
(2002) 11 GAU CK 0028
In the Gauhati High Court
Case No : WP (C) No. 2980 of 2001

Motiur Rahman

APPELLANT

Vs

United Commercial Bank and Others

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 467

Citation : (2003) 1 GLR 303 : (2003) 1 GLT 196 : (2003) 2 LLJ 217

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B.K. Sarma and P.K. Tiwari, for the Appellant; P.C. Deka and S.K. Medhi, for the Respondent

Final Decision : Partly Allowed

Judgement

Ranjan Gogoi, J.—The validity of the disciplinary proceeding initiated against the writ petitioner by a charge memo dated 29.9.2000 and a notice dated 12.4.2001 asking the writ petitioner to show cause against the proposed penalty after holding the writ petitioner guilty of the charges brought is the subject-matter of challenge in the present proceeding.

2. The facts of which the instant challenge is founded, may be recited very briefly.

The petitioner who was at the relevant point of time working as a Clerk-cum-Assistant Cashier at Debok Branch of the respondent-Bank was charge sheeted by a charge memo dated 29.9.2000. The essence of the charges brought against the writ petitioner is that while the writ petitioner was employed in the aforesaid capacity in the concerned Branch of the respondent-Bank, against receipt of different amounts in cash deposited by the customers of the Bank, the writ petitioner had signed and affixed the seal of the Bank on the counterfoils of pay-in-slips and had also undated the Pass Books of the concerned customers without however, reflecting the aforesaid deposits in the Ledgers of the Bank. Such illegalities, it was alleged, were committed by the writ petitioner in respect of a

large number of accounts the details of which as well as the particulars of the account-holders were mentioned in the charge memo dated 29.9.2000.

The petitioner submitted his reply to the aforesaid charge memo on 1.12.2000 and the explanations furnished not having been found to be satisfactory by the respondent-Bank, an Enquiry Officer was appointed to make an enquiry into the alleged charges levelled. The Enquiry Officer, after being so appointed, issued notice dated 12.12.2000 to the petitioner asking the petitioner to appear before him on the date fixed for enquiry. In the meantime, a FIR dated 11.1.2001 was filed by the Bank authority alleging commission of criminal offences in respect of various acts mentioned in the charge memo dated 29.9.2000. On the basis of the aforesaid FIR, Rangia Police Station Case No. 13/2001 was registered against the writ petitioner under Sections 409/467 of the Indian Penal Code. The writ Petitioner by a communication dated 29.1.2001 requested the Enquiry Officer to defer the enquiry proceeding as the facts on which the disciplinary proceeding was initiated were same and similar to the facts on the basis of which the criminal proceeding was lodged. However, it appears that the Enquiry Officer proceeded further in the disciplinary proceeding against the writ petitioner requesting the writ petitioner from time to time to participate therein. On 23.3.2001, the writ petitioner reiterated his prayer for deferment of the disciplinary proceeding by submitting a written request to the disciplinary authority. However, nothing appears to have materialised from the request by the writ petitioner for deferment of the disciplinary proceeding and in fact, the enquiry was completed ex-parte on 20.3.2001. The Enquiry Officer submitted his report which was adverse to the writ petitioner. Acting on the basis of the Enquiry Officer's report, the disciplinary authority found the writ petitioner to be guilty of the charges levelled and on that basis, issued the communication dated 12.4.2001 informing the petitioner that he has been found guilty of the charges levelled and asking him to show cause against the proposed penalty of dismissal from service. It may be noticed at this stage that the report of enquiry was furnished to the writ petitioner for the first time along with the aforesaid notice dated 12.4.2001. Aggrieved, the instant writ petition has been filed.

3. Mr. B.K. Sarma, learned Sr. counsel appearing on behalf of the writ petitioner in a short and precise argument has sought to fortify the challenge made in the writ petition on two principal grounds, Firstly, it is contended by the learned counsel that as the disciplinary proceeding as well as the criminal case have been initiated on identical facts, having regard to the law laid down by the Apex Court, in the facts of the present case, it was desirable that the disciplinary proceeding should have been deferred till the conclusion of the criminal case as prayed for by the writ petitioner before the Enquiry Officer as well as before the disciplinary authority. It is argued that the continuation of the disciplinary proceeding would have seriously prejudiced the writ petitioner in his defence in the criminal case and, therefore, the writ petitioner was compelled to stay away from the aforesaid proceeding which came to be concluded ex-parte. Mr. Sarma has pressed into service a decision of the Apex Court in the case of Capt. M. Paul Anthony Vs.

Bharat Gold Mines Ltd. and Another, in support of the above contention. The second limb of the arguments advanced on behalf of the petitioner is that in the instant case, the report of the Enquiry Officer was furnished to the writ petitioner along with the notice dated 12.4.2001 asking the writ petitioner to show cause against the proposed penalty. It is argued that in the aforesaid notice dated 12.4.2001, the disciplinary authority had already recorded its conclusion that the petitioner is guilty of the charges levelled against him. Mr. Sarma contends that an opportunity to persuade the disciplinary authority not to accept the report of enquiry and not to proceed further on that basis is an integral part of the doctrine of reasonable opportunity to which the writ petitioner is entitled. The report of enquiry has to be furnished at a stage where the disciplinary authority is yet to make up its mind. The doctrine of reasonable opportunity having been breached by the actions of the disciplinary authority, the notice dated 12.4.2001 holding the petitioner to be guilty of the charges levelled is illegal, contends Mr. Sarma, learned counsel appearing on behalf of the writ petitioner. Mr. Sarma has placed reliance on an Apex Court judgment in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., in this regard. The third argument raised on behalf of the writ petitioner is that the facts and events on account of which the writ petitioner was compelled to stay away from the enquiry, would call for appropriate interference by this Court with the enquiry held and the findings recorded therein.

4. Mr. P.C. Deka, learned counsel appearing on behalf of the respondent-Bank has sought to controvert the arguments advanced on behalf of the writ petitioner by contending that it is not an invariable requirement of law that a criminal case as well as a disciplinary proceeding, on the same set of facts, cannot proceed simultaneously. Mr. Deka has submitted that in the facts of the instant case the writ petitioner having already submitted his reply to the charges, no question of prejudice can legitimately arise. The charges brought against the writ petitioner in the disciplinary proceeding are grave and serious and reflect upon the reputation of the Bank. It is, therefore, in the interest of the Bank as well as in public interest that the disciplinary proceeding should be concluded at the earliest so that the culpability of the writ petitioner can be judged. Learned counsel had placed before the Court a letter written by the writ petitioner on 8.2.2000 in which, it is contended, admissions have been made by the writ petitioner with regard to at least some of the charges brought against him. In such a situation, according to the learned counsel for the respondents, there can be no justification for deferring the disciplinary proceeding till the conclusion of the criminal case which is a very uncertain event. Mr. Deka has further submitted that time and again notices were issued to the writ petitioner by the Enquiry Officer for his participation in the enquiry proceeding. The writ petitioner did not participate in the said proceedings in spite of receipt of notice and, therefore, cannot have any grievance as has not been sought to be raised in the present proceeding. Coming to the notice dated 12.4.2001, the submission of Mr. Deka is that the conclusion of guilt recorded in the said notice is tentative and the writ

petitioner has been afforded with an opportunity to show cause against the said findings as well as the proposed penalty. No prejudice therefore, can be said to have been caused to the writ petitioner.

5. The submissions advanced on behalf of the rival parties have been duly noticed. The law relating to continuation of a disciplinary proceeding and a criminal case on the same set of facts has been considered by the Apex Court in very many cases since the decade of 1960s. The law in this regard has been succinctly laid down in a recent pronouncement of the Apex Court in the case of *M. Paul Anthony v. Bharat Gold Mines Ltd.* (supra), reliance on which has been placed on behalf of the writ petitioner. The Apex Court after recapitulating the entire development of law in this regard has held that there is no absolute legal bar to the simultaneous continuation of a disciplinary proceeding and a criminal case founded on the same set of facts. The justifiability, propriety and/or advisability of the continuation of a disciplinary proceeding where a criminal case is pending on the same facts, according to the Apex Court, would in the last resort be relatable to the facts of a given case. Prior to the judgment in *Paul Anthony* (supra) the paramount factor that had to be considered by the Court while examining the claim of an affected employee to defer the departmental proceeding until the conclusion of the criminal case was understood to be - whether the continuation of the departmental proceeding would cause prejudice to the affected employee in the criminal proceeding. The Apex Court in *Paul Anthony* (supra) has clearly laid down the law that prejudice is only one of the factors which would go into the balancing scale to determine the advisability, desirability or propriety of deferring the disciplinary proceeding. The Apex Court has also clearly laid down that it is in public interest to ensure that the departmental proceeding is brought to the earliest conclusion so that the culpability or otherwise of the charged officer can be judged. These are, therefore, the two conflicting and competing forces that will have to be balanced by the Court in determining the claim of the writ petitioner as made in the present case.

6. Turning to the facts of the present case, this Court finds that the writ petitioner had already submitted his reply to the charged levelled against him by charge memo dated 29.9.2000, In the aforesaid reply, the writ petitioner apart from denying the charges brought against him had put forward his own version of the case. When the defence of the writ petitioner in the departmental proceeding had already been made known and the criminal proceedings were instituted after such reply of the writ petition was filed, it is difficult to comprehend how any serious prejudice would have been caused to the writ petitioner. That apart, it has not been pleaded by the writ petitioner as to what is the present stage of the criminal proceeding. That criminal trials at times drag on for years is a known fact. The charges against the writ petitioner are that though he had received cash deposits from the customers of the Bank and he had signed the counterfoils and had also updated the Pass Books of each customer, the corresponding entries were not made in the Ledgers of the Bank. The charge is

indeed serious and has the effect of telling upon the reputation of the Bank. Public interest would, therefore, demand that the exact role and responsibility of the writ petitioner in such acts is determined at the earliest. In the departmental proceeding, the culpability of the writ petitioner had to be judged on the basis of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. As already stated, the present stage of the criminal proceedings have not been made known to the Court. On a consideration of the totality of the facts as recited above, it will be difficult for this Court to hold that the respondent authority had committed any error in continuing with the departmental proceeding during the pendency of the criminal trial against the writ petitioner. The first contention advanced on behalf of the writ petitioner, therefore, has to fall.

7. To decide the second contention advanced on behalf of the writ petitioner, it will be necessary for this Court to turn to the law laid down by the Apex Court in the case of Managing Director, ECIL v. K. Karunakar (supra). While the details of the case need not detain the Court, it must be noticed that in the aforesaid case, the Apex Court has set at rest the controversy that had repeatedly occurred over the question of the stage of the enquiry at which the delinquent employee is entitled to receive a copy of the Enquiry Officer's report and the consequences of non-furnishing of such report. After elaborate consideration of the existing case law in this regard including the decision in the case of Ramjan Khan, the Apex Court held that an opportunity to persuade the disciplinary authority not to accept the Enquiry Officer's report and not to take any action on the basis thereof is a part of the doctrine of reasonable opportunity to which a delinquent employee is entitled. The Apex Court had clearly laid down that the said right would be available to the delinquent officer at a stage where the disciplinary authority is yet to make up its mind, as regards the culpability of the charged employee or otherwise. In the instant case, admittedly, no copy of the Enquiry Officer's report was furnished to the charged employee prior to the notice dated 12.4.2001 and a copy of the said report was served on him along with the notice dated 12.4.2001. But in the said notice dated 12.4.2001, the disciplinary authority has clearly held the writ petitioner to be guilty of the charges brought, on the basis of the report of the Enquiry Officer and has further asked him to show cause against the penalty proposed. The disciplinary authority, therefore, appears to have determined the culpability of the writ petitioner without furnishing to him a copy of the inquiry Officer's report. The mandate laid down by the Apex Court in the case of Managing Director, ECIL (supra) appears to have been clearly violated. The reasonable opportunity which the laws of the Country bestow on the writ petitioner appears to have been denied. This Court, therefore, has no hesitation in coming to the conclusion that the notice dated 12.4.2001 is void and illegal and needs to be interfered with. Accordingly, the said notice dated 12.4.2001 shall stand quashed.

8. The logical and natural further order that would be called for, in view of the conclusions reached by this Court, would be for the continuation of the

departmental proceeding against the writ petitioner from the stage of furnishing the report of enquiry. As all available grounds can now be taken by the writ petitioner to persuade the authority not to accept and act on the basis of the report of enquiry including the fact that the enquiry was concluded ex-parte, this Court does not consider it necessary to record any operative finding on the entitlement of the writ petitioner with regard to the third submission advanced, i.e., the validity of the enquiry held ex-parte. The fact, that the question of the validity of the continuation of the departmental proceeding against the writ petitioner has now been decided by the present judgment, will be taken into consideration by the disciplinary authority and when the question of the validity of the enquiry on the ground that it was held ex-parte is taken up by the writ petitioner before the said authority.

9. This writ petition is accordingly, partly allowed to the extent indicated above.