

(1983) 04 DEL CK 0050

In the Delhi High Court

Case No : Letter Patent Appeal No. 147 of 1982

Krishan Dev Puri

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-04-1983

Acts Referred:

Citation : (1983) 24 DLT 72 : (1983) 2 ILR Delhi 801 : (1984) LabIC 532 : (1984) 1 SLJ 68

Hon'ble Judges : Prakash Narain, C.J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Anand Prakash and Raj Birbal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) On the conclusion of the hearing of this Letters Patent Appeal, we had orally ordered that the appeal was dismissed but with no order as to costs. The reasons for the dismissal of the appeal are given below.

(2) The appellant was appointed as a Clerk in the Punjab National Bank Limited on 9th May, 1940. According to the averments made in the writ petition, his appointment was made by the then Staff Controller. With effect from 1st April, 1946 he was promoted as a Supervisor and thereafter he was promoted as an Accountant with effect from 12th October, 1957. In March, 1959 he was reverted to the post of Supervisor but subsequently, with effect from 1st July, 1967, he was again promoted to the post of Accountant.

(3) Between 1959 and 1974, five punishments were awarded to the appellant. These punishments were as follows" : "1. 14.9.59. One graded increment withheld on account of negligence.

(4) 25.10.60 Reverted as Supervisor for irregularities committed by you at B.O. Siliguri.

(5) The Regional Manager, in continuance of the earlier charge-sheet dated 18th

July, 1974, served a further charge-sheet dated 27th July, 1974. In this it was, inter alia, stated that the appellant, while caring little for the discipline and decoram, had addressed letters directly to the office and various departments at the Head Office in utter disregard of explicit instructions to write all representations through proper channel. It was also stated that in Letters dated 12th July, 1974 and 20th July, 1974 written by the appellant the language used was highly offensive and the tone of the said letters smacked of insubordination and the same was derogatory and unbecoming of a responsible bank officer. It was alleged that the appellant wanted to intimate his superiors by addressing such letters. Reference in the second charge-sheet dated 27th July, 1974 was also made to the earlier punishments which had been imposed on the appellant. The appellant was then required to submit his Explanation on the points set out in the said charge-sheet and he was also required to show cause why disciplinary action should not be taken against him for "(i) flouting discipline and decoram; (ii) using offence and derogatory language in the letters addressed to your superiors; (iii) for having in authorised excess to the offence correspondence; and (iv) intimidating and threatening your superiors."

(6) The appellant sent his reply dated 6th August, 1974. He denied the allegations contained in the second charge-sheet. He did not, however, deny having written the letters to which objection was taken in the charge-sheet. On 7th August, 1974 the appellant wrote a letter to the General Manager of the Bank alleging harassment by the Regional Manager as well as by the Manager of the Regional Manager's office against the appellant.

(7) Thereafter the Regional Manager wrote a letter dated 26th December, 1974. It was stated therein that the Personnel Committee at the Head Office had considered the replies of the appellant dated 29th July, 1974 and 6th August, 1974 to the charges leveled against him and had come to the conclusion that the replies were far from satisfactory. The appellant was informed that the Bank proposed to impose on him the punishment of discharge from service. The appellant was asked if he had anything to say against the proposed punishment.

(8) The appellant gave a reply dated 1st January, 1975. In the said reply he categorically admitted having written the letters to the language of which strong exception had been taken by the Bank. In this connection he expressed his regrets in the following words:

"I am extremely very very sorry for having written some very nasty letters, which I feel that I should never have written in such wordings, as has been done by me, whatever the frustration, or anger or disillusionment I might be having. I feel from the core of my heart that I have been unwise in the selection of words to put forward my demands, and my sentiments."

The appellant tendered his unqualified apology and he prayed that a sympathetically consideration should be shown to him.

(9) The Personnel Committee of the Bank considered the said reply of the

appellant. Thereafter by letter dated 30th September, 1975 the following letter was" written by the Manager of the Bank to the appellant:

"AS instructed by the Regional Manager, Jollundur Circle, Jullundur City vide their letter No. STFII/5453 dated 29-9-75 we have to inform you that your reply dated 1.1.75 in response to our show cause memo Stf I/7664 dt. 26.12.74 proposing on you the punishment of discharge from Bank's service; it has been considered by the Personnel Committee and has been decided that you should be discharged from Bank's service turn writing threatening letters to the Regional Manager in highly offensive language and also on account of unsatisfactory performance and past bad record. You are accordingly hereby discharged from Bank's service today afternoon. Further you are advised to collect month's salary in lieu of notice."

(10) The appellant filed an appeal to. "the Chairman of the Bank. The said appeal was, however, rejected by the Chairman and by letter dated 24th November, 1975, the appellant was informed about it.

(11) The appellant then filed a petition under Article 226 of the Constitution being Civil Writ No. 1527 of 1975 challenging the aforesaid orders whereby he had been discharged from service.

(12) By judgment dated 17th November, 1981 a single Judge of this Court dismissed the petition. The single Judge came to the conclusion that the impugned order dated 30th September, 1975 was one of discharge implicate and that no punishment had been awarded to the appellant. He also held that even if it be assumed that the grounds regarding the past bad record and the unsatisfactory performance of the appellant were not established. the impugned order would still not be vitiated and would hold good on the first ground, namely, writing of threatening letters to superior officers. The learned single Judge examined the letters which the appellant had written and came to the conclusion that the threatening letters were written not only to respondent No. 3 but also to the other officers. The record, however, did not show that any of the officers had any personal enmity against the appellant and, Therefore, the allegations of mala fide alleged by the appellant "were not established. The learned single Judge also came to the conclusion that there was no violation of the principles of natural justice. While dismissing the writ petition, the learned Judge recorded the gesture on behalf of the Bank which agreed to make a payment of Rs. 12,500 to the appellant on humanitarian grounds. This amount was, however, payable only if appellant failed in his appeal, before the Division Bench and the Supreme Court, in case the appellant filed such appeals.

(13) The aforesaid judgment of the Single Judge is now challenged by way of a Letters Patent Appeal before us. The main contention off the appellant before us is that the impugned order is not of discharge implicate bun: was by way of punishment. According to him the principles of natural justice have not been complied with.

(14) Before dealing with the aforesaid submissions, we may take note of the fact that on 28th October, 1952 the Punjab National Bank had issued a Staff Circular No. 20. The Bank had not framed any rules or regulations providing for departmental enquiry. The aforesaid Staff Circular, however, dealt with the case of disciplinary action. The said circular provided that the Head of the Department, upon receipt of information or knowledge of any grave misconduct, cheating, fraud, forgery, theft, robbery or misappropriation against an employee, may, in his discretion, and in the interest of the Bank, suspend the employee. The circular further provided that the Staff Committee shall administer all punishments including dismissals. It was stated that the punishment shall be commensurate with the offence in the background of the history of the employee. The said circular provided that deterrent punishment would be meted out to habitual offenders. It was also stated therein, with regard to grave offences, as follows:

"THE following offences amongst others shall be considered as very grave: (a) Disloyalty to the Bank. (b) Adverse propaganda against the Bank in whatever garb it may have been done. (c) Abetment of above activities. (d) Dishonesty. (e) Theft, fraud, forgery and any other act involving moral turpitude on the part of the offender."

The circular lastly provided that there may be cases where an employee may have committed no offence but he may have developed traits which may make him unsuitable in Bank's service. In such cases the employee shall only be discharged when the Staff Committee finds that it is against the interests of the Bank to retain him. The Punjab National Bank was one of the Banks which was acquired with the promulgation of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, which was preceded by an Ordinance. Section 19 of the said Act gave the Board of Directors of the corresponding Bank the power to make regulations. Sub-section (3) of section 19 provided that until any regulations were made, the articles of association of the existing bank and every regulation, rules, bye-law or order made by the existing bank and was in force on the date of the commencement of the Act, shall be deemed to be the regulations made under sub-section (1). In view of section 19(3) the said circular of 1952 has, Therefore, to be regarded as a regulation framed u/s 19(1).

(15) The learned single Judge was of the Opinion that no punishment has been imposed on the appellant because punishment should be imposed only in case of very grave offences. In our opinion, the correct reading of the circular shows that the punishment can be imposed for various reasons like grave misconduct, cheating, fraud, forgery etc. When the circular provides that the Staff Committee shall administer all punishments including dismissals it is clear that apart from dismissal, other punishments can also be imposed. With regard to offences, which are branded as very grave, the circular provides that deterrent punishment should be meted out to habitual offenders. A deterrent punishment would be dismissal from service. A lesser punishment, for example, can be of ordering

compulsory retirement or, as in this case, imposing punishment of discharge. When the impugned order itself uses the expression "punishment of discharge", we cannot regard the said order as being an order of discharge simplicitor. Two options were open to the Bank in "the present case. It could either have discharged the appellant or it could have imposed a penalty on the appellant. The perusal of the impugned order shows that it has chosen to impose a penalty on the appellant. The impugned order was preceded by two charge-sheets the replies given by the appellant were taken into consideration and thereupon the Personal Committee took a decision that a punishment of discharge should be imposed upon the appellant. On the face of it the impugned order casts a stigma on the appellant by use of the words "punishment of discharge". Just as with regard to civil servants, punishment of compulsory retirement can be imposed or they can be compulsorily retired under F.R. 56-J, which is not regarded as a punishment, similarly in the case of this Bank an employee can either be discharged by way of punishment or there can be a discharge simplicitor. The moment in the impugned order it is stated that a punishment or discharge is being imposed, it would mean that a penalty is being imposed upon the employee. We are, Therefore, of the firm opinion that the impugned order imposes a penalty on the appellant.

(16) The procedure for imposing the penalty is also prescribed by the aforesaid circular. It is provided therein that before an employee is punished he shall be served with a charge-sheet and his Explanation thereto shall be duly considered in order to find out the extent of his fault, if any, and thereupon punishment may be imposed which should be commensurate with the offence and in the background of the history of the employee. In the present case, admittedly, two charge-sheets were issued. Replies" were filed and they were taken into consideration. It is only thereafter that the punishment of discharge was imposed on the appellant. It is clear, Therefore, that the procedure as postulated by the said circular was followed.

(17) It is, however, contended by the appellant that implicit in the said procedure is that the rifles of natural justice should be followed and a regular enquiry should be held. We are unable to agree with this bald proposition. There is no challenge in the petition to the validity of the said circular. We do agree that in appropriate cases, apart from serving a charge-sheet and getting a reply, it may become necessary for the Bank to hold a regular enquiry. No hard and fast rule can, however, be laid down in this behalf. What sort of an enquiry, if any, should be held must depend upon the facts of each case. In the present case. one of the charges against the appellant was that he was writing threatening letters which contained abusive language. If the appellant had denied having written such letters then the Bank would have been obliged to hold an enquiry to prove the genuineness of the said letters. Where, however, as in the present case, the appellant admitted, having written such letters, there could be no useful purpose served in holding a formal enquiry. A formal enquiry is ordinarily held if there is any dispute as to the question of fact. The writing of letters having been

admitted, all that had to be considered was as to whether the said letters were threatening in nature and contained offensive language or not. If this inference could be derived by the Personal Committee then it was empowered to impose punishment on the appellant without any further enquiry.

(18) It may be that with regard to the charges" of unsatisfactory performance and past bad record, a formal enquiry might have been held. We do not consider it necessary to go into this question because, if the punishment imposed can be sustained on the basis of one of the three charges, then the validity of the impugned order has to be upheld. In this connection reference may usefully be made to the decision of the Supreme Court in the case of *Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh*, . Following an earlier decision of the Supreme Court in *State of Orissa Vs. Bidyabhusan Mohapatra*, the Supreme Court held that is the order in an enquiry under Art. 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question". Apart from the aforesaid two decisions, the case of *Burn & Co. Ltd. v. Workmen* and another 1970 (20) F.L.R. 273 (3) is also to the same effect. If, Therefore, out of the three charges, one charge can be sustained and on that charge alone the punishment can be imposed, then the order would not be vitiated if two of the other charges were wrongfully taken into consideration by the punishing authority. This being the state of the law, if the charge of writing threatening letters containing abusive language has been validly proved then the impugned order cannot be set aside.

(19) In the present case the objectionable letters have been considered by the single Judge at length. It is evident from the same that the letters were threatening in nature and contained objectionable language. Such letters were written by the appellant with regard to four of his superior officers. The writing of such Letters by an Accountant in the Bank, who is normally next to the Bank Manager, would constitute a serious misconduct on his part. We are Therefore, in agreement with the single Judge that on the ground alone the punishment of discharge has to be sustained.

(20) It was then contended by the appellant that the proceedings against him have been initiated by an officer who was junior in rank to the one who had appointed him in service. As already noted, the appellant has stated that he was appointed by the Staff Controller. It is alleged that the Staff Controller is now designate as the Chief Personnel Officer and it is only he who could initiate the disciplinary action against him. The respondents, however, in their return contended that the Regional Manager of the Del Division was" not junior to the Chief Personnel Officer. We see no reason to reject this averment of the Bank. The appellant has not been able to bring to our notice any document which can conclusively show or even suggest that the Regional Manager v junior in rank to the Chief Personnel Officer, This being so, find no force in the said contention of

appellant.

(21) It was then contended that "the punishment which was imposed on the appellant was disproportionate to the offence. On considering facts and circumstances of this case and the letters which have been written by the appellant we do not think that the punishment imposed is disproportionate to the offence. The appellant has not been dismissed from service. The punishment of discharge cannot be equated with the punishment of dismissal. If the punishment of dismissal had been imposed then, possibly, the appellant may have lost his right to get some terminal benefits. It is, however, not denied that the appellant is entitled to get terminal benefits. This has been possible because a lesser punishment has been imposed on the appellant, namely, the punishment of discharge.

(22) It was lastly contended that the order of the Chairman was a non-speaking order. In our opinion merely because no reasons are contained in the said order would not be a ground for quashing the same. The reasons for which the punishment has been imposed are contained in the order dated 30th September, 1975 whereby the punishment was imposed. The effect of the non-speaking order of the Chairman apparently is that it must be presumed that he has concurred with the reasoning contained in the order imposing punishment.

(23) Lastly, we may note, in the appeal filed by the appellant to the Chairman against the order imposing penalty, there is no grievance of the appellant that a formal domestic enquiry was not held. There is no plea that principle of natural justice have been violated, at least as regards the first charge regarding the writing of the threatening letters containing abusive language. This being so, it is not open to the appellant to raise such a contention either in the writ petition or in appeal before us.

(24) For the aforesaid reasons the appeal was dismissed with no order as to costs