(1982) 08 MAD CK 0012

In the Madras High Court

Case No : Writ Appeal No. 157 of 1977

K.S. Ramanathan APPELLANT

Vs

The Local Board, State Bank of India RESPONDENT

Date of Decision : 11-08-1982

Acts Referred:

Constitution of India, 1950 — Article 12, 226
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 5(3), 5(4), 50, 50(2), 50(4)

Citation : (1984) ILR (Mad) 1

Hon'ble Judges : K.B.N. Singh, C.J;Venugopal, J

Bench : Division Bench

Advocate : G.N.R. Rao, M. Ganapathy, V. Selvaraj and P. Jacob Jaya Kumar, for the Appellant; King and Patridge, for the Respondent

Final Decision : Allowed

Judgement

VenuGopal, J.—The Appellant-writ Petitioner joined the services of Imperial Bank of India on 10th October 1944. In July 1955 the

Imperial Bank was taken over by the State Bank of India, and thereafter he become a member of the staff of the State Bank of India. He was

promoted as Grade II Officer in 1961 and further promoted as Grade I Officer in 1965. For certain administrative lapses, the Appellant -writ

Petitioner was charge-sheeted on 3rd October 1973 and he submitted his explanation on 19th July 1974. The Appellant writ Petitioner insisted for

personal hearing and wanted some other officer of the Bank should be permitted to help him in his defence and copies of investigation reports

should be supplied to him. He also wanted to examine defence witnesses. The Appellant-writ Petitioner''s request for supply of the investigation

reports, permission to examine witnesses, and his request for an officer to help rim in his defence, were all refused. He refused to participate in the

personal hearing and ultimately the impugned order dated 18th August 1976 reverting him as Grade II Officer came to be passed. The Appellant

writ Petitioner thereafter filed a writ petition to quash the order, commending-

(a) Rule 50(2) of the State Bank of India (Supervising Staff Service Rules (hereinafter to be referred to as the rules) postulates a personal hearing

and the personal hearing should consist of an opportunity to cross-examine the witnesses and let in defence witnesses, and since no such

opportunity was granted, there has been violation of Rule 50(2) and the principles of natural justice.

(b) The General Manager committed an act of impropriety by consulting the Head Office before the personal hearing as to what should be the

proper punishment.

2. The defence of the State Bank in the writ petition was that the rules are purely non-statutory in character and they are not enforceable in a Court

of Law, and having regard to the nature of the reply of the Appellant - writ Petitioner admitting the charges, failure to afford an opportunity to

examine defence witness has not prejudiced the Appellant-writ Petitioner and regarding the quantum of punishment, there was an independent

application of the mind by the punishing Authority, and there has been no violation of the principles of natural justice or the Service Rules.

3. A learned single Judge of this Court who heard the writ petition, held-

(1) Inasmuch as the Appellant had admitted most of the charges, ''but only pleaded for a lenient attitude to be taken, the failure to examine defence

witnesses as not caused any prejudice, and there is no violation of the principles of natural justice.

2. Though the General Manager wrote to the Central Office as to what would be proper punishment, the punishing Authority has independently

applied its mind and came to the conclusion regarding the quantum of punishment, and the consolation of the Central Office had in no way

influenced the judgment of the puni(sic)bing Authority'' Against this judgment of learned single judge, the writ Petitioner has filed the present appeal

before this Court.

4. The learned Counsel for the Appellant contended that the State Bank of India is a statutory body set up under the statute and managed and

controlled by the Government, and a major-punishment, like reduction in rank, cannot be imposed without following the procedure laid down

under Rule 50(2) and the opportunity to be heard in person postulated in that rule, means, the Appellant should be given a reasonable opportunity

to deny his quit to defend himself and to establish his innocence, which means and includes an opportunity to cross-exameans the witnesses relied

upon by the Bank and an opportunity to lead evidence in defence of the charge, and inspite of requests for an opportunity to cross-examine

witnesses relied upon by the Bank and an opportunity to lead evidence in defence of the changes and inspite of request to give an opportunity to

cross examine witnesses and let in defence evidence, no such opportunity was given, and thus there is violation of Rule 50(2) of the Rules and also

violation of the principles of natural justice.

5. The learned Counsel for the Respondents contended that the rules do not contemplate an elaborate enquiry and the Appellant was given an

opportunity to make his representation in relation to the charge laid against him, and as the Appellant had admitting the charges and pleaded only

extenuating circumstances to mitigate the punishment that may be awarded, no enquiry was held as it would only amount to an empty formality, and

the personal hearing was not availed of by the Appellant and thus there is no violation of the rules or the principles of natural justice. The learned

Counsel further contended that Rule 50 is not a statutory rule and has no force of law, and a misconstruction of that rule or its contravention by any

decision of a domestic tribunal, cannot be corrected under Article 226 of the Constitution. The learned Counsel finally contended that if the totality

of the circumstances satisfied the Court that the party visited with the adverse order had not suffered from denial of reasonable opportunity, the

Court should decline to be punctilious or fanatical about the alleged violation of the principles of natural justice. In support of the above

contentions, the learned Counsel for the Respondents relied on the decisions of the Supreme Court report in Central Bank of India Ltd. Vs.

Karunamoy Banerjee, . Central Bank of India v. Kanmamo and Board of Mining Examination v. Ramjee AIR 1977 S.C. 1965

In the decision reported in Sukhdev Singh v. Bhagatram AIR 1975 S.C. 133 the Supreme Court held that Oil and Natural Gas Commission tiff

Insurance Corporation and the Industrial Finance Corporation are authorities within the meaning of Article 12 of the Constitution, and their

employees have a statutory status and are entitled to a declaration of being in employment when their dismissal or removal is in contravention of the

statutory provisions.

6. In the decision reported in U.P. Warehousing Corporation v. Vijay Narayanan AIR 1960 S.C. 840, the Supreme Court held that the U.P. State

Warehousing Corporation is constituted under the Madhya Pradesh State Warehousing Corporation Act XXVIII of 1956 which was later

replaced by the Madhya Pradesh Act LVIII of 1962 and it is a statutory body wholly controlled and managed by the Government. The Supreme

Court further held that it would presume the existence of a duty on the part of the dismissing authority to observe rules of natural justice and to act

in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal and the rules of

natural justice required that the employee should be given a reasonable opportunity to deny his guilt and establish his innocence by grant of an

opportunity to cross-examine the witnesses relied on by the employer and also let in evidence in defence of the charge.

7. Having evolved a procedural rule for inflicting punishment on its employees, has the Respondents followed that rule in awarding punishment to

the Appellant, is the short question for consideration in this appeal. Rule 50 of the State of India (Supervising Staff) Service Rules is as under:

(1) Where the Managing Director in the case of an employee serving in or under Central Office or the Chief General Manager in the case of the

employee serving in a Circle is satisfied that there is a prima facie case for any official to investigate the case and submit an independent report

thereon in writing

(2) A brief statement of the charges together with the grounds on which they are based shall then be communicated in writing to the employee. The

employee shall be required to submit a written statement in defence and also given an opportunity to be heard in person if desired by him. He shall

also be given facilities for access to the records of the Bank for the purpose of preparing his written statement but the Managing Director or Chief

General Manager may, for reasons to be recorded in writing refuse him such access if in his opinion such records are not strictly relevant or it is not

desirable in the interests of the Bank to allow such access.

For certain alleged administrative lapses and gross negligence of duty on the part of the Appellant, investigation was ordered to be conducted by

Staff Officer Sivaprakasam. On the basis of the report of the Investigation Officer, as many as ten charges were framed against the Appellant and

he was directed to show cause why disciplinary action should not be taken against him. The Appellant submitted lengthy explanations in respect of

each charge. When asked to avail of the personal hearing provided under Rule 50(2) the Appellant by his letter, dated 13th March 1976 stated:

I would like to examine in my defence the following witnesses who will speak to prove the contents of my explanation.

I seek your kindness to permit a brother-Officer to assist me in examining the witnesses at the time you record their evidence.

I request you to call for all those witness on whose evidence the charge sheet is sought to be proved.

A personal hearing in its proper sense a full-fledged enquiry alone will reveal the true dimensions of the case.

By letter, dated 16th March 1976 the Appellant again wrote:

I am told by the Regional Manager and Personnel Manager that in the proposed personal hearing I will not be given the facilities which I have

asked for in my above letter, (i.e. letter dated 13th March 1976). In the absence of the facilities sought for, the personal hearing will be reduced to

a mere technical formality without any substance will be in effect deprived of real opportunity to defend myself.

When it was stated that the Appellant did not avail himself of the personal hearing, he again wrote in his letter dated 14th April 1976 stating:

I was hopeful that necessary facilities will be extended to me, so that the hearing could provide me a real opportunity for establishing my innocence.

The scope of the personal hearing as understood by the Bank, became known to me. Therefore, though I did not appear before your good self. I

went through the preliminaries connected with the personal hearing.

The extracts of the above letters written by the Appellant to Respondent No. 2 show that in order that the personal hearing is effective, the

Appellant wanted witnesses to be examined for the charges levelled against him and wanted an opportunity to cross-examine them and also let in

evidence in support of his defence. The Respondents, without affording any such opportunity, awarded a major punishment like reduction in rank.

The State Bank of India is a statutory body set up under a statute An enquiry into the conduct, by such a statutory body, of its employee is of a

quasi-judicial character. The punishing authority should act in accordance with the spirit of Rule 50(2) of the State. Bank of India (Supervising

Staff) Service Rules. The rule requires a personal hearing. Personal hearing in the context would mean, the Appellant should be given a reasonable

opportunity to deny his guilt and establish his innocence, and this includes an opportunity to cross-examine the witnesses and an opportunity to let

in evidence in defence. It is sought to be contended by the learned Counsel for the Respondents that when the Appellant had admitted guilt to the

charges laid against him and has pleaded only extenuating circumstances to mitigate the punishment, what then is the necessity to hold an enquiry

and examine witnesses to prove the charge It is incorrect to state that the Appellant has admitted his guilt and pleaded only extenuating

circumstances to lesser the punishment. A careful perusal of the lengthy explanations submitted by the Appellant in respect of each charge shows

that what he pleads are not extenuating circumstances, but circumstances which go to establish his innocence. The findings of the General Manager

in respect of each charge show that the explanation of the Appellant was rejected and he was found guilty of the charge. The contention that the

Appellant admitted the charges and hence no enquiry was held, has to be rejected. Excepting the investigation report, the charges framed on the

basis of the investigation report and the explanation offered by the Appellant, no enquiry was held and no opportunity was given to the Appellant

to establish his innocence in spite of repeated requests made by him to hold an enquiry and afford him an opportunity to cross-examine the

witnesses and also to examine witnesses in defence. The impugned order is in violation of Rule 50(2) and also violates the principles of natural

justice.

8. The learned Counsel for the Appellant next contended that the order of punishment passed by the Local Board (punishing authority) merely

approves the report of the General Manager recommending the punishment to be awarded and the Board has not independently applied its mind

and there is abdication of the powers by the Board and the impugned order passed is in violation of Rule 5(4). Under Rule 5(3) along with the

investigation report and the delinquent officer''s explanation the General Manager has to send a report for consideration of the Local Board. In that

report the General Manager has recommended a punishment which has been accepted by the Board. The mere fact that the Board approved the

punishment suggested by the General Manager does not lead to the inference that the Board did not apply its mind and form its own opinion, or

there was abdication of the function of the Board. As pointed out by the Calcutta High Court in Bibhuti v. State of West Bengali even if the

punishing authority decides in consolation with another officer, the decision is not open to challenge and it cannot be said that the punishing

authority did not apply his mind because he adopted the decision of another officer.

9. Charges were framed against the Appellant on 3rd October 1973 and the explanation to the charges was submitted on 19th July 1974. Even

before the receipt of explanation to the charge, from the Appellant, the Secretary of the Local Head Office in Madras wrote to the Head Office in

Bombay on 17th November 1973 suggesting that cancellation of three increments to the Appellant would meet the ends of justice. From this it is

sought to be argued by the learned Counsel for the Appellant that there has been a pre-determination of the guilt of the Appellant and the strange

procedure adopted, proposing the quantum of punishment even before the receipt of explanation from the Appellant is like putting the cart before

the horse and the procedure adopted violates both Rule 50(4) and the principles of natural justice. The person who wrote the letter to the Head

Office on 17th November 1973 is not the punishing authority. The punishment suggested in the letter has not been awarded and a higher

punishment came to be awarded to the Appellant. The contention that there was pre-determination of the guilt on account of the Madras Office

writing to the Head Office in Bombay regarding the quantum of punishment cannot, therefore, be accepted.

10. Having evolved a procedural rule for awarding punishment/to its employees and having initiated disciplinary proceedings under that rule, the

Respondents have failed to comply with both the letter and spirit of Rule 50(2). Following the well known dictum of Justice Frankfusther, laid

down , quoted with the approval in the decision of the Supreme Court reported in Sukhdev Singh, Oil and Natural Gas Commission, Life

Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal,

Industrial Finance Corporation, , be that takes the procedural sword shall perish with that sword, we quash the impugned order dated 18th August

1976 passed against the Appellant. The appeal is allowed, with costs.

