**(2010) 05 GAU CK 0023**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 5473 of 2008

Krishna Priti Gupta APPELLANT

Vs

State Bank of India and Others RESPONDENT

**Date of Decision :** 06-05-2010

**Acts Referred:**

State Bank of India (Officers Service) Rules, 1992 — Rule 3.3, 3.4, 67, 68(2)

**Citation :** (2010) 3 GLT 615

**Hon'ble Judges :** Hrishikesh Roy, J

**Bench :** Single Bench

**Advocate :** S. Shyam, A. Dhar and R.B. Deka, for the Appellant; N. Baruah, for the Respondent

**Final Decision :** Allowed

## Judgement

Hrishikesh Roy, J.—Heard Mr. S. Shyam, learned Counsel appearing for the Petitioner. Also heard Mr. N. Baruah, learned standing Counsel who represents the Respondent Nos. 1 to 4. The Respondent No. 5, has not participated in this proceeding.

2. The Petitioner who is a Middle Management Level III Officer in the State Bank of India (SBI) has approached this Court to challenge the inquiry finding and the penalty, pursuant to a disciplinary proceeding conducted against him.

2.1. At the relevant time the Petitioner was serving as the Branch Manager in the Lerie Branch of the SBI located in Nagaland and the disciplinary proceeding was initiated on the basis of a complaint made on 23.10.2003 by the Respondent No. 5. It was alleged in the complaint that the Respondent No. 5 was unable to collect the Bank Draft for a car loan sanctioned to him because of the complainant''s inability to pay a sum of Rs. 7000/- demanded by the delinquent Officer.

2.2. Immediately after the complaint was lodged, the delinquent officer (D.O.) was summoned to the Bank''s Regional Office located at Guwahati and a detailed explanation was furnished by the D.O. denying the charges and indicating the circumstances under which the Respondent No. 5 might had been motivated to file a false complaint against the delinquent.

2.3. However the explanation was not accepted and accordingly a disciplinary proceeding was initiated with a charge memo on 26.11.2004 and the delinquent was asked to respond to the following allegations.

Allegation No. 1: It is reported that Shri V. Zango, Registrar, Shri Dielie Vinuo, Superintendent, Shri Tsenro Lotha, Audit Officer all from Treasuries and Accounts, Govt. of Nagaland, Kohima had applied for personal loan from Lerie Branch. You did not attend to the applications promptly and kept the loan applications pending intentionally.

Allegation No. 2: You had allegedly demanded Rs. 5000/- each from Shri V. Zango, Shri Dielie Vinuo and Shri Tsenro for sanctioning of the loans. Thereafter, you did sanction the personal loan of Rs. 1.00 lac each during 1st week of July 2003 after they reportedly paid the amount demanded by you.

Allegation No. 3: You had delayed processing the loan applied by Smt. Vithuvole Rika sponsored by the Govt. under PMRY scheme for setting up a readymade garment shop. You had allegedly demanded Rs. 5000/- from her. As she could not pay the amount to you, you did not release the full amount to her.

Allegation No. 4: It is reported that you had delayed sanctioning of car loan to Dr. N.M. Kikan, Senior Lecturer. Department of Anthropology, Kohima because of his inability to pay Rs. 7000/- as allegedly demanded by you.

3. Since the first 3 allegations were not found to be proved by the Inquiry Officer, we may take note of the D.O.''s reply in response to the allegation No. 4. In his reply dated 20.7.2004 the D.O. claimed that the complaint of Respondent No. 5 was false and have been engineered by the complainant and some of the Bank''s staffs, who were enimical to the Branch Manner (D.O.), because of his strict enforcement of the Rules in the Lerie Branch of the SBI.

4. The Disciplinary Authority unsatisfied with the explanation, appointed one Shri K.W. Chyne as the Inquiry Officer. As the Petitioner perceived a threat to his life at Lerie and since the inquiry was conducted at Lerie Branch of the Bank, he could not personally participate in the proceedings. Nevertheless, no evidence to substantiate the allegation Nos. 1, 2 and 3 were found in the inquiry.

5. As regards the 4th allegation to the effect that the delinquent had delayed sanctioning of a car loan to the complainant because of his inability to pay Rs. 7000/- allegedly demanded by the D.O., the Inquiry Officer found that delay in sanctioning of the car loan was not established, as the records revealed that the loan was sanctioned within one day i.e. on 20.10.2003. As regards the demand of speed money, the Inquiry Officer recorded that even this allegation could not be proved beyond doubt.

 

However by interpreting the words contained in the complaint filed by the Respondent No. 5 and without any other material, the Inquiry Officer declared that this part of the allegation is partialy proved.

6. After the inquiry finding was given, the Disciplinary Authority by his communication dated 27.2.2006 decided to disagree with the findings recorded by the Inquiry Officer and accordingly the D.O. was asked to furnish his response on the said decision of the Disciplinary Authority.

7. Thereafter the delinquent was informed through letter dated 27.2.2006 that it has been decided to hold a ''hearing'' of the case at Lerie Branch at 10.30 A.M. and the D.O. was advised to attend the hearing along with his defence Counsel.

8. Being aggrieved, the D.O. challenged the decision of re-enquiry through the W.P.(C) No. 294/2007 and this Court by the judgment and order dated 27.5.2008 declared the decision as illegal as reason for ordering the re-enquiry was not disclosed. Then after quashing the decision of re-inquiry, the Court directed the Disciplinaiy Authority to proceed in the matter as per Rule 3.3 and 3.4 of the State Bank of India Vigilance Manual (hereinafter referred to as the ''Vigilance Manual'').

9. Subsequent thereto, the Disciplinary Authority intimated that the penalty of "Reduction to a lower grade of MMGS-II, with further directions that the officer will be fitted at the initial stage in the pay scale of MMGS-II" in terms of Rule 67(g) of the State Bank of India Officers Service Rules (hereinafter referred to as ''the Service Rules'') be inflicted against the D.O., through communication dated 22.7.2008.

9.1. The Petitioner preferred an Appeal against the penalty and during the pendency of this case, the said appeal was rejected by the Appellate Authority on 9.4.2009.

10. Challenging the legality of the procedure as well as the punishment inflicted in the Disciplinaiy Proceeding, Mr. S. Shyam, learned Counsel for the Petitioner contends that the delinquent was not afforded any opportunity to rebut the charges in the inquiry proceeding, as no opportunity for defence evidence was made available by the Inquiry Officer and on this count alone Mr. Shyam submits that the inquiry findings stand vitiated in law.

10.1. It is also contended that there is no evidence whatsoever for the inquiry officer to conclude that the charge under allegation No. 4 has been partially proved as the said conclusion is not based on any evidence but is based on mere surmise of the Inquiry Officer.

10.2. The legality of the disciplinary proceeding has also been challenged by contending them to be contrary to the provisions of the Rule 68(2)(xvi) and (xvii) of the Service Rules. It is also submitted by Mr. Shyam that the Disciplinary Authority ignored the direction given by the Court on 27.5.2008 in W.P.(C) No. 295/2007, by straightway inflicting the penalty, by disregarding Rule 3.3 and 3.4

 

of the Vigilance Manual, which envisage consideration of submission of the delinquent against the finding in the Inquiry Report. It is contended that no such opportunity was afforded to the delinquent to make any submission against the inquiry report.

11. Mr. N. Baruah, learned Counsel appearing for the Respondent Bank produces the records of the Disciplinary Proceeding and submits that since the Petitioner has been found guilty of a serious charge, the penalty of reduction in rank has been rightly imposed upon him.

12. In order to test the veracity of the contentions made by the D.O., the inquiry record produced by Mr. Baruah has been perused. The record shows that after closure of the prosecution evidence on 30.8.2005, the inquiry was concluded on the same day and there is nothing in the inquiry record to show that any opportunity was afforded after the said date, to produce the defence evidence by the D.O.

12.1. Such procedure adopted by the Inquiry Officer not only denies to the delinquent a reasonable opportunity to meet the charges but this appears to be wholly contrary to the procedure laid down in Sub-rule XV, xvi, xvii of Rule 68(2) of the Service Rules. Under the said Rules, when the case in support of the charge is closed, the D.O. is required to set up his defence and the inquiry officer is required to provide an opportunity for production of the defence evidence.

Even after the closure of the defence evidence, the inquiry officer is required to afford an opportunity to the delinquent to explain the circumstances appearing in the evidence against him. But no such opportunity was given to the D.O.

13. Apart from the above irregularities noticed in the inquiry proceeding, it is also seen that there is no evidence available for the inquiry officer to conclude that charge under allegation No. 4 has been partly proved. The said conclusion appears to be clearly unreasonable, as the main part of the said charge pertaining to delay in sanctioning of the loan to the complainant was not proved as it was found that the loan was processed and sanctioned promptly and in fact in a single day.

14. It may also be noted that after this Court interfered with the decision of the Disciplinary Authority of re-inquiry, penalty was inflicted on the delinquent straightway, by ignoring the direction given by the Court in W.P.(C) No. 294/07. No opportunity was afforded to the delinquent to make his submission against the inquiry finding as contemplated in Rule 3.3 of the Vigilance Manual and as such, the impugned penalty was inflicted by disregarding the prescribed procedure applicable to Disciplinary Proceeding in the SBI and also by ignoring the Court''s direction which were given in the W.P.(C) No. 294/2007 filed by the D.O.

15. As no date was fixed by the Inquiry Officer for defence evidence after conclusion of the prosecution evidence on 30.8.2005, the Inquiry Proceeding

 

apart from being one sided also contravenes the procedure contained in the various Sub-rules under Rule 68(2) of the Service Rules. This Court in a judgment pertaining to an officer of the SBI reported in Srimanta Pratim Barooah Vs. State Bank of India and Others, has held that quashing of order of penalty is justified because of such denial of reasonable opportunity when the D.O. is denied by the Inquiry Officer to produce his Defence Evidence. Therefore, it is obvious that Natural Justice was denied to the D.O.

16. As already recorded, no basis is found for holding that the allegation No. 4 is partly proved, as there is no evidence for such conclusion by the Inquiry Officer. Accordingly I am of the opinion that no penalty can be legally justified on the basis of such perverse conclusion reached by the Inquiry Officer.

17. It is evident that in the present case, the inquiry norms have been disregarded and conclusions have been reached without any evidence. The delinquent has been denied of a fair opportunity to defend the charges. Accordingly it must be declared that the impugned Disciplinary Proceeding stands vitiated in law. It is ordered accordingly. Consequently all the service benefits of the Petitioner be granted forthwith.

18. In view of above, the case stands allowed and the penalty dated 22.7.2008 and the order in Appeal dated 9.4.2009 are quashed without any order on cost.

 