

(1977) 07 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6963 of 1976

Lachhman Dass Aggarwal

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 26-07-1977

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(1), 19(2), 19(3)
Constitution of India, 1950 — Article 12

Citation : (1978) 48 CompCas 327 : (1979) 38 FLR 46 : (1977) 2 ILR (P&H) 747

Hon'ble Judges : O. Chinnappa Reddy, J;Gurnam Singh, J

Bench : Division Bench

Advocate : J.L. Gupta, for the Appellant; D.S. Nehra and Arun Nehra, for the Respondent

Final Decision : Dismissed

Judgement

Chinnappa Reddy, J.—The petitioner was an employee of the Punjab National Bank, a nationalised bank. On December 6, 1974, the Assistant Regional Manager of the bank issued a notice to the petitioner asking him to explain why disciplinary action should not be taken against him for certain alleged malpractices. It was stated in the notice that certain complaints had been received against the petitioner, that the complaints had been investigated by an inspector and that certain malpractices were noticed. The malpractices were stated to be as follows I

"1. The undernoted borrowers have given written statements to the investigating officer, duly attested by Oath Commissioner, Mohindergarh, that they paid the amount, mentioned against each, to you as bribe for getting loan from the bank :

Rs.

(a) Ram Chander, son of Rachpal Singh

50

(b) Bishan Lal, son of Kabur Chand

150

(c) Sant Lal, son of Jai Dayal

75

(d) Tirath Dass, son of Hari Chand

90

(e) Ratti Ram, son of Kabur Chand

150

Shri Mool Chand, son of Bihari Lal, has given written statement duly attested by Oath Commissioner, Mohindergarh, that you demanded Rs. 100 as bribe for granting loan to him. He was agreeable to pay the sum of Rs. 100 but you increased your demand and asked for payment of Rs. 200 as bribe which he could not pay."

2. The petitioner was asked to submit his explanation within ten days from the receipt of the notice. On December 20, 1974, the petitioner requested the Regional Manager to furnish him with copies of the complaints said to have been made against him as also copies of the statements of the parties. The petitioner mentioned that there was no such attestation by any Oath Commissioner as stated in the notice. The petitioner further mentioned that the area manager, Rohtak, had visited Mohindergarh twice on a fact-finding mission. The petitioner requested that copies of the reports of the inspector and the area manager might also be supplied to him. To this letter, the assistant regional manager sent a reply advising the petitioner to call at the office on any working day " for consulting the relevant records". The petitioner appears to have made a request to the regional manager that he should be allowed to copy the documents at the time of inspecting them. By his letter dated February 20, 1975, the regional manager informed the petitioner that his request for copying the documents was untenable. He was told that he could only go through the relevant records and submit his explanation. He was given seven days' time for submitting his explanation. On February 26, 1975, the petitioner once again wrote to the regional manager bringing to his notice the circumstance that in all previous enquiries copies of documents were made available. He also brought to the notice of the regional manager that the enquiry by the inspector was irregular and illegal as the enquiry was conducted behind his back without affording him any opportunity for defending himself. He pointed out that the enquiry by the area manager was not vitiated in any such manner. He reiterated his request for supply of documents. The regional manager by his letter dated April 7, 1975, once again denied the request for supply of copies and called upon the petitioner to submit his explanation within ten days. On April 26, 1975, the petitioner once again requested the regional manager to furnish him with copies of the relevant

documents. He denied the allegations made against him. He further stated that the alleged statements referred to in the original show-cause notice were never "attested" as claimed. The " attestations" were fabricated and forged. He also submitted that the area manager who enquired into the matter earlier had found that the so-called attestations were all forged, the persons who had appeared before him having so stated. On July 20, 1976, the regional manager issued a notice to the petitioner proposing the punishment of discharge from service, holding that the petitioner's explanation was unsatisfactory. The petitioner sent a reply repeating his request for copies of documents. The request was not granted and finally an order was passed discharging the petitioner from the service of the bank, without affecting terminal benefits. It is this order of discharge from service that is questioned in this application for the issue of a writ.

3. Shri Jawahar Lal Gupta, learned counsel for the petitioner, submitted that there was a failure to comply with the principles of natural justice as well as the principles embodied in the staff department circular No. 20 of the bank in regard to the imposition of punishments. Shri Nehra, learned counsel for the bank, contended that no writ petition was competent to enforce a contract of employment. In any case he contended that there was no non-compliance either with the principles laid down in the circular or with the principles of natural justice.

4. Considerable argument was advanced on the question whether the Punjab National Bank was an " authority " within the meaning of Article 12 of the Constitution of India. The question whether the bank is an "authority" within the meaning of Article 12 of the Constitution would be relevant if the basis of the claim of the petitioner was an infringement of a fundamental right. The definition of the expression " the State " occurring in Article 12 of the Constitution is expressly confined in its application to Part III of the Constitution only. Since the basis of the claim of the petitioner in the present case is not an infringement of a fundamental right, the question whether the bank is an " authority" within the meaning of Article 12 of the Constitution is not really relevant. We may, however, state that we do not have any doubt that the Punjab National Bank which is a nationalised bank is an "authority " within the meaning of Article 12 of the Constitution. By the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, undertakings of certain banking companies were acquired by the Government of India and transferred to the "corresponding new banks" created by the Act as body corporates. The Punjab National Bank Ltd. was one of the banking companies whose undertaking was acquired and transferred to the corresponding new bank called " Punjab National Bank ". It will be useful to refer to some of the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The "existing bank " is defined as banking company specified in column 1 of the First Schedule while the " corresponding new bank " is defined, in relation to the existing bank, as the body corporate specified against the said bank in column 2 of the First Schedule. Section 3 of the Act provides that on the commencement of the Act there shall be constituted

such corresponding new banks as are specified in the First Schedule with the same paid up capital as that of the existing bank. Section 3(3) further provides that the entire capital of each new bank shall stand vested, and allotted, to the Central Government. Section 3(4) prescribes that every corresponding new bank shall be a body corporate. Section 4 provides for the transfer of the undertaking of every existing bank and the vesting of the same in the corresponding new bank. Section 6 provides for payment of compensation by the Central Government to every existing bank whose undertaking is transferred to the corresponding new bank. Section 7 prescribes that the head office of each new corresponding bank shall be at such place as may be specified by the Central Government and that the general supervision, direction and management of affairs and business of the corresponding new bank shall vest in a "board of directors". Section 7(3) empowers the Government to appoint the first board of directors in consultation with the Reserve Bank of India. Section 9 empowers the Government to make a scheme for carrying out the provisions of the Act including the constitution of the board of directors. The Central Government is also vested with the power to amend the scheme in consultation with the Reserve Bank. Section 8 obliges every corresponding new bank to be guided, in the discharge of its duties, by such directions in regard to the matters of operation involving public interest, as the Central Government may give in consultation with the Reserve Bank. Section 10 provides for the audit of the corresponding new bank and requires the auditor to make his report to the Central Government. The Central Government is required to lay the auditor's report before both Houses of Parliament. Section 10(7) also provides that the balance of profits of the corresponding new bank should be transferred to the Central Government. Section 11 provides for the deeming of corresponding new bank as an Indian company for the purpose of the Income Tax Act. Section 18 provides that no provision of law regarding winding up of corporations shall apply to a corresponding new bank. Section 19 empowers the board of directors of a corresponding new bank, after consultation with the Reserve Bank and with the previous sanction of the Central Government to make regulations providing for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. In particular the board of directors are empowered by Section 19(2)(d) to make regulations prescribing conditions or limits subject to which the corresponding new bank may appoint officers, officials, or other employees and fix their remuneration and terms and conditions of service. Section 16 grants immunity to directors, officers and employees of a corresponding new bank against all losses and expenses incurred by them in or in relation to the discharge of their duties except such as have been caused by their own wilful act or default. The question for consideration is whether, in view of these provisions, the Punjab National Bank is or is not an "authority" within the meaning of Article 12 of the Constitution.

5. The question as to who is an "authority" within the meaning of Article 12 of the Constitution was considered at great length by the Supreme Court 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, . There the question arose whether the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation were "authorities" within the meaning of Article 12 of the Constitution. Ray C.J., after referring to the provisions of the Oil and Natural Gas Commission Act, observed :

" 44. All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the capital, the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all authority and agency of the Central Government.....

60. The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The Commission has the exclusive privilege of extracting petroleum. The management is by the Government. It can be dissolved only by the Government.....

64. The Oil and Natural Gas Commission Act confers power of entry on employees of the Commission upon any land or premises for the purpose of lawfully carrying out work by the Commission. The members and employees of the Commission are public servants within the meaning of Section 21 of the Indian Penal Code. The Commission enjoys protection of action taken under the Act."

6. Referring to the provisions of the Life Insurance Corporation of India Act, it was observed:

"50. The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands are also of the Central Government.....

61. The Life Insurance Corporation is owned by the Government. The life insurance business is nationalised and vested in the Corporation. No other insurer can carry on life insurance business. The management is by the Government. The dissolution can be only by the Government.....

65. The Life Insurance Act provides that if any person lawfully withholds or fails to deliver to the Corporation any property which has been transferred to and vested in the Corporation or wilfully applies them to purposes other than those expressed or authorised by the Act, he shall, on the complaint of the Corporation, be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. The Corporation also enjoys protection of action taken under the Act."

7. With reference to the provisions of the Industrial Finance Corporation Act, the

learned Chief Justice said t

"59. These provisions of the Industrial Finance Corporation Act show that the Corporation is in effect managed and controlled by the Central Government.....

62. The Industrial Finance Corporation is under the complete control and management of the Central Government. Citizens cannot be shareholders. Certain specified institutions like scheduled banks, insurance companies, investment trusts and co-operative banks may apply for the shares. The Central Government may acquire shares held by shareholders other than the Development Bank. After such acquisition the Government may direct that the entire undertaking of the Corporation shall be vested in the Development Bank. The Corporation cannot be dissolved except by the Government.....

66. The Industrial Finance Corporation Act states that whoever in any bill of lading, warehouse receipt or other instrument given to the Corporation whereby security is given to the Corporation for accommodation granted by it wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. Further, whoever without the consent in writing of the Corporation uses the name of the Corporation in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to one thousand rupees or with both. The Corporation enjoys protection of action taken under the Act. A company incorporated under the Indian Companies Act does not enjoy these privileges."

8. Finally, the learned Chief Justice held as follows :

" 67. For the foregoing reasons we hold that rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. By way of abundant caution we state that these employees are not servants of the Union or the State. These statutory bodies are " authorities " within the meaning of Article 12 of the Constitution. "

9. Applying the principles laid down 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, , there can be no doubt that Punjab National Bank is an "authority" within the meaning of Article 12 of the Constitution. Punjab National Bank, as distinguished from the Punjab National Bank Ltd., is not a company incorporated pursuant to the provisions of the Companies Act, but is a body created by statute, namely, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is wholly owned by the Central Government. The general supervision, direction and management of the

affairs and business of the Punjab National Bank are vested in a board of directors appointed pursuant to a scheme made by the Central Government in consultation with the Reserve Bank of India. The Central Government has the power to modify the scheme from time to time. The Central Government is entitled to give directions to the bank. The audit report is to be submitted to the Central Government and the Central Government is under an obligation to lay the report before both Houses of Parliament. The profits of the bank are required to be transferred to the Central Government. The officers and employees of the bank are granted immunity against losses and expenses incurred in connection with the discharge of their duties. It is clear from these provisions that the Government, instead of itself carrying on the business of banking, as it certainly is entitled to, has chosen to carry on the business through the instrumentality of the Punjab National Bank and other "corresponding new banks", created by the statute and wholly owned by the Government. It is "State action" through bodies corporate, owned "body and soul" (if such an expression may be used) by the State. We have no doubt that the "new corresponding banks" are authorities within the meaning of Article 12 of the Constitution. Our view is supported by a decision of the Gujarat High Court in *Sukhdev Rati Lal v. Chairman, Bank of Baroda* 1976 (2) SL R 144 and that of a learned single judge of this court in *Chaman Lal Gupta v. Punjab National Bank* (RSA. No. 1797 of 1973).

10. Shri D.S. Nehra, learned counsel for the bank, argued that the bank continued to be a company and relied upon Section 11 of the Act, which provides that for the purposes of the Income Tax Act, 1961, the bank shall be deemed to be an Indian company. The submission of Shri Nehra is entirely without substance. Shri Nehra is confusing Punjab National Bank with the Punjab National Bank Ltd. While the Punjab National Bank Ltd. was a company incorporated pursuant to the provisions of the Indian Companies Act, Punjab National Bank, the corresponding new bank, is a creature of statute. The fact that it is required to be assessed to Income Tax as an Indian company does not make it a company incorporated under the Indian Companies Act. In fact if it was a company under the Companies Act, Section 11 of the Act would be redundant.

11. The next question for consideration is whether the staff department Circular No. 20 dated October 28, 1952, can be said to have statutory force. It is not disputed by the learned counsel for the bank that the provisions of the circular have not been replaced by any later statutory regulations and that it continues to be in force and governs the relations between the bank and its employees. It is also not disputed that the provisions of the circular apply to all classes of employees of the bank and contain rules of general conduct. In form and content, the circular has the attributes of "law" rather than "administrative instructions". The difference between law and administrative instructions has been brought out 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, , as follows :

" Another characteristic of law is its content. Law is a rule of general conduct, while administrative instruction relates to particular person. This may be illustrated with reference to regulations under the Acts forming the subject-matter of these appeals. The Life Insurance Corporation Act as well as the Industrial Finance Corporation Act confer power on the Corporation to make regulations as to the method of recruitment of employees and the terms and conditions of service of such employees or agents. The Oil and Natural Gas Commission Act u/s 12 states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide, inter alia, the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory."

12. Now, therefore, if a nexus is established between the circular and a statutory power, the circular must be held to have statutory force. Sections 19(1) and 19(2)(d) enable the board of directors of the bank to make regulations prescribing the conditions of service of its officers and employees. It is not disputed that staff department Circular No. 20 dated October 28, 1952, deals with the general conditions of service of the bank's officers and employees. It is also not disputed that it continues to govern the relations between the bank and its officers and employees even now. It is further not disputed that if the circular had been issued subsequent to the passing of the Banking Companies (Acquisition and Transfer of Undertakings) Act, it could have been issued under Sections 19(1) and 19(2)(d) of the Act. Section 19(3) provides that regulations, rules, bye-laws and orders made by the existing bank shall be deemed to be regulations made u/s 19(1) until fresh regulations are made u/s 19(1). In view of the provisions of Section 19(3) it must be held that Circular No. 20 dated October 28, 1952, has the same force as a regulation made under Sections 19(1) and 19(2)(d) of the Act. Circular No. 20, therefore, has statutory force. A.R. Joshi v. State Bank of India (C.W.P. No. 838 of 1968), a decision of the Delhi High Court on which Shri D.S. Nehra, learned counsel for the bank, relied, has no application, since in that case the court came to the conclusion that there were no statutory regulations and, therefore, the employees had no statutory status.

13. The next question for consideration is whether there has been any breach of the provisions of Circular No. 20 ? In the paragraph relating to " punishment" it is stated as follows :

" The staff committee shall consider all punishment, including dismissals. Before an employee is punished, he shall be faced with the charge-sheet and his explanation thereto shall be duly considered to find out the extent of his fault, if any. The punishment shall be commensurate with the offence in the background of the history of the employee. "

14. The submission of Shri D.S. Nehra, learned counsel for the bank, was that the only stipulation was to ask for the explanation of the employee before disciplinary action was taken and if that was done there was no further scope for the application of any so-called principle of natural justice. We do not agree with the submission of Shri Nehra. If Circular No. 20 has statutory force and if the power to take disciplinary action is traceable to Circular No. 20, the existence of a duty to observe the rules of natural justice would be presumed. The very object of seeking the explanation of the employee is to observe the rules of natural justice. The content of the requirement to observe the rules of natural justice will naturally depend on the facts and circumstances of the case. 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*, , the Supreme Court observed as follows :

" An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of the statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by the statute. "

15. The question for consideration is whether the principle of natural justice embodied in the requirement of Circular No. 20 that the employee " shall be faced with a charge-sheet and his explanation thereto shall be duly considered to find out the extent of his fault, if any " has been observed. The petitioner was served with a notice calling upon him to offer his explanation. The notice has been extracted by us at the outset. It is seen that apart from mentioning the names of the persons, who are said to have paid bribes to the petitioner, no other particulars have been given in the notice. Even the dates, when the bribes are supposed to have been paid, are not mentioned. The amounts of loan taken by the parties are not mentioned and the purposes for which loans were taken are also not mentioned. The petitioner was not supplied with copies of the statements, said to have been made by the several borrowers. The information given in the notice was meagre and wholly insufficient to enable the petitioner to offer any explanation. Therefore, he requested that copies of statements, etc., might be supplied to him. His allegation was that the statements were not attested by the Oath Commissioner, Mohindergarh, as alleged in the notice. He further alleged that the very report of the area manager, Rohtak, who enquired

into the matter would show that his allegation was true. The bank refused to give him copies of the statements and the reports of the inspector and area manager. The petitioner then asked to be permitted to copy the statements. Even that was denied. He was asked to peruse the statements and submit his explanation. We do not think that the bank acted fairly. The essence of natural justice is fair play. The petitioner could not be expected to remember verbatim the various statements allowed to be perused by him. It might have been possible for him to submit an explanation, if he was allowed at least to take notes of the statements. From the correspondence it is clear that the bank was insisting that the petitioner should merely peruse the statements and not copy the statement or make any notes. In the reply now filed on behalf of the bank it is stated that the bank was willing to permit the petitioner to take notes at the time of perusing the statements. This is a statement which has been made for the first time in this court. In none of the letters addressed by the bank to the petitioner is there the slightest indication that the bank was willing to permit the petitioner to make notes of the statements. We have no doubt that the present case of the bank is a mere afterthought. In the circumstances we are compelled to say that the petitioner was not given reasonable opportunity to submit his explanation to the charges levelled against him. There was a clear breach of the principle of natural justice incorporated in Circular No. 20 dated October 28, 1952, the relevant part of which has been extracted by us.

16. We, therefore, allow the writ petition and quash the order dated September 29, 1976. The petitioner will be reinstated in service with all consequential benefits. The petitioner is entitled to have his costs.

Gurnam Singh, J.

17. I agree.