
(2008) 05 GAU CK 0005
In the Gauhati High Court

Krishna Priti Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:

Citation : (2009) 3 GLR 719 : (2008) 3 GLT 753

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Judgement

H. Baruah, J.—Heard Mr. J.P. Sharma, learned Counsel for the petitioner. Also heard Mr. N. Baruah, learned Asstt. Solicitor General of India for the respondents.

2. By this writ petition, the petitioner has challenged the legality of the impugned letters dated 16.08.2006 and 09.09.2006 (Annexure- 8 and 9 to the writ petition) and notice dated 2.1.2007 (Annexure-12 to the writ petition) and also sought for a direction from this Court to direct the respondent No. 2 to act in terms of Rules 3.3 and 3.4 of the State Bank of India Vigilance Manual (for short the SBI Vigilance Manual).

3. The petitioner is a Branch Manager of the State Bank of India, Lerie Branch. A departmental proceeding was instituted against the petitioner for the following charges:

Allegation No. 1:

It is reported that Shri V. Zango, Registrar, Shri Dielie Vinuo, Superintendent, Shri Tsenro Latha, Audit Officer all from Treasuries & Accounts, Government of Nagaland, Kohirna had applied for personal loan from Lerie Branch. You did not attend to the applications promptly and kept the loan application 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 Government under PMRY scheme for setting up a readymade garments 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, Deptt. of Anthropology, Kohima because of his inability to pay Rs. 7,000/- as allegedly demanded by you.

The writ petitioner submitted written statement in his defence. The Disciplinary Authority, respondent No. 2 appointed Sri K.W. Chyne as Inquiry Officer for the purpose of enquiring into the charges herein before stated. Enquiry was conducted and on the closure, the Inquiry Officer submitted his enquiry report and findings to the Disciplinary Authority. Vide letter under Memo No. VIG/2005-2006/943 dated 27.02.2006 respondent No. 2 forwarded a copy of the enquiry report dated 28.11.2005 asking the writ petitioner to submit his representation within seven days from the date of the receipt of the letter as against the findings of the Inquiry Officer.

4. On 22.3.2006 writ petitioner submitted his reply to the Disciplinary Authority (respondent No. 2) with reference to his letter dated 27.2.2006. It would be pertinent to mention herein at this stage that the Inquiry Officer held the charge No. 4 as partly proved while other charges were held to have been not proved as against the writ petitioner. After receipt of the explanation so offered in writing by the writ petitioner, the Disciplinary Authority decided that for the purpose of total clarity and to arrive at a factual position and for ensuring natural justice, the enquiry was required to be re-convened for a limited purpose as stated aforesaid and vide Annexures-8 Shri Z.T. Khiangte SMAS-IV was appointed as Inquiry Officer for the purpose and the writ petitioner was requested to co-operate with the Inquiry Officer. Vide Annexure- 8 one month time was allotted for conclusion of the re-enquiry. Vide Annexure-9 again advised to co-operate with the Enquiry Proceedings.

5. Mr. J.P. Sharma, learned Counsel for the writ petitioner while supporting the case of the writ petitioner criticized the acts of the "Disciplinary Authority as evident from Annexure-8 and 9. Referring to the Rule 2 of the SBI Vigilance Manual, it is submitted by Mr. Sharma that a provision has been made by Rule 2 for re-enquiry and while making an order for re-enquiry, the Disciplinary Authority cannot flout/override the mandate of Rule-2 of Chapter-DC of the SBI Vigilance Manual. It is further submitted by him that while ordering such a re

enquiry it is obligatory on the part of the Disciplinary Authority to provide adequate reasons for doing so and if no adequate, sufficient and cogent reasons are provided, the order for re-enquiry made by the Disciplinary Authority can be branded as illegal and erroneous which according to him cannot sustain in law.

6. Rule 2 of the State Bank of India Vigilance Manual speaks as under:

2. RE-ENQUIRY:

The DA will have to examine the report in detail. If he finds any lack of clarity or defect, he may ask the IA to record further evidence in which case there will be only a partial re-opening of the inquiry.

If, however, the DA is of the view that there were infirmities in the inquiry or all evidence required had not been produced or if there has been any palpable denial of natural justice/reasonable opportunity not given to the CSO/CSE to defend himself or the inquiry is found vitiated for any reasons, he may remit the case back to the same IA for further inquiry as regards the required portion or order an inquiry "de novo" as the case may be. In such an eventuality, the DA has to record his reasons for such a course of action. The re-inquiry, in any case, should not be viewed as having been ordered merely because the earlier one "was in favour of the CSO/CSE.

7. The words "if he finds any lack of clarity or defect" employed in the first paragraph of the Rule 2 go to show that a naked decision for enquiry of the matter will not be justified. The Disciplinary Authority while making such an order ought to have assigned cogent reasons why such an order is made. From bare perusal of the Annexures-8 and 9 it is nowhere found that the Disciplinary Authority gave adequate reasons in adhering such a decision. It is also not found in the Annexures why the Disciplinary Authority could not concur with the findings of the enquiry officer. Therefore, apparently the mandate of the Rule 2 of the SBI Vigilance Manual was not obliged. That apart before ordering such a re-enquiry against the writ petitioner no notice was found to have been issued to show cause why such re-enquiry should not be ordered. According to Mr. J.P. Sharma, learned Counsel for the writ petitioner, the Disciplinary Authority by not issuing a proper notice violated the rules of natural justice. A reasonable opportunity ought to have been given to the writ petitioner to explain why such re-enquiry was not desirable.

8. Mr. J.P. Sharma in support of his contention relied on the decision in the case between the S.B.I and Ors. v. Arvind K. Shukla reported in AIR 2001 SC 2398 wherein their lordships of the Apex Court held as under:

On receipt of the findings of the enquiring officer, the disciplinary authority re-examined the materials and did not agree with the conclusion of the enquiring officer on charges 1(a), 1(d), 2 and 3. The disciplinary authority, on the other hand, come to the conclusion that the charges 1(b) and 1(d) must be held to have been fully proved, and taking into account the gravity of the charges, the

disciplinary authority recommended the case to the appointing authority for infliction of a major punishment. This it was entitled to under Rule 49(g) of the State Bank of India (Supervisory Staff) Service Rules. The appointing authority ultimately terminated the service of the delinquent servant in exercise of his power under Rule 68(3)(iii) of the said service rules. The delinquent then preferred an appeal under the statutory rule, but being unsuccessful therein, preferred a writ petition. The learned Single Judge came to the conclusion that non-furnishing of the reasons, which weighed with the disciplinary authority to differ with the findings of the enquiring officer to the delinquent is fatal, and vitiates the ultimate order of punishment inflicted upon, and therefore the learned Single Judge allowed the writ petition. The Bank assailed the said order by preferring an appeal, but the Division Bench having dismissed the same the Bank has preferred this appeal before this Court.,

9. Respondents filed affidavit-in-opposition wherein in paragraph 6 it has been clearly stated that the Disciplinary Authority differed with the findings of the Inquiry Officer with regard to the allegation Nos. 2, 3 and 4 of the charge-sheet and as such it ("Disciplinary Authority") by its letter dated 27.2.2006 asked for a representation from the writ petitioner within seven days. In paragraph 11 of the affidavit-in-opposition it is also contended that for ascertaining the factual position and for sake of total clarity, the Disciplinary Authority decided to take recourse to the provision of Rule-2 of the SBI Vigilance Manual. Further, it is also contended that such a recourse was taken to avoid hurried penalty as against the petitioner.

10. Per contra to the submission advanced by Mr. J.P. Sharma, learned Counsel for the petitioner, Mr. N. Baruah, learned Asstt. Solicitor General of India adhering to the facts contended in the affidavit-in-opposition and Rule 2 of the SBI Vigilance Manual submits that the Disciplinary Authority in order to avoid some unwarranted decision and for receiving a clear picture and clarity in the enquiry, ordered re-enquiry for limited purpose. No de novo enquiry was ordered by the Disciplinary Authority nor the same can be ascertained from Annexures-8 and 9. Further, it is submitted by him that the Disciplinary Authority by remaining within the mandate of the provision of Rule 2 of the SBI Vigilance Manual ordered re-enquiry. Thus the letters dated 16.8.2006 and 9.9.2006 (Annexures-8 and 9) are not liable to be set aside and quashed.

11. It is discussed herein before that the Disciplinary Authority while issuing such an order for re-enquiry failed to project adequate reasons, why such a re-course was adopted. Rule-2 of the SBI Vigilance Manual clearly speaks that if the Disciplinary Authority finds any lack of clarity or defect he may ask the enquiry authority to record further evidence in which case there will be an only partial reopening of the Enquiry. The words "if he finds" speak for the reasons while the Disciplinary Authority decided as such. The learned Asstt. Solicitor General of India in the context of making of the order for re-enquiry fails to lead this Court through the reasons/findings of the Disciplinary Authority why such a decision

was taken. Mr. N. Baruah, the learned Asstt. Solicitor General admits that there is no such finding available with the record.

12. When apparently a decision was taken for re-enquiry by the Disciplinary Authority it must be adorned with cogent and sufficient reason and when it is lacking the order for re-enquiry cannot sustain.

13. Rule 3.3 and 3.4 provide that on the basis of the enquiry report made by the CSO on the charges held proved by the Inquiry Officer, the Disciplinary Authority will make a tentative decision with regard to the penalty and while doing so, the requirement incorporated in Rule-34 shall ever be satisfied. From the enquiry report it is found that the Inquiry Officer failed to hold the writ petitioner responsible for the charges 1, 2 and 3. Only in respect of charge No. 4 the Inquiry Officer held it as partly proved. The writ petitioner in view of the provisions of Rule 3.3 and 3.4 also prayed for a direction to the respondent No. 2 to act as per mandate of the above rules.

14. Since the Disciplinary Authority did not provide any reasons, the order for re-enquiry is held illegal, consequently, the letters i.e. Annexures-8 and 9 are also illegal.

15. In the result, the letters dated 16.2.2006 and 09.09.2006 (Annexures-8 and 9) are set aside and quashed. The Disciplinary Authority is directed to act as per Rule 3.3 and Rule 3.4 of the SBI Vigilance Manual rules within a period of one month from the date of receipt of the certified copy of this judgment and order.

This writ petitioner is accordingly disposed of. No order as to cost.