petitioner will cooperate in the enquiry. After completion of the departmental enquiry, the question of continuance of Petitioner''s suspension should be reviewed again and appropriate orders in accordance with law should be passed. Respondents are directed to comply with the aforesaid observations.

19. The writ petition accordingly disposed of with the aforesaid observations. All other reliefs called in the writ petition are rejected. The parties will bear their own costs.

20. The writ petition is accordingly disposed "of with the aforesaid observations. All other reliefs claimed in the writ petition are rejected. The parties will bear their own costs.

