(2001) 01 PAT CK 0033

In the Patna High Court

Case No : C.W.J.C. No. 8292/1999

Lakshman Kumar Varma APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0033

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition the petitioner is aggrieved by the orders dated March 21, 1997 (Annexure 1), March, 24, 1998 (Annexure 2) and June 16, 1999 (Annexure 3) passed by the appointing authority, the appellate authority and the reviewing authority, namely, the General Manager (Operation). The Deputy Managing Director and C.D.O. Central Office and the Reviewing Committee (II) of the State Bank of India, respondents No. 3, 5 and 6 respectively, and thus, has prayed for quashing of the said orders and for direction to the respondents to give consequential benefits at the rate of 18% per annum and cost of the proceeding.

2. In short, the relevant facts are that the petitioner was initially appointed as Clerk in the State Bank of India (hereinafter referred to as ''the Bank'') on March 27, 1972 and was promoted on March 6, 1990 as an Officer in Middle Management Grade II. vide order passed by the Chief General Manager with effect from August 1, 1988, as contained in Annexure 4. While the petitioner was posted as Branch Manager at Mahuadanr, an explanation was called for, vide letter dated December 24, 1992. contained in Annexure 5, with respect to the charge of misappropriation. The petitioner, claims to have submitted his explanation on December 29, 1992. Thereafter on January 12, 1993. he was placed under suspension and attached to Daltonganj Branch for the purpose of drawing subsistence allowance, vide-Annexure 6. The petitioner filed writ petition, bearing C.W.J.C. No. 810 of 1993 challenging the said order of suspension, which was later withdrawn on March 5, 1993. The petitioner was

served with articles of charges, vide letter dated July 4, 1994, contained in Annexure 7. It is alleged that he was not served with the statement of allegations along with the said charges as required under the rules. However, he filed show cause on August 18, 1994, contained in Annexure 8, denying allegation and requesting not to proceed against him and exonerate him of the charge on review.

3. On September 26, 1994 an inquiry officer was appointed and the inquiry was concluded on December 29, 1995. The inquiry officer submitted his report on May 14, 1996, as contained in Annexure 15. The inquiry officer found Charge/ allegation No. 1 (a), l(b) and l(c) as not proved, Charge/allegation No. 2 was found partially proved, Charge/allegation No. 3 was found to be substantiated and Charge/allegation No. 4 was partially proved. The disciplinary authority vide letter dated July 10, 1996 contained in Annexure 14, while disagreeing with the findings of the inquiry officer in respect of Allegation No. 1(b), 2 and 4, forwarded a copy of the inquiry report to the petitioner requiring him that if he so desires he may make any representation or submission within 15 days of the receipt of the said letter and if no submissions are received, the disciplinary authority/appointing authority would proceed to take such action on the report as deemed fit.

4. The petitioner claims to have filed second show cause, vide Annexure 16, and the General Manager, who at the relevant time was the appointing authority, passed the impugned order (Annexure 1) inflicting penalty of removal of the petitioner from Bank''s service in terms of Rule 67(i) of the State Bank of India Officers Service Rules and also the punishment that the period of suspension shall be treated as such, i.e., not on duty. It was further directed that the petitioner would not be entitled to any benefit viz. salary and allowances, increments, etc. other than the subsistence allowance already paid to him for the period he remained under suspension. The petitioner thereafter preferred appeal which has been rejected, vide impugned order contained in Annexure 2, by the Chief General Manager, against which he again preferred a petition for review which was also rejected, vide impugned order contained in Annexure 3, by the Reviewing Committee (II).

5. Counter-affidavit and supplementary counter-affidavit have been filed on behalf of the respondent-Bank, to which the petitioner has filed his reply and rejoinder affidavit also.

6. Mr. Ojha, learned counsel appearing for the petitioner while assailing the impugned order contended that the order of removal having not been passed by the appointing authority is violative of Rule 68 (3) (iii) of the State Bank of India Officers Service Rules (hereinafter referred to as ''the Rules'') and thus contended that the subsequent orders passed by the appellate authority as well as the reviewing authority are also bad in law.

7. On the other hand, Mr. Sinha, learned senior counsel appearing for the

respondent- Bank has submitted that it is true that the appointment of the petitioner as an Officer in the Middle Management Grade II was made by the Chief General Manager, but later the appointing authority for Middle Management Grade II was changed with effect from February 4, 1997, vide Circular dated March 5, 1997, contained in Annexure-B to the supplementary counter-affidavit filed on behalf of the respondent Bank. It is submitted that initially the authorities to impose minor and major penalty on an Officer of Scale I and II were the General Manager and the Chief General Manager respectively but under the revised instructions (Annexure B), the said authorities were the Deputy General Manager and the General Manager respectively. This, according to him, was obviously on account of change of the disciplinary authority who before the time of the revised instructions was the General Manager in case of both the penalties whereas after the revised instructions, the Deputy General Manager has been delegated with the power of disciplinary authority. This revised instructions was issued as per the decision of the Executive Committee in terms of the definition of the ''disciplinary authority'' as contained in Rule 3(1)(h) of the Rules, according to which, "Disciplinary Authority" means the authority specified as such by the Executive Committee from time to time and Rule 3(1)(j) defines "Executive Committee" which means the Executive Committee of the Central Board. It is submitted that the impugned order, contained in Annexure 1, has been passed by the General Manager (D & PB) as an appointing authority who under the revised instruction was competent to impose such penalty and the Chief General Manager was the appellate authority and the reviewing committee was the reviewing authority. Thus, according to him there is no substance in the submission of the learned counsel for the petitioner with respect to the power of the General Manager in passing the impugned order. Learned counsel placed reliance on a decision of the Supreme Court in the case of State of Bank of India Vs. S. Vijaya Kumar, . :

8. Mr. Ojha, learned counsel for the petitioner, in reply, submitted that the revised instruction itself is bad as it is not of the Central Board and secondly that it was never circulated as required under Rule 78 of the Rules which provides that every officer to whom these rules apply shall be entitled to a copy of the rules and his acknowledgment will be obtained on Form A prescribed in Appendix 1 to the Rules. According to the learned counsel for the petitioner, the fact that the said revised instruction was never circulated has not been denied by the respondent Bank and as such it is bad in law. According to Mr. Ojha, proviso to Rule 68(3)(iii) also stands violated as it has admittedly not been passed by the Chief General Manager, who was the appointing authority of the petitioner. He placed reliance on a catena of decisions in the cases of Munna Lal Gupta v. Delhi Municipal Corporation, 1967 S.L.R. 56, Mahadev Prasad v. S.N. Chatterjee AIR 1954 Pat 285 AIR 1949 112 (Privy Council) . N. Somasundaram v. State of Madras AIR 1956 Mad 419 AIR 1937 27 (Privy Council) and Krishan Murari Lal Sehgal Vs. State of Punjab, .

9. The decisions relied upon by Mr. Ojha do not relate to the provisions applicable

to the officers of the State Bank of India and are not of much avail in support of the contention of Mr. Ojha. In fact, the said question has been I decided by the Apex Court in the case of State Bank of India v. S. Vijaya Kumar (supra). In the said case, the Apex Court while dealing with the question of dismissal by an, authority lower than the appointing authority upheld the validity of the order of punishment as Chief General Manager at the relevant time had become under amended Regulations appointing authority in respect of the delinquent officers and it was held mat protection against dismissal I afforded by Regulation 55(2)(a) and by Article 311 is different. The Court held that the date on which the order was passed was relevant to determine competency.

10. The "Appointing Authority" is defined under Rule 3(1)(a), according to which it means such authority as designated in accordance with Regulation 55 of the State Bank of India General Regulations, 1955 (hereinafter referred to as ''the Regulations''). Regulation 55 of the Regulations provides, that save as provided in Sub-regulation (2) and as may be directed by the Central Board, a local Board may exercise all the powers of the State Bank in respect of the staff serving in the areas in its jurisdiction. Clause (a) of Sub-regulation (2) of Regulation 55 of the Regulations provides that the appointing and/or promoting authority for various categories/grades of officers and employees shall be such as the Executive Committee may by general or special order designate from time to time. "Executive Committee" has been defined under Rule 3(1)(j), according to which it means the Executive Committee of the Central Board.

11. Bare perusal of Annexure-B shows that the revised instructions were placed before the Executive Committee of the Central Board at its meeting held on February 4, 1997 and approved by them, which has been circulated on March 5, 1997, vide Annexure B. Rule 14(1) provides that all appointments in, and promotions to, the officers grades shall be made by the competent authority in accordance with the policy or guidelines, if any, laid down in this behalf by the Central Board or the Executive Committee. In exercise of the said power, the Executive Committee, vide Annexure-B, brought change in the existing position with respect to the authority for. appointments in or promotions to various grades, including Middle Management Grade Scale II for which under the position as existed then Chief General Manager was the competent authority but after the change, General Manager has been made the appointing authority as well as the promoting authority and as such, this Court does not find any substance in the submission of the learned counsel appearing for the petitioner that the order of punishment (Annexure 1) has not been passed by the competent authority, namely, the appointing authority.

12. Article 311 of Constitution of India provides that no person who is a member of a Civil service of the Union or an all-India service or a Civil service of a State or holds a Civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed whereas the power with regard to staff of the Bank in this regard is provided in Regulation 55(2)(b)

of the Regulations, according to which, no officer or employee of the Bank shall be dismissed, discharged, removed or retired from the service of the Bank or reduced to a lower grade or post or to a lower stage in a time scale by an authority lower than the appointing authority. The Explanation further provides that for the purpose of Clause (b), the term "appointing authority" shall mean and include the authority who has been designated as such in respect of such class of grade of officers or employees to which the officer or employee concerned, as the case may be, belongs at the time when such order is passed or any proceeding leading to such order or termination is initiated. The Officers or employees of the State Bank can thus claim protection as provided under Regulation 55(2)(b) of the Regulations, according to which, no officer or employee of the Bank can be dismissed, discharged, removed or retired from the service by an authority lower than the appointing authority. It is not in dispute that on the date when the order of dismissal was passed, the General Manager had already become the appointing authority by virtue of the revised instructions and as such, ..in my opinion, the order of dismissal has not been passed by the authority lower than the appointing authority as has been held by the Apex Court in the case of State Bank of India v. S. Vijaya Kumar, (supra).

13. There is no force in the submission of the learned counsel for the petitioner that the revised instruction cannot be enforced in the case of the petitioner as it has not been served on him in terms of the provisions contained in Rule 78. Learned counsel for the respondent-Bank has rightly contended that Annexure-B is not an amendment to the Rules. It has merely been passed in exercise of the powers vested in the Executive Committee for delegation of administrative powers under the Rules and the Regulations. Rule 78 of the Rules only provides that every officer to whom these Rules apply shall be entitled to a copy of the Rules and his acknowledgment will be obtained on Form A prescribed in Appendix 1 to the Rules and not that the said requirement will also have to be complied where the Executive Committee in exercise of the power under Regulation 55(2)(a) designates administrative powers relating to appointment and/or: promotion for/various categories/grades of officers and employees of the Bank. In my opinion there is no question of bringing change in the Rules itself. Annexure-B only consists of comprehensive list of competent authorities under the Rules covering all the aspects which was placed before the Executive Committee of the Central Board at its meeting held on February 4, 1997 and approved by them designating competent authorities with effect from February 4, 1997, the date on which the approval was given by the Executive Committee of the Central Board.

14. Mr. Ojha, learned counsel for the petitioner has ventured to submit that the decision taken by the Executive Committee, vide Annexure-B amounts to bringing change in Appendix II of the Rules and, as such, on account of non-compliance of the requirement of the provisions contained in Rule 78, the revised instruction is vitiated. It was also submitted that the revised instruction destroys the rights of the petitioner for consideration of his case by two separate authorities as per the provisions, contained in Rule 68(3).

15. The Court does not find any substance in the said submission of Mr. Ojha Appendix II does not provide that it forms part of the Rules. Moreover, from the notes to the said Appendix II it is clear that power to make further delegation in respect of the matters contained, therein has been vested with the approval of the Executive Committee. Therefore, in my opinion, non-compliance of the requirement of Rule 78 will not vitiate the revised instructions (Annexure-B). Equally there is no substance in the submission of Mr. Ojha that it destroys the rights of the petitioner for consideration by two authorities as per the provisions contained in proviso to Rule 68 (3)(iii). Rule 68(3)(iii) is only applicable to a case where the disciplinary authority is lower in rank to the appointing authority, in which case the disciplinary authority is required to submit the records to the appointing authority if he is of the opinion that the penalty is any of the major penalties specified in clauses (e), (f), (g) and (h) of Rule 67, but where the disciplinary authority and the appointing authority are same, there would not be any question for placing the records of the inquiry before the appointing authority as in the present case.

16. On merit, it has been submitted by the learned counsel for the petitioner that the entire proceeding is vitiated as the statement of allegations was not served along with the articles of charges and notice to show cause and that it was served only in course of inquiry. As such, according to him, Rule 68(2)(iii) has been violated which vitiated the proceeding. Learned counsel for the Bank has submitted that admittedly the statement of allegations was received by the petitioner in course of inquiry on December 27, 1994 i.e. much before the inquiry was concluded and the notice of disagreement was served upon him. The petitioner submitted his reply on August 6, 1996 and February 4, 1997, but no prejudice caused to him has been alleged. Under such circumstances, according to the learned counsel for the Bank, unless it is alleged that the prejudice has been caused to the petitioner on account of non-service of the statement of allegations, the order of punishment would not vitiate on that count.

17. This Court finds substance in the submission of the learned counsel for the Bank. Learned counsel for the petitioner has not been able to show that any prejudice has been caused to the petitioner on account of non-service of the statement of allegations along with the memo of charge. It is admitted that the statement of allegations was received by the petitioner in course of the inquiry much before the report was submitted by the inquiry officer. Under such circumstances, in my opinion, the inquiry is not vitiated on account of non-service of the statement of allegations along with the article of charges. Moreover, learned counsel for the petitioner has failed to show that the petitioner ever raised such question before the appellate authority as well as the reviewing authority.

18. Under the said circumstances, this Court does not find any reason for interfering with the impugned orders. The writ application is, thus, dismissed. However, in the facts and circumstances, there shall be no order as to costs.