
(1991) 08 AHC CK 0062
In the Allahabad High Court
Case No : Writ Petition No. 1289 of 1985

K.N. Misra

APPELLANT

Vs

M.D., State Bank of India and Others

RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 49, 50(3), 60(3)

Citation : (1991) 63 FLR 921 : (1992) 1 LLJ 872 : (1992) 1 UPLBEC 33

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : A.K. Khan, for the Appellant; P.N. Mathur, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—The fate of this writ petition hinges on the reply to the question as to whether the disciplinary authority disagreeing with the report of the Enquiry Officer, without giving any opportunity to the delinquent, may impose punishment to the petitioner.

2. In the counter affidavit it has been indicated that the disciplinary authority not only recorded its disagreement with the finding of the Inquiry Officer but also recorded its own finding on charge, on the basis of sufficient evidence on record. He was otherwise competent to impose the penalty, but being junior in rank to the appointing authority, he recommended that he be dismissed from bank service. The appointing authority, while considering the records pertaining to the enquiry in its entirety and being in agreement with the finding of the disciplinary authority, dismissed the petitioner from bank's service.

3. Rule 60(3) of the State Bank of India (Supervising Staff) Service Rules, which are applicable to the petitioner, provides that where the disciplinary authority disagrees with the report of the Enquiry authority, he may, for reasons recorded in writing, remit the case to the enquiring authority for fresh or further inquiry. Rule 50(3)(ii) provides that where the disciplinary authority disagrees with the

finding of the inquiry authority on any article of charge, may on the basis of evidence on record, record its own finding and record reasons for such disagreement. Rule 50(3)(iii) provides that disciplinary authority having regard to its finding may make an order imposing any of the penalties specified under Rule 49.

4. The Deputy Managing Director (P&S) of the State Bank of India who was the appointing authority, after the receipt of the inquiry report, has mentioned in his order that a fraud was suspected to have been committed by the petitioner with the connivance of a group of bank employees and in the absence of necessary documentary evidence, which have either been destroyed or not produced in the inquiry, none of charges levelled against the petitioner were proved. The order further indicated that, however, the disciplinary authority for the reasons recorded by him in his enclosed note dated February 15, 1984, found the allegations (iii) and (iv) of charge No. 2 as proved. The disciplinary authority, disagreeing with the report of the inquiry officer, recommended the dismissal of the petitioner to the appointing authority, as a result of which the order of dismissal was passed. The Rules mentioned above provide for such a situation that where the disciplinary authority disagrees with the finding of the inquiry officer on any article of charges, the disciplinary authority on the basis of evidence on record, record its own finding and record its reason for such disagreement.

5. In the case at R.P. Srivastava v. State Bank of India 1990 LCD 497 same question cropped up before this Court. A Division Bench of this court in which Hon"ble Mr. Justice U.C. Srivastava, as he then was, and myself were the members, held that although there existed no provision in the Rules for giving an opportunity of hearing to a delinquent, in case the disciplinary authority gave its own finding disagreeing with the report of the inquiry officer and imposed the punishment, the principle of natural justice would require that opportunity of hearing should be given to him. Hon"ble Supreme Court in the case of Narain Misra v. State of Orissa 1989 SLR 658 held that in case the punishing authority differed from the finding of the inquiry Officer and held the delinquent guilty of the charge for which he was exonerated, it is incumbent upon the appointing authority to give an opportunity of hearing to the petitioner. This case was in respect of a Forester who earlier was an employee of the Indian State, but later on became an employee of State of Orissa after the merger of the said State. In this case there is no reference to any Rule one way or the other and the delinquent was acquitted. The punishing authority differing from the finding of the inquiry officer held the official guilty of the charges from which he was exonerated. No notice or opportunity was given to the delinquent officially by the punishing authority. The order of removal was set aside, holding the same to be violative of principles of natural justice and fair play. Very same principle will apply in this case in which rules were framed but under the said rules a person cannot be dismissed from service by the appointing authority, in case on some of the charges he was exonerated by the inquiry officer. The order of dismissal can

certainly be passed if he had differed with the report of the inquiry officer by giving an opportunity of hearing to the delinquent.

6. In view of what has been indicated hereinabove the petition succeeds and is allowed. A writ in the nature of certiorari quashing the impugned order of dismissal and the appellate order dated April 5, 1984 and January 17, 1985 respectively, contained in Annexures 5 and 9 respectively. A writ of mandamus is also issued directing the opposite parties not to give effect to both the impugned orders, and the petitioner would be entitled to the consequential benefits arriving out of the quashing of the above said two impugned orders. However, it will be open for the opposite parties to proceed in accordance with law. In the circumstances of the case there will be no order as to costs.