
(2010) 12 PAT CK 0066

In the Patna High Court

Case No : Letters Patent Appeal No. 559 of 2001

Mrs. Rita Prasad, Ms. Tanya Tanvi, Ms. Reetu Ranjan and Ms.
Reecha Ranjan

APPELLANT

Vs

The Board of Directors

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0066

Hon'ble Judges : Sudhir Kumar Katriar, J; Samarendra Pratap Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sudhir Kumar Katriar, J.—This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna raises a grievance with respect to the order dated 9.5.2001, passed by a learned Single Judge of this Court, in Ranjan Kumar v. The Board of Director through its Chairman, Nalanda Gramin Bank, Bihar Sharif and Ors. C.W.J.C. No. 12375 of 1999 whereby the writ petition has been dismissed, and the departmental proceeding leading to dismissal from service of the writ Petitioner has been upheld. The Bank had placed on record its counter affidavit in the writ proceedings.

2. Ranjan Kumar, the writ Petitioner, died during the pendency of the present appeal and has been substituted by his heirs including his widow. We shall describe Ranjan Kumar as "the employee".

3. A brief statement of facts essential for the disposal of this appeal may be indicated. The employee had joined the services of the Respondent-bank on 17.1.1983, as an officer. He was placed under suspension on 17.2.1995, in contemplation of a departmental proceeding. The charge-sheet incorporating six charges was served on 14.6.1995. He had shown cause before the learned enquiry officer. He had submitted his application dated 11.1.1997, for permission to be represented by a lawyer in the enquiry proceeding. The same was rejected

by the Bank's Chairman by communication dated 18.1.1997. The learned enquiry officer submitted his report dated 2.12.1997, wherein he held that all the six charges have been proved. Second show-cause notice dated 25.2.1998 along with a copy of the enquiry report was served on the employee as to why punishment of dismissal from service be not inflicted on him. The employee had shown cause on 14.3.1998. On a consideration of the materials on record including the cause shown by the employee, the learned disciplinary authority passed order dated 31.3.1998, dismissing the employee from service. The employee's appeal was dismissed by order dated 14.9.1999, leading to the writ petition which has also been dismissed.

4. While assailing the validity of the action of the Respondent authorities, learned Counsel for the Appellants submits that, in view of the clear provision obtaining in the written procedure to conduct departmental enquiry, the employee had made out a clear case for engagement of a lawyer which had illegally and arbitrarily been rejected. He relies on the following reported judgments of the Supreme Court:

(i) State Bank of Patiala and others Vs. S.K. Sharma, .

(ii) Pett v. Greyhound Racing Association Ltd. 1969(1) LR 125 .

4.1) He next submits that second show-cause notice dated 25.2.1998, was issued with a pre-determined mind to dismiss the employee which caused immense prejudice to him, and does not speak of an open mind to consider the cause shown by the employee. He relies on the judgment of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . He lastly submits that he was not afforded opportunity of personal hearing at the appellate stage.

5. Learned Counsel for the Respondents has supported the impugned action of the Respondent authorities. He submits that prejudice is the ultimate test in disciplinary proceedings. He relies on the judgment of the Supreme Court in M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, , wherein it has been laid down that the delinquent employee cannot claim engagement of a counsel to represent his cause in the departmental proceeding as a matter of right. The provision in the prescribed procedure is directory, not mandatory. He submits in the same vein that the present one is not one of those cases where it was imperative for the Bank to allow engagement of a counsel.

6. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It appears to us on a perusal of the charge-sheet that the employee was charged of diversion of Bank's funds to accounts of other account-holders and such other financial irregularities. The delinquent employee's representation during the course of enquiry proceedings in the present case is governed by the "GUIDELINES FOR THE PROCEDURE TO BE ADOPTED FOR DISCIPLINARY ACTION IN REGIONAL RURAL BANKS". The relevant portion is reproduced hereinbelow:

(f) DEFENCE REPRESENTATIVE:

RIDER-IV

A charge sheeted official has every right to represent his own case. At his option, he may be allowed to be represented by any other employee of the bank or an office bearer of the trade union of which he is a member. In such cases, the Charge-sheeted employee should address a letter to the bank or if an Enquiry Officer is already appointed to the Enquiry Officer concerned, proposing such representative as his nominee and declare that he (the charge-sheeted official) will be bound by all that the nominee does, says or signs. Wherever an Office bearer or other member of the Trade Union is deputed by the Union to defend the charge-sheeted employee, a formal letter should be addressed by the Trade Union stating that the nominee of the charge sheeted employee has been deputed on its representative to defend the charge sheeted employee. It is not necessary that the Union should have been recognized by the Bank. It is sufficient if the union of the Bank employees is a registered Union.

Generally, the charge-sheeted official is not entitled to be represented by a legal practitioner or an outsider who is not connected with the bank. However, if the presenting officer is a legally trained man including a Law Officer or a Legal Advisor of the Bank, the delinquent employee will have a right to be defended by a lawyer notwithstanding the prohibition contained in Sub Reg. (3) of Reg. 30 of the Staff Service Regulations. (Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,).

If an employee is charged for a gross mis-conduct involving criminal offences like fraud, misappropriation, embezzlement of accounts, forgery, theft, etc. and if he so requests to be permitted to be represented by a lawyer in the enquiry, the Enquiry Officer/Disciplinary Authority may notwithstanding the prohibition contained in Sub-Regulation (3) of Regulation 30 of the staff Service Regulations, consider such requests in the light of the facts and circumstances of the case and consider allowing the delinquent official to be represented by a legal practitioner or any other outsider of the choice of the delinquent. In such cases, the Bank also may consider getting its case represented by a legally trained person or a legal practitioner or a Law Officer of the Bank.

As to the question whether in a given case the charges are of a serious and of a complex nature involving criminal offences or not has to be decided by the Enquiry Officer/Disciplinary Authority on the basis of the facts and circumstances of the case and if necessary, the Legal Advisor of the Bank may be consulted.

(Emphasis added)

It is thus imperative that, as a basic rule, the delinquent employee is not permitted to be represented by a legal practitioner during the course of enquiry proceeding, or an outsider who is not connected with the Bank, unless the presenting officer is a legally trained person, including a Law Officer or a Legal

Advisor of the Bank. Learned Counsel for the Respondents before us informs us at the Bar that the Bank was represented by a Senior Manager who was not a law-knowing person. In that view of the matter, the applicability of first part of rider-IV is obviated in the present case.

6.1) However, applicability of the second part deserves serious consideration. On a perusal of the charge-sheet, we are convinced that the employee was charged with gross mis-conduct involving fraud, misappropriation, embezzlement of account, forgery etc. In that view of the matter, rejection of the employee's application for engagement of a counsel was in clear disregard of the procedure prescribed by the Bank. The entire text of the order dated 18.1.1997, conveying rejection of the employee's application for representation by a legal practitioner is reproduced hereinbelow:

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It appears to us that the Chairman completely overlooked the second part of rider-IV.

6.2) In view of the position that a clear provision is incorporated in the prescribed procedure, the Chairman of the Bank seriously erred in law by rejecting the employee's representation to be represented by a counsel. In the facts and circumstances of the present case, he had the only option of allowing the application, permitting the employee to be represented by a legal practitioner.

7. We have taken the view mainly because a written rule was in operation. Learned Counsel for the Appellants has rightly relied on the judgment of the Court of Appeal in *Pett. v. Greyhound Racing Association Ltd.* (supra). Speaking for the Court, Lord Denning observed (at page 133) that "...But the dictum does not apply to tribunals dealing with matters which affect a man's reputation or livelihood or any matters of serious import. Natural justice then requires that he can be defended, if he wishes, by counsel or solicitor". In that view of the matter, the judgment relied on by learned Counsel for the Respondents in *Cipla Ltd. v. Ripu Daman Bhanot* (Supra), does not apply to the facts and circumstances of the case, wherein the Supreme Court has upheld the employer's decision

declining permission to the employee to be represented by the legal practitioner. That was a case where the departmental rules relating to enquiry proceedings provided that the charged employee "be permitted to be defended by a co-representative of his choice". Furthermore, there was absence of a written rule which is in operation in the present case. The judgment in *Cipla Ltd. v. Ripu Daman Bhanot* (supra), is, therefore, inapplicable to the facts and circumstances of the present case.

8. Importance of procedure has been emphasized by the Supreme Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, . Speaking for the Court, Mr. Justice M.N. Venkatachaliah (as his Lordship then was), observed as follows:

The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the summary jurisdiction of the Court-Martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the power. The wider the power, the grater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the Statute. The oft quoted words of Frankfurter, J. in *Vitarelli v. Seaton* 359 US 535 are again worth recalling:

... if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed....

This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

"The history of liberty" said the same learned Judge "has largely been the history of observance of procedural safeguards." (1942) 318 US 332.

We are afraid, the non-compliance of the mandate of S.130 is an infirmity which goes to the root of the jurisdiction and without more, vitiates the proceedings. Indeed it has been so held by this Court in *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, where Desai J. referring to the purpose of S.130 observed:

...Whenever an objection is taken it has to be recorded. In order to ensure that anyone objected to does not participate in disposing of the objection....

...This is a mandatory requirement because the officer objected to cannot participate in the decision disposing of the objection.

... The provision conferring a right on the accused to object to a member of the Court-Martial sitting as a member and participating in the trial ensures that a charge of bias can be made and investigated against individual members composing the Court-Martial. This is preeminently a rational provision which goes a long way to ensure a fair trial.

What emerges, therefore, is that in the present case there is a non-compliance with the mandate of S.130 with the attention consequence that the proceedings of the Summary Court-Martial are rendered infirm in law. This disposes of the first limb of the contention (a).

9. Learned Counsel for the Respondents has relied on *State Bank of Patiala v. S.K. Verma* (supra), with particular emphasis on paragraph 4(b), at page 390 (f) (g), and is reproduced hereinbelow:

(4)

... ..

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/ employees has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,*. The ultimate test is always the same, viz. test of prejudice or the test of fair hearing, as it may be called.

10. We are mindful of the position that the employee may be required to establish prejudice for any action, or interlocutory order, or even the final order, passed by the enquiry officer or the disciplinary authority. However, in the present case, we are convinced that by declining permission to engage a legal practitioner, the employee was prejudiced in his defence. He may not have been able to measure up to the requirements of disciplinary proceeding and, therefore, really needed the assistance and support of a legal practitioner. It is for this reason that the framers of the guidelines have advisedly incorporated the second part in the guidelines, so that the delinquent employee would not be prejudiced in his defence during the course of enquiry proceedings particularly on account of the gravity of the charges of the nature indicated therein. Prejudice was surely caused to the employee in the present case.

11. We are reminded of the classic judgment of the House of Lords in *Council of Civil Service Unions and Ors. v. Minister for the Civil Service* (1984) 3 All E.R. 935, wherein it has been held that an administrative action is subject to control by judicial review under three heads, namely: (i) illegality, where the decision-making authority has been guilty of an error of law, i.e. by purporting exercise of a power it does not possess; (ii) irrationality, where the decision-making authority has guided so reasonable that no reasonable authority would have made the decision, and (iii) procedural impropriety, where the decision-making

authority has failed in its duty to act fairly. The relevant portion of the judgment is reproduced hereinbelow:

My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness (see *Associated provincial Picture Houses Ltd. v. Wednesbury Corporation* (1947) 2 All ER 680 : (1948) 1 KB 223. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstaw* (1955) 3 All ER 48 : (1956) AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality; by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review. I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative

tribunal at all.

12. We are of the view that the present case is covered by the second ground as well as the third ground. It is irrational because, in the facts and circumstances of the case and the substance of the charges, no reasonable authority would reach the decision dated 18.1.1997. It is surely a case of procedural impropriety also, being in gross violation of the prescribed written procedure.

13. In the result, this appeal is allowed, and the order of the learned disciplinary authority as well as the learned appellate authority are hereby set aside. Let the entire arrears of salary and the post-retirement benefits admissible to the employee be paid to Appellant No. 1 which shall carry interest at the rate of 9% from the date(s) the amounts became due till the date of payment. In view of the position that the employee is dead, it is not possible to grant liberty to the Respondents to proceed afresh with the departmental proceedings. In the facts and circumstances of the case, there shall be no order as to costs.