

(2015) 11 DEL CK 0044
In the Delhi High Court
Case No : W.P. (C) 791/2000

K.M. Tomar

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2015) 11 DEL CK 0044

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : R.K. Saini and Atul Guglani, Advocates, for the Appellant; Rajiv Kapur and Karan Kakkar, Advocates, for the Respondent

Judgement

S. Ravindra Bhat, J.—This writ petition was referred to the Division Bench by an order of the single judge dated 18.07.2013. The single judge noticed that writ petitioner had challenged the vires of Rule 50 of the State Bank of India (Supervising Staff) Service Rules, 1975 (hereafter "the Rules"). The other reliefs claimed are for quashing the order of dismissal issued against the writ petitioner.

2. The Petitioner was at the relevant time working as Branch Manager of the respondent State Bank of India (SBI), Karawal Nagar Branch, New Delhi. By an order dated 31.08.1984 he was placed under suspension, in terms of Rule 50A(1) of the State Bank of India (Supervising Staff) Service Rules, 1975 (hereafter "the Rules") on allegations of irregularity. A charge sheet was later issued, on 31.10.1989. This was followed by a detailed inquiry. The Enquiry Officer furnished his report (dated 29.05.1991) to the SBI and the Disciplinary Authority after considering the report imposed the penalty of dismissal, by order dated 30.12.1991. The petitioner appealed against his dismissal, without avail. The appellate authority rejected his plea by order dated 16.10.1993. The petitioner sought review of the said order; the review was declined by the SBI's order dated 10.04.1996.

3. As the petition concerns the vires of the Rule, for which a direction to quash

Rule 50 is sought, as the third relief, the discussion in this judgment would be confined to that issue only i.e. its validity.

4. Mr. R.K. Saini, learned counsel appearing for the writ petitioner, urged that Rule 50 is arbitrary inasmuch as it permits SBI to conduct an inquiry without affording full and adequate opportunity to a charged employee. It was submitted that the said rule does not mandate that the employer should furnish copies of documents sought to be relied upon, at the stage when the Articles of Charge and imputations are served. Counsel urged that given the fact that a charged officer has to deal with the charge sheet within a time frame, indicated under the Rules, the omission to mandate that copies of documents should be furnished to the delinquent employee occasions failure of justice and amounts to violation of principles of natural justice.

5. Mr. Saini points out that Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 clearly envision opportunity to a charged employee. Rule 14(3), it is submitted mandates the furnishing of copy of all the documents relied on by the employee.

"(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained."

The lack of a similar mandate to the establishment or management of the State Bank of India, submitted counsel, results in denial of a fundamental principle of natural justice, i.e. that one charged for an offence or misconduct, should be made fully aware of all the material sought to be used against him by the employer, at the stage she or he is asked to answer to the charges. Denial of this opportunity vitiates the entire enquiry. Therefore, urged counsel, Rule 50 violates Article 14 of the Constitution of India.

6. Mr. Kapoor, learned counsel appearing for the respondent, SBI urges that the petitioners' contentions are unfounded and the charge of the rule being arbitrary, devoid of merit. SBI urges that the delinquent or charged employee is entitled to seek inspection - and in this case, was granted inspection, before he filed his formal reply or denial of the charges. He refers to the Articles of charges issued in the present case, on 31.10.1989, which contained a note that

"Should you need to refer to any records for preparing your defence you may do so by visiting Karawal Nagar, (Delhi branch) for a day or so and submit your reply within the stipulated time."

At the stage of the enquiry, full opportunity was granted to the Petitioner, who uncomplainingly availed it. Counsel further highlighted that Under Rule 50(x)(a) the Inquiry Officer has to - in the case of employees not admitting to guilt in his written statement of defence - furnish to the employee "a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be proved". Under Rule 50(x)(b) the Inquiry Officer is under an obligation to record in his order that the charged officer is permitted to inspect and take notes of the documents within five days of so ordering.

7. The SBI argues that in this case, the petitioner was afforded fullest opportunity to defend himself; he not only sought and was provided the requisite information, but appeared to have effectively defended himself. He therefore, submitted that in the present case, the court should not intervene.

8. In the present case, the relevant provisions of the Rules are as follows:

Rule 50

(1)

(i) The Disciplinary Authority may itself, or shall when so directed by its superior authority, institute disciplinary proceedings against an employee.

(ii) The Disciplinary Authority or any authority higher than it may impose any of the penalties in rule 49 on an employee.

Provided that where the Disciplinary Authority is lower in rank than the Appointing Authority in respect of the category of employees to which the employee belongs no order imposing any of the major penalties specified in clauses (e), (f), (g) and (h) of rule 49 shall be made except by the Appointing Authority or any authority higher than it on the recommendations of the Disciplinary Authority.

(2)

(i) No order imposing any of the major penalties specified in clauses (e), (f), (g) and (h) of rule 49 shall be made except after an inquiry is held in accordance with this sub-rule.

(ii) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct against an employee, it may itself enquiry into, or appoint any other employee or a public servant (hereinafter referred to as the Inquiring Authority) to inquire into the truth thereof.

Explanation: When the Disciplinary Authority itself holds the enquiry, any reference in clauses (viii) to (xxi) to the Inquiring Authority shall be construed as

a reference to Disciplinary Authority.

(iii) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the employee. The articles of charge, together with a statement of the allegations on which they are based, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority not exceeding 15 days or within such extended time as may be granted by the said Authority, a written statement on his defence.

(x)

(a) The Inquiring Authority shall where the employee does not admit all or any of the articles of charge furnish to such employee a list of documents by which, and a list of witness by whom, the articles of charge are proposed to be proved.

(b) The Inquiring Authority shall also record an order that the employee may for the purpose of preparing his defence:

I - inspect and take notes of the documents listed within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow;

II - submit a list of documents and witnesses that he wants for inquiry;

III - be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority;

IV - give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to at (II) above.

Note: The relevancy of the documents and the examination of the witnesses referred to at (II) above shall be given by the employee concerned.

9. In this case, there is no doubt that Rule 50(2)(iii) varies in structure from Rule 14(3) of the CCS (CCA) Rules. The latter, especially Rule 14(3)(ii)(b) requires that the charged employee or officer should be furnished "a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained." In the case of the SBI, however, inspection of the said documents are to be furnished, on demand by the Inquiry Officer, who has custody of these, having received them, under rule 50(2)(v). This difference in approach is highlighted as arbitrary and violative of Article 14 of the Constitution of India.

10. Does Article 14 dictate uniformity in all matters similar, regardless of situation, circumstance and time? We think not. Nor are we novel in our approach. The Supreme Court held this to be so, in *T. Devadasan Vs. The Union of India (UOI) and Another*, when it observed that:

"It seems to us that the argument based upon Art. 14 of the Constitution in fact turns on the same considerations as the argument that Art. 16(1) is infringed by the aforesaid rule. What Art. 14 provides is that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. What is meant by equality in this Article is, equality amongst equals. It does not provide for an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. It does not mean anything more."

In *Ashutosh Gupta Vs. State of Rajasthan and Others*, , it was similarly observed that:

"The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike."

In *All India Station Masters" and Assistant Station Masters" Association, Delhi and Others Vs. General Manager, Central Railway and Others*, , the Supreme Court held as follows:

"The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. It will, for example, plainly make no sense to say that because for employment as professors of colleges, a higher University degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied."

11. If the principles underlying the observations of the Supreme Court in the judgments referred to are to be kept in mind, mere differences in approach, given existing disparities, cannot lead to a conclusion of discrimination or arbitrariness. If we keep this in mind, that the Central Government in its wisdom directed that in inquiries into the conduct of its officers, requires that copies of documents should be furnished to them at the threshold, whereas the State Bank of India permits inspection of those documents (albeit after the charged official has denied the charge), per se cannot lead one to conclude that the allegation of arbitrariness has been established. There has to be something more

fundamental, leading the court to infer that there is inherent unfairness in the procedure, as it would always or inevitably lead to failure of justice or that the procedure is inherently unfair.

12. This court notices that the petitioner was in fact given opportunity to inspect the documents before he furnished his reply, when the SBI told him that he could go to the concerned branch for the purpose (as can be noticed from the order issuing the Articles of Charge). Rule 50(2)(x) too enabled him to say what documents were to be allowed for inspection, after the commencement of inquiry. If some were not, the inquiry officer was obliged to direct for further inspection. In light of the practice of giving opportunity to inspect prior to filing reply, and the rules that enable inspection once the charges have been denied, we are of the opinion that Rule 50 is not arbitrary as alleged.

13. In view of the above conclusions, we are of opinion that the submissions with respect to violation of Article 14 are meritless. Since the parties, with respect to the merits of the case, did not argue anything else, the registry is directed to list the matter before the roster Bench for decision on the other issues, for directions, on 18.11.2015. The parties are directed to be present on that date.