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(1985) 12 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 668 of 1981

K.M. Gang APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 16-12-1985

Acts Referred:

Citation : (1986) 1 WLN 188

Hon'ble Judges : Ashok Kumar Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, J.—The petitioner by this writ petition has challenged the order of removal dated 12th September, 1979 and the order dated 25th November, 1980 by which his appeal was rejected, on various grounds.

2. The petitioner while serving with the respondent Central Bank of India (here in after referred as the respondent Bank) came to be served with the charge sheet on 17-18th May, 1976. By this charge sheet he was called upon to furnish his explanation in regard to the matters stated in the memo. The petitioner submitted his reply on 25th May, 1976. His explanation was not found to be satisfactory therefore he was placed under suspension and a regular charge sheet was issued to him on 13th Nov., 1976 along with other person Shri O.P. Sharma. The petitioner was informed by the Divisional Manager that Shri S.B. Saxena, Branch Manager, Greater Kailash, New Delhi has been nominated as enquiry officer to hold the enquiry against the petitioner But this enquiry officer was changed and in his place one Mr. M.M. Lalla, Chief Officer was appointed to conduct the enquiry against the petitioner as well as O.P. Sharma and the petitioner was asked to participate in the enquiry which was conducted against O.P. Sharma. It is stated that the petitioner has raised an objection that the management has not complied with the instructions contained in para 19.14 of the Bipartite Settlement. Some witnesses were also examined, namely Sarva Shri N.K. Gupta, R.K. Sharma, D.R. Nahta and S.C. Jain and their depositions

were recorded. Since the charges against the petitioner and O.P. Sharma were some what common therefore this enquiry against the petitioner and Shri O.P. Sharama was agreed to be taken together. While the enquiry was going on and during the pendency of enquiry another supplementary charge sheet dated 3rd February, 1978 was also served on the petitioner and Shri M.M. Lalla was appointed as enquiry officer on respect of the second charge sheet also. Thereafter the second enquiry was started on 13th February, 1979 and concluded on 14th February 1979. In the course of this enquiry, the Department examined Sarva Shri V.K. Chopra, N.K. Gupta, S.C. Jain in support of this case. After both the parties filed their written arguments'' and the enquiry officer after hearing both of them recorded his finding and found the petitioner guilty of the charges. Thereafter the petitioner was called upon to submit his submissions regarding quantum of punishment and ultimately the petitioner came to be dismissed from service vide Annexure-12 and this order was communicated to the petitioner by the Chief Manager by his communication dated 15th September, 1979 (Annexure-13). Aggrieved against this order the petitioner preferred an appeal to the appellate authority and the appellate authority by its order dated 25th October, 1979 dismissed the appeal vide Annexure-14. Aggrieved against this the petitioner has filed the present writ petition.

3. Mr. Mridul, learned counsel for the petitioner has submitted that the order of punishment as well as appellate order are non-speaking orders therefore, they have to be quashed. In this connection he has referred to the cases of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., Umaid Charitable Trust Vs. Commissioner of Income Tax, Hari Narain v. Union of India and Ors. 1980 WLN 546, and The State of Rajasthan v. Amolak Chand Sanghi 1982 WLN 633.

4. Before I deal with arguments, it will be necessary to reproduce both the charge sheets against the petitioner. They read as under:

Shri K.M. Garg, Teller (Clerk Under Suspension) of Jalori Gate, Jodhpur Branch is hereby informed that his explanation dated 25-5-1976 to the Bank''s Memo No. 16/62 dated 17/18-5-1976 has not been found satisfactory. He is therefore charge sheeted as under:

(1) That on 13-4-1976 Shri K.M. Gang was working as Teller'' in the H.S.S. Department of the Bank''s Jalori Gate Branch at Jodhpur.

(2) That on 13-5-1976 Shri K.M. Gang presented to the Branch''s Chief Cashier a Credit Voucher along with Cheque No. JDH/RS 108731 dated 12-5-1976 of HSS a/c No. 3112 for being transferred and credited to HSS a/c No. 11676;

(3) That the Branch''s Chief Cashier, after having entered the voucher and cheque in the relative transfer book, forwarded the vouchers and cheques to Shri K.M. Gang ''Teller'' for dealing with them;

(4) That while working in the aforesaid capacity on that day and in the normal discharge of his duties as Teller'' he caused the cheque No. JDH/108731 dt.

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12-5-1976 for Rs. 1000/- passed in his H.S.S. a/c No. 3112 for being credited to H.S.S. a/c No. 11676 in his name jointly with his wife to be operated by either knowing it well that there was no sufficient credit balance in his said account on that date to meet the cheque in question on presentation. That after having got credited Rs. 1000/- in HSS a/c No. 11676, Shri K.M. Gang withdrew Rs. 1000/- in cash from the said joint HSS a/c No. 11676 on 13-5-1976 by a withdrawal form;

(5) That while passing the relative vouchers Shri K.M. Gang put the rubber stamp ''Entered by Teller'' and signed the vouchers but he knowingly passed the necessary debit and credit entires in Teller Card of HSS a/c No. 3112;

(6) That in the evening of 13-5-1976 when Shri N.K. Gupta, Sub-Accountant was checking the HSS Ledger, he found that there was neither sufficient credit balance at the opening of banking hours on 13-5-1976 nor any amount was credited during the day in HSS a/c No. 3112, to meet the payment of cheque No. 108731 for Rs 1000/- issued by Shri K.M. Gang;

(7) That it has also been discovered that Shis K.M. Gang knowingly passed necessary debit and credit entry for Rs. 1000/- in the Teller Card of HSS a/c. No, 3112 which was in his possession when in fact there was no credit voucher in existence:

(8) That to get the credit entry made by him in Teller Card on 13-5-1976 passed through his account No. 3112 on 14-5-1976 Shri K.M. Gang brought a demand draft for Rs. 1231.50 along with a paying in slip of HSS a/c. No. 7415 of Shri R.C. Bhargava as also a back dated letter of Authority for debiting Shri Bhargava''s said HSS a/c. and affording credit to Shri K.M. Gang''s a/c. No. 3112. Shri K.M. Gang managed to get entered, without knowledge and permission of the concerned competent officer, the necessary credit and debit voucher on 14-5-1976 in transfer book No. 2; as of 13-5-1976 which book is solely meant for entering transfer vouchers pertaining to Loans and Sundry payments and not pertaining to entries of deposit accounts:

(9) That Shri K.M. Gang managed to pass the fictitious debit entry of Rs. 1000/- in his own HSS a/c. No. 3112 on 13-6-1976 without there being sufficient balance in the account by a credit transfer entry of Rs. 1000/- in his joint HSS a/ c. No. 11676. After making these bogus and unusual entries in the Teller Card of the above said two HSS accounts, being operated by him, he withdrew the amount of Rs. 1000/- from joint HSS a/c. No. 11676 and thus obtained unauthorised and illegal pecuniary gain for himself and put the bank into financial loss:

That Shri K.M. Gang permitted an act of tampering with the record of the Bank by getting entered on 14-5-1976 debit and credit vouchers as of 13-5-1976 without the knowledge and permission of the competent and or authorised officer of the concerned department to the prejudice of the interest of the Bank and in utter disregard to his normal duties functions;

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The aforesaid actions of Shri K.M. Gang tantamount to gross mis-conduct'' as per para 19.5J of the Bipartite Settlement dated 19-10-1966."

Shri K.M. Gang, Teller (Under Suspension) of Jalorigate Office is is hereby informed that he was served with a Memo No. DM/LEGAL/ 76/L-195/2341 dated 26th November 1976/28th December 1976 and he was advised to submit his reply to the same. Inspite of reminders he has chosen not to reply to the aforesaid memo. Shri Gang is chargesh ceted as under.

(1) Shri Gang issued the following cheques/withdrawals without keeping sufficient balance in his account. In one case he discounted the name with the bank to take pecuniary gains. Shri Gang has, therefore, acted prejudicial to the Bank by so doing:

(a) Cheque No. 075234 for Rs. 1000/- drawn on Central Bank of India Cotton Exchange Branch Bombay given on 1-1-76 in HSS a/c. No. 11676;

(b) A withdrawal for Rs. 3000/- favouring T.C. Taparia dated 27-1-1976

(2) Shri Gang passed and verified the signatures on the cheques withdrawal in the following accounts which apparently differ from those on record;

(a) Withdrawl dated 28-1-76 for Rs. 3000/- drawn by Shri Radha-kishan and brought by Shri K.M. Gang;

(b) Letter of Authority to debit Rs. 500/- in HSS a/c. No. 7297 fvg. Kamla R. Mehta.

(3) Shri Gang maneavoured fictitious credit in HSS account No. 11676 on 6-5-76 without any corresponding entry in the books of the Bank and thus fraudulently withdrawn Rs. 2000/- on the same from his account. By so doing Shri Gang acted prejudicially to the interest of the Bank;

(4) Shri Gang with ulterior motive on 27-5-76 closed his account No. 7100 with a balance of Rs. 1.18 paise only in the teller card but did not pass the necessary slips in the account being closed in the relative ledger. This act of Shri Gang is prejudicial to the interest of the Bank;

(5) Shri Gang made bogus and fictitious entry in HSS a/c. No. 11679 fvg. Shri Badesh Chand Bhandari whereas the relative debit and credit slips are not exiting in the Bank''s books. The entry is purported to be in the handwriting of Shri Gang in the captioned HSS account;

(6) Shri Gang has been maintaining joint account No. 11674, 11675, & 11676 in name of himself and his minor son & daughters and the perusal of the transactions in this account shows that Shri Gang has been indulging in business and trade outside the scope of his duties;

All the omissions and commissions constitute gross misconduct as defined in pare 19. 5 (J) of the first Bipartite Settlement and it has been decided to hold departmental enquiry against Shri K.M. Gang, Shri M.M. Lalla, Chief Officer

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(Operations) Regional Office, New Delhi has been nominated as enquiry officer to hold the above said departmental enquiry.

5. A perusal of these two charge sheets would show that a person, who is serving in the financial institution like Bank, which requires great amount of confidentiality and if a person acts in such an irresponsible manner then the very institution like the Bank will be lost. More so regarding the Teller Account where the Banks at primarily on the basis of bonafide and honesty and honoured the cheque of Rs. 1,000/- straightway. If any person of such a character commits this kind of grave mis-conduct then the whole system is likely to fail. In this back ground we have to view the whole matter whether such person should be given the benefit of this extra ordinary jurisdiction or not.

6. Mr. Mridul counsel for the petitioner has firstly submitted that the order of punishment as well as the order of appellate authority passed by the respondents are not speaking orders therefore these orders should be quashed.] am afraid this submission of the learned counsel is not well founded. In fact order Annexure-12 cannot be read in isolation of the order Annexure-10, the finding of the enquiry officer. The enquiry officer has found the petitioner guilty of the charges and after discussing all the relevant evidence recorded his finding and asked the petitioner as required under Para 19.6 of the Bipartite Settlement that what he has to say regarding proposed punishment of dismissal. The petitioner filed a reply to the finding and the enquiry officer found the petitioner to be guilty of misconduct therefore dismissed the petitioner without notice under para 19.6 of the Bipartite Settlement. The petitioner was informed by Annexure-13 that a final order of dismissal has been passed by Shri M.M. Lalla against the petitioner without any notice from the Bank''s service from the date of the order of the enquiry officer i.e. 15th July, 1979.

7. Mr. Mridul, learned counsel for the petitioner submits that the petitioner specifically raised objection during the course of enquiry that para 19.14 has not been complied with as the disciplinary authority has not been designated but no finding on this question has been given by the enquiry officer. I am afraid this submission of the learned counsel has no force. The enquiry was conducted against the petitioner by Shri M.M. Lalla Chief Officer but still the petitioner persisted in his objection that the para 19.14 has not been complied i.e. the discipinary authority has not been designated. It is true that the objection was raised by the petitioner but the fact remains that he has no where raised an objection that Shri M.M. Lalla who was conducting his enquiry is a person who is wholly unauthorised. Shri M.M. Lalla is a Senior Officer of the Bank and was authorised to conduct the enquiry.

8. Mr. Bhansali as against this submitted that Shri M.M. Lalla was authorised to hold the enquiry and take disciplinary proceedings. He has produced Exbt. R/l covering letter regarding appointment of enquiry officers in continuation of the other circulars. Exbt. R/l is said to have been circulated to all officers and it is further covered by a notice that the name of the officers containing in the list

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have been appointed as enquiring officers. Name of Shri M.M. Lalla appeared at item No. 40 of this list. Mr. Mridul, learned counsel for the petitioner has submitted that the document which has been filed along with the reply has not been sworn in properly. He further submitted that such order cannot to said to be valid because the same has not been published and no publication of such has been made. In this connection he has invited ray attention to the cases of Ugam Raj Bhandari v. The State of Rajasthan and Anr. 1979 WLN 737 ; Col. A.S. Sangwan Vs. Union of India (UOI) and Others, , and State of Punjab Vs. Amar Singh Harika, . Be that as it may I find that Shri M.M. Lalla was duly appointed enquiry officer and disciplinary authority, simply because this was not placed before the enquiry officer will not vitiate the enquiry, but this is Bank''s circular well known to all officers and simply because it has not been placed properly it cannot be said that it will loose its validity, and court cannot take notice of it. This was issued way back in 1976 and it is not a new innovation of the respondent to defeat the case of the petitioner. Thus the objection of Mr. Mridul that this is not properly published or no widely circulated, it will not lose its existence and efficacy.

9. The learned counsel for the petitioner argued that the copies of the statement of examination in chief of witnesses were not supplied to the petitioner and he was asked to cross examine them. He submitted that he raised this objection but this has not been decided. I am afraid this is also not well founded. As is apparent from the petitioner''s own pleading in para 7 that he was asked to participate in the enquiry which commenced against Shri O.P. Sharma, who was also charged along with the petitioner and it was agreed that the depositions made by the witnesses in the enquiry against Shri O.P. Sharma were common, therefore it is agreed to take these depositions against petitioner also. Thus a joint enquiry was held and the petitioner was asked to present when the depositions against Shri O.P. Sharma were made and it was agreed that it would be read against the petitioner also, therefore it was not necessary to supply him the copies of the examination in chief because he was present when examination in chief was going on. However the petitioner was allowed to cross examine these witnesses. Thus the enquiry was conducted against the petitioner in accordance with the principles of natural justice and it is not open for the petitioner to say that without supplying him copies of the examination in chief he was asked to cross examine the witnesses. Thus this argument of the learned counsel for the petitioner is also without any substance and it is over ruled.

10. Next the learned counsel for the petitioner submitted that this is case of no evidence and in this connection he has cited the case of Jagir Singh v. The State of Punjab and Ors. 1983(2) SLR 685. I am afraid this submission of the learned counsel is also without any basis. Firstly this is a writ of certiorari and this court cannot sit as a court of appeal to appreciate the finding of fact recorded by the enquiry officer.

11. In this connection I would like to refer the case of State of Mysore Vs. S.S.

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Makapur, , wherein their Lordships of the Supreme Court have considered scope of the Administrative Tribunal and scope of this court while dealing with such writ petitions. The Supreme Court held as under:

Domestic Tribunals, exercising quasi-judicial functions are not Courts and therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against when it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

I have perused the report of the enquiry officer and I think the finding recorded by the enquiry officer is based on depositions made against the petitioner by the witnesses. The learned counsel for the petitioner has tried to show the reference to the certain witnesses that no finding has been given on the evidence of Shri S.C. Jain or N.C. Bhargava. He further submitted that on the same evidence Shri O.P. Sharma has been exonerated, but I am afraid all these submissions are without any basis. Firstly as would be evidence from the charges that the petitioner while working on Teller Account has drawn Rs. 1000/- and he was trying to make it good by certain over acts and in that process even Shri O.P. Sharma who was holding the Ledger''s Accounts was also mislead. I have perused the report of the enquiry officer and find that evidence of Shri N.C. Bhargava and S.C. Jain has been discussed where ever it is necessary. More over there is as misreading of evidence of both these witnesses. The learned counsel for the petitioner further submitted that same evidence against O.P. Sharma has not been accepted to find him guilty. I am afraid this submission cannot be considered because no copy of the finding in the case of Shri O.P. Sharma has been placed on the record so as to appreciate as to whether Shri O.P. Sharma has been exonerated or not.

12. Thus in this light I find that the order of removal of the petitioner does not suffer from the vice of nonspeaking order. We have to read all the three orders together i.e. Exbt. 10,12, 13. Reading of all these three orders together would clearly show that the order of removal is detailed one. Thus so far as proposition of law which has been referred to in the above cases is not in dispute. But the fact is that whether these orders suffer from the vice of the non-speaking order or not. In my considered opinion reading of these three orders together, they form one composite order and the orders does not suffer from the vice of non-speaking order.

13. In this connection I may also like to mentioning here the objection of Mr.

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Bhansali that the petitioner has not challenged Annexure-13 and no relief has been claimed against Annexure-10. Since I have found that all the three orders Annexure 10, 12 and 13 form one composite order therefore nothing turns on this objection .

14. So far as the submission of the learned counsel that the appellate order is also non-speaking order, therefore it also suffers from the vice of non-speaking order, is also not correct. Annexure-15 is a covering letter, but the detailed reasons have been annexed with it and all the contentions raised by the petitioner in his memo of appeal annexre-14 have been taken in to consideration. It may also be relevant to mention here that in Annexure-14 the petitioner has not raised any objection regarding non-compliance of para 19.14 of the Bipartite Settlement. He has only raised a vague ground that the enquiry officer did not apply its mind to the various objections raised by the petitioner and he has tried to cover this by saying that the copies of these objections are enclosed here with for your perusal. But whether copies of these objections were really sent or not or whether they form the part of the appeal or not, it is not known. But the fact remains that a detailed speaking order has been passed by the appellate authority dismissing the petitioner''s appeal and affirming the finding of the enquiry officer. Thus this contention of Mr. Mridul is also without any basis.

15. Thus, in result, I do not find any merit in this writ petition and it is dismissed. No order as to costs.

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