
(2009) 08 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) No. 1609 of 1990

K.V. Kulkarni

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0132

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Vasudha V. Indulkar, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Petitioner- K.V. Kulkarni, was the Chief Manager of Bank of India (hereinafter referred to as the "respondent-bank") and vide Order, Annexure P-1, he was dismissed from service on the basis of Enquiry Report, Annexure P-35, returning findings of misconduct against the petitioner.

2. The aforesaid order of dismissal of the petitioner from service was confirmed by the Appellate Authority vide order, Annexure P-2, which is under challenge in this petition.

3. The stand of the petitioner is that respondent No. 3 was predetermined to dismiss the petitioner from service and the Departmental Enquiry was an eyewash and that the respondent had deprived the petitioner of reasonable opportunity to defend himself in the enquiry and the respondent did not allow the petitioner to produce defence witnesses and thereby, the Departmental Enquiry against the petitioner stood vitiated. To elaborate the stand of the petitioner, learned Counsel for the petitioner points out that there is denial of reasonable opportunity to the petitioner to defend himself during the enquiry proceedings, as the petitioner had submitted a list of seven defence witnesses being relevant, as they had handled the concerned accounts of M/s Harison Tyre Company

(hereinafter referred to as the "borrower company") at the branch or zonal office.

4. According to the petitioner, the Enquiring Authority, at the instance of the Presenting Officer, had compelled the petitioner to disclose his defence by asking the petitioner to submit the evidence of each of the defence witnesses in the form of written statement, duly signed by them. Learned Counsel for the petitioner contends that the Enquiring Authority had travelled far beyond Regulation - 6(10), which enjoins upon the delinquent officer to give the relevancy of the documents and the witnesses, sought to be got examined by him. It was vehemently urged that the aforesaid procedure of submitting the text of the examination of the defence witnesses was a strange procedure, which is unknown to law and the defence witnesses of the petitioner were prepared to orally depose before the Enquiring Authority but were not ready to give their signed submissions to the petitioner as their deposition before the Enquiring Authority.

5. According to the petitioner, the attitude of the Enquiring Authority was arbitrary as on 24th November, 1988, an adjournment was sought by the petitioner, as the Defence Representative of the petitioner had gone to Tis Hazari Courts, Delhi, in connection with the work of the respondent-bank and the adjournment was illegally declined by the Enquiring Authority. Another ground to impugn the disciplinary proceedings conducted against the petitioner is that there is a deliberate delay of fourteen months in holding the enquiry against the petitioner and this delay was deliberate to compulsorily retire a vital witness- Mr. S.P. Limay, the then Zonal Manager of the respondent -bank as the petitioner had acted under the instructions and guidance of the aforesaid Zonal Manager and the facilities were accordingly extended to the borrower company. Petitioner claims that vide his reply, Annexure P-8, he had elaborately explained the position of each of the charges and it was pointedly stated in the reply that the facilities were extended to the borrower company under the instructions of the aforesaid Zonal Manager. Non-application of mind by the Enquiring Authority as well as by the Appellate Authority is alleged by the petitioner by contending that the enquiry conducted was one sided and full facts could not be brought out since fair opportunity of getting the defence witnesses examined was not extended to the petitioner. Lastly, it is stated on behalf of the petitioner that the penalty of dismissal from service imposed upon the petitioner was preconceived as even before the appeal of the petitioner was decided, the respondent-bank had forfeited his provident fund and gratuity. Thus, quashing of the impugned order of dismissal from service is sought in this petition.

6. The stand of the respondents is that the relevancy of ten defence witnesses was not given by the petitioner but in all fairness, petitioner was permitted to get two witnesses examined in his defence. It is pointed out that Mr. George Thomas, PW-2, was an outstation witness and in the absence of his Defence Assistant, petitioner had agreed to cross- examine this witness, but after recording of the evidence of this witness, PW-2, petitioner had categorically stated that he did not

want to cross-examine him. On the delay aspect, the stand of the respondents is that within one year of the Audit Report, the departmental proceedings had commenced against the petitioner and the delay is not inordinate and it is not shown by the petitioner as to what prejudice has been caused to him. Learned Counsel for the respondents has referred to Proposal -EX. P-1, Correspondence from Punjab National Bank - EX. P- 4,5, 26, Ledger Sheet - EX.P-16, to show that it substantiates the first Charge of release of part of the facilities to the borrower-company without pre- sanction inspections. Correspondence, Ex. P-6 to EX. P-8, has been relied upon by the respondents to show that the petitioner had released the bills of purchase facilities to the borrower company which was beyond his delegated authority. Cash Credit Ledger, EX. P-16, and the Bank Records, Ex.P-9 and Ex. P-25, have been also relied upon to substantiate the remaining charges against the petitioner. According to the respondents, no fault can be found in the decision making process adopted by them and there is no merit in this petition, which deserves dismissal.

7. After having heard both the sides and upon perusal of the material on record, as well as the decisions reported in 1995 (1) SLR 31; D.D. Sansi Vs. Union of India and Others, ; 1980 (1) SLR 324; AIR 1972 SC 2535; State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, ; S.P. Goswami alias Sakti Pada Goswami Vs. General Manager, South Eastern Rly. and Another, ; Bank of India and Others Vs. T. Jogram, ; State Bank of Patiala and others Vs. S.K. Sharma, and Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, cited, I find that the decision of the Disciplinary Authority requires interference only if it is shown that it suffers from procedural defects and only when it is shown that there is violation of principles of natural justice.

8. The Disciplinary proceedings were initiated against the Petitioner on the following charges:

During your tenure as Chief Manager at Bank's Connaught Circus Branch, New Delhi from April, 1983 to May, 1987 acts of misconduct, as hereinafter mentioned, are alleged to have been committed by you- That, you abused your official position to accommodate M/s. Harrison Tyre Co., a borrower of the Branch, to the detriment of Bank's interest in as much as:

a) Instead of submitting your proposal dated 30.10.1984 recommending various facilities to M/s. Harrison Tyre Co., to the tune of Rs. 62,80 lacs to your superior and availing sanction thereon, without carrying out pre-sanction inspection and ascertaining technical feasibility of the project, you allowed release of part of the facilities to the borrower knowing fully well that this Unit is an off-shoot of M/s. Kanishka Tyres & Tubes (P) Ltd., and without consulting M/s. Punjab National Bank, Banker to M/s. Kanishka Tyres & Tubes (P) Ltd., and did not report your action to your superior immediately;

b) Even after the proposal in question was received by your superior alongwith your reporting of release of part of the facilities and the matter was under

correspondence, you granted further facilities and commenced casual purchase of bills in the accounts of the borrower;

c) While allowing the facilities, instead of obtaining the joint and several guarantee of all the Directors of the Company, you obtained the guarantee in respect of only two directors and that too in respect of only cash credit and bills purchase facilities;

d) Cash credit limits were released without ensuring that the borrower has requisite machinery to manufacture products, overlimits were continuously allowed even exceeding your delegated authority without relevance to security and without reporting to your superior and bills purchased and returned unpaid were debited to this account instead of transferring the same to Past Due Bills Purchased Account in an irregular manner;

e) Bills purchased on a casual basis were allowed even beyond your delegated authority without obtaining status report on drawees and also in respect of bills accompanied by M.T.Rs., from unapproved transport operators, in gross violation of Bank's norms and persisted with the purchase even though bills were being returned unpaid frequently and the cash credit account was grossly out of order;

f) You allowed opening casual inland L/Cs exceeding delegated authority and even without insisting on margin on D.A. basis as against original recommendation of D/P basis and as the stocks hypothecated to the Bank were invoiced in the name of M/s. Kanishka Tyres & Tubes (P) Ltd., which you allowed in an irregular manner and in the absence of obtention of title to goods or trust receipts from M/s., Kanishka Tyres & Tubes (P) Ltd., or collateral security from the borrower there is no security to cover the amount of the three unpaid B/R under L/C;

g) The facilities granted to M/s. Harrison Tyre Co., by you without proper sanction have gone grossly out of order and Bank is exposed to serious financial loss in this regard.

9. No doubt, recording of the evidence of Mr. George Thomas, PW-1, had taken place in the absence of the Defence Assistant, but, this by itself would not amount to denial of a fair opportunity to the petitioner because he himself had agreed to the recording of the evidence of this witness, PW-21, in the absence of Defence Assistant and had chosen not to cross-examine this witness. In normal course of events, had there been any grievance regarding manner of recording of the evidence of George Thomas, PW-2, the same ought to be brought to the notice of the Enquiry Officer on the next date either by the Defence Assistant or by the Delinquent Official by moving an application in this regard. Petitioner had not chosen to adopt such a course and even in the Appeal, Annexure P-39, filed by the petitioner, he had not made any such grievance. Therefore, now the petitioner cannot be heard to complain about it.

10. Regulation -6(10) of the Regulations, 1976, (Annexure P-15), requires that

the Delinquent Officer has to submit in writing about the relevancy of the documents and the witnesses which he wants to get examined. Vide Annexure P-20, petitioner had simply given the names of the six witnesses he wanted to get examined in his defence and had stated that they were working in the Branch at the relevant time and were connected with the accounts of the borrower company in question. Not satisfied with this, petitioner was called upon by the Enquiring Authority to give the relevance of the witnesses and vide Annexure P-25, petitioner had simply stated that for different Charges he wanted to get "examined so and so witness" and it was stated by him that he cannot be compelled to disclose his defence.

11. It is true that Enquiring Authority cannot call upon a delinquent officer to give the text of the examination of defence witnesses duly signed by them, before they are allowed to be summoned, but the purpose for which eight or ten witnesses, the petitioner wanted to summon, had to be given, which was not disclosed either in Annexure- P-20 nor in Annexure P-25. Even during the course of the arguments, counsel for the petitioner was called upon to state as to on what aspects petitioner wanted to get examined these eight defence witnesses, but no satisfactory answer was given.

Two witnesses have deposed before the Enquiring Authority on behalf of the petitioner. As is evident from the material on record, the case set out against the petitioner is based on documentary evidence, which has been referred to and has been dealt with, in the Enquiry Report, which is quite reasoned one. The decisions relied upon on behalf of the petitioner are of no avail because the petitioner fails to show as to for what purpose he wanted to get these witnesses examined in his defence. Thus, the Enquiring Authority had rightly not permitted the petitioner to summon eight witnesses in his defence. In my considered view, no prejudice is caused to the petitioner on this account.

12. The delay of one year or so, in holding of the Departmental Enquiry against the petitioner is not inordinate, nor it causes any prejudice to the petitioner. There is no basis to assert that the delay in holding the enquiry was with a purpose to compulsorily retire a vital witness i.e. Mr. S.P. Limay, the then Zonal Manager of the respondent-bank. In any case, no such grievance has been made by the petitioner in the appeal filed by him. Infact, the stand of the petitioner all throughout had been that he had released the part of the facilities to the borrower company with the consent of Mr. Limay, the then Zonal Manager, and that he had not exceeded his delegated powers in doing so.

Although the stand of the petitioner is that Mr. Limay, the then Zonal Manager, had been compulsorily retired and the petitioner has been removed from service, but the petitioner cannot claim parity with Mr. Limay as he had not urged this aspect before the Enquiring Authority nor he has placed on record the copy of the Compulsory Retirement Order of Mr. Limay. Nothing had stopped the petitioner from getting Mr. Limay examined in his defence, regarding petitioner extending facilities to the borrower company in question, with the concurrence of

the higher authorities, i.e. Mr. Limay, the then Zonal Manager.

13. Furthermore, it emerges from the material on record, that this case hinges upon the documentary evidence which has been dealt with, by the Enquiring Authority in its correct prospective and I do not find any procedural irregularity except for the fact that Enquiring Authority had exceeded its jurisdiction in calling upon the petitioner to furnish the text of the evidence of the defence witnesses. However, as already observed above, this irregularity does not go to the root of the matter because the petitioner has not been able to satisfy the Enquiring Authority, Appellate Authority or even this Court about the relevance of the witnesses which the petitioner wanted to get examined in his defence. So, petitioner suffers no prejudice.

14. Simply because respondent-bank had forfeited petitioner's provident fund and gratuity, it would not be fair to draw an inference that the Appellate Authority was preconceived in maintaining the order of dismissal of the petitioner from service before petitioner's appeal was decided. It is so said, because forfeiture of provident fund and gratuity in routine follows the order of dismissal and in the event of petitioner's succeeding in appeal, then the consequential benefits of provident fund etc., would have been made available to the petitioner. Thus, it cannot be said that the respondent-bank was pre-determined to uphold the order of dismissal in the appeal.

15. Appellate Authority has concurred with the finding of the Disciplinary Authority and upon perusal of the impugned order of the Appellate Authority, I find that no fault can be found in the impugned order as it discloses application of mind by the Appellate Authority. Since the Appellate Authority has agreed with the conclusions arrived at, by the Enquiring Authority, therefore, no separate reasons are required to be given by the Appellate Authority. The Impugned order does not suffer from any procedural impropriety nor violates the principles of natural justice. Therefore, this Court unhesitating upholds the impugned order and rejects this petition being without any substance.

16. This petition and pending application, if any, stands disposed of accordingly.

17. No costs.