
(1995) 08 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 1739 of 1993

M.V. Palekar

APPELLANT

Vs

Bank of India and others

RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 LLJ 681

Hon'ble Judges : N.D. Vyas, J

Bench : Single Bench

Judgement

N.D. Vyas, J.—By the present petition, the petitioner has challenged the validity and legality of the order dated 19th December, 1992 passed by the Disciplinary Authority and the order dated 7th April, 1993 passed by the Appellate Authority and has prayed that both these orders be quashed and set aside. It is further prayed that the respondents be directed to reinstate the petitioner with full back wages and continuity in service with all other consequential benefits.

2. Briefly stated the facts giving rise to the present petition are as follows :- The petitioner joined services of the Respondent No. 1 in the year 1961 as a direct recruit. He was initially employed as a Sub-Officer and ultimately became Deputy General Manager at the Head Office of the Respondent No. 1 Bank. From 18th October, 1980 to 19th February, 1986 the petitioner was working as a Deputy Zonal Manager/Assistant General Manager of the Bombay Metropolitan Zone. During this period, in respect of one customer of the Bank viz., Patni Group of Concerns certain loan facility was granted. It is not necessary to deal in detail with the said transaction. Suffice to say that as and when necessary, some further facts would be referred to. In respect of the said transaction, on 24th April, 1991, a charge-sheet dated 13th April, 1991 was received by the petitioner. Alongwith the said charge-sheet, statement of allegations, list of documents, list of witnesses and copies of documents in respect of the charge-sheet were annexed. According to the charge-sheet, the petitioner was charged

with showing undue favours to Patni Group of Concerns without taking due care and overlooking the remarks of the Functional Department at Zonal Office in sanctioning the proposal for Rs. 20.20 lakhs put up by the Respondent No. 1 Bank's Mahalaxmi Branch on 10th February, 1986. It was further alleged that the petitioner was well aware that he had no authority to sanction the said proposal and that the said borrowers defaulted in the said payment forcing the Respondent No. 1 Bank to resort to legal action for recovery of the amount advanced. The petitioner was charged under Regulation 3(1) of the Bank of India Officer Employees' (Conduct) Regulations, 1976 (hereinafter referred to as the said Regulations). The petitioner was asked to give reply to the said charge-sheet within 15 days of the receipt of the said charge-sheet. The petitioner by his letter dated 26th May, 1991, after taking inspection of some of the relevant documents, replied to the said charges. Inter alia it was stated by the petitioner in his reply that he was innocent and the charges against him were not correct. In the said reply, the petitioner also explained the factual position which led to the sanction of the said loan to Patni Group. A departmental enquiry was instituted by the Respondent No. 1 Bank against the petitioner and the same was conducted by one Shri Vellayudhan. The petitioner was represented by a representative of the Officers' Association, one Shri A.P. Adhikari, and the Respondent No. 1 Bank was represented by one Shri Vemuri Pandu Ranga Rao. The hearing of the enquiry commenced on 13th January, 1992. Around 32 documents were produced by the Respondent No. 1 Bank and 12 documents were produced by the petitioner. Several witnesses were examined by the Respondent No. 1 Bank as prosecution witnesses. They were allowed to be cross-examined by the petitioner. The petitioner neither examined himself nor examined any witnesses on his behalf. The petitioner, before the commencement of the hearing of the said enquiry, requested that he be furnished with a copy of the investigation report. However, the same was not given on the ground that it was a privileged document. The enquiry came to be concluded on 12th May, 1992. The written submissions, after the evidence was over, were also filed by the Respondent No. 1 Bank as well as the petitioner. The Enquiry Officer concluded that the petitioner had committed misconduct alleged against him and the petitioner was therefore called upon to show cause why punishment should not be imposed on him. The petitioner replied to the show cause, however, the respondent No. 2 by her letter dated 19th December, 1992 intimated to the petitioner that she had disagreed with the reply of the petitioner and was fully satisfied with the report of the Enquiry Officer and had decided to impose the punishment of compulsory retirement as provided by Clause 4 Sub-clause (f) of the said Regulations. Thus, the petitioner was compulsorily retired with effect from 21st December, 1992. The petitioner thereafter filed an Appeal as provided for under the said regulations. In the Appeal, the petitioner again requested the Appellate Authority to reject the charge-sheet and the Enquiry officer's report and also the Order of the Respondent No. 2 as according to the petitioner he was not at all guilty of misconduct alleged against him. The appeal was rejected by the Respondent No. 3 on the ground that he was fully convinced that the charges

levelled against the petitioner were substantiated and proved and that on the basis of the gravity of the misconduct, the Respondent No. 3 refused to interfere with the punishment imposed. Being aggrieved by the said orders, viz. Order of compulsory retirement dated 19th December, 1992 and Order in Appeal dated 7th April, 1993, the petitioner has preferred the present petition.

3. Before I deal with the submissions made by the petitioner, it is necessary to point out that it is settled law that the scope of the jurisdiction of the Writ Court under Article 226 of the Constitution in respect of departmental enquiry is very limited. In the case of *Government of Tamil Nadu & Anr. v. A. Rajapandian* reported in 1995 I C.L.R. 167, it has been inter alia held by the Supreme Court that it has been authoritatively settled by string of authorities of the Supreme Court that Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. It was further inter alia held that it was not permitted for the Tribunal to evaluate the evidence. In short, it was held that reappreciation of evidence was not permissible. Similar view is taken by the Supreme Court in the case of *Transport Commissioner, Madras v. A. Radhakrishna Moorthy*, reported in 1995 I CLR 377. It was inter alia held in the said decision that the truth and correctness of the charges was not a matter for the Tribunal to go into, more particularly at a stage prior to the conclusion of the disciplinary enquiry and even when the matter comes to the Tribunal after the imposition of punishment, the Tribunal has no jurisdiction to go into the truth of the allegations/charges except in a case where there is no evidence, i.e., when the findings are perverse. It was observed that the jurisdiction of the Administrative Tribunal is akin to that of the High Court under Article 226 of the Constitution of India and that the Tribunal, just like High Court under Article 226 of the Constitution, can only examine procedural correctness of the decision making process. From the above, it is clear that the powers of the Court under Article 226 of the Constitution of India are very limited. With this background, the submissions made by the petitioner attacking the validity and legality of the impugned orders will have to be examined.

4. It was first submitted by Shri Cama, the learned counsel appearing for the petitioner that although the incident which was complained of had taken place as far back as on 10th February, 1986 the charge-sheet was served on the Petitioner only in the year 1991. Thus, according to Shri Cama, there was a gross delay in issuing charge-sheet and this itself vitiated the enquiry. Shri Singh, learned counsel for the Respondents, on the other hand submitted that there was no question of any delay on the part of the Respondent No. 1 in as much as the misconduct of the petitioner came to light to the Respondent No. 1 Bank only in 1991. Shri Cama cited various authorities in support of the said submission, viz., *Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot*, , *Gujarat E.S. Athithyaraman Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras*, , *Hindu Religious and Charitable Endowments (Administration) Department, Madras* and 1980 I LLJ 513 , *P.G. George v. State of Tamil Nadu & Anr.* In my opinion none of these

authorities can assist Shri Cama as they relate to cases where after the charge-sheets were served, the enquiries themselves commenced after a considerable delay. In the facts and circumstances of the case, therefore these authorities have no application and therefore, the submission is rejected.

5. It was next submitted by Shri Cama, the learned counsel appearing for the petitioner, that if at all the petitioner was guilty, he was guilty of negligence and it was his submission that negligence by itself could not amount to misconduct. Shri Cama referred to a decision of the Supreme Court in the matter of Union of India & Ors. v. J. Ahmed, reported in 1979 LIC 792. In that case, the Supreme Court while dealing with the Code of Conduct as set out in the Conduct Rules then under consideration, observed that the Code of Conduct clearly indicated the conduct expected of a member of the service, and that it would follow that conduct which was blameworthy for the Government servant in the context of Conduct Rules would be misconduct, and that if a servant conduct himself in a way inconsistent with due and faithful discharge of his duty in service, that was misconduct. According to the Supreme Court, relying on Stroud's Judicial Dictionary, misconduct meant misconduct arising from ill-motive and acts of negligence, errors of judgment or innocent mistake would not constitute such misconduct. Thus, it was held that the single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission resulted in serious or atrocious consequences, the same may amount to misconduct as was held by Supreme Court in P.H. Kalyani Vs. Air France Calcutta, . In order to appreciate the submissions advanced by Shri Cama, it is necessary to refer to the Bank of India Officer Employees (Conduct) Regulations, 1976. Regulation 3 provides as follows :-

"3. General

(1) Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority".

There is another regulation which is necessary to be considered in this context and that is Regulation 24 which is as follows :-

"24. Acts of misconduct :-

A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank of India (Discipline and Appeal) Regulations 1976".

It was the submission of Shri Cama in respect of Regulation 3(1) that it only provided for the qualities expected of every employee and absence of any could not entail dismissal but only withholding of promotion which would have been justified. Shri Cama in this context relied on a decision of the Supreme Court reported in 1984 LIC 961 (S.C.), *A.L. Kalra v. The Project and Equipment Corporation of India Ltd.* While dealing with a regulation similar to Regulation 3, the Supreme Court held that a general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation and failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Incidentally, Rule 5 which was under consideration by the Supreme Court provided for various acts of misconduct. In that case, it was further observed that any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 was vague and of a general nature and what was unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation, and what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. It was further observed that where misconduct when proved entailed penal consequences and therefore it was obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post factor interpretation of some incident may not be camouflaged as misconduct. Unfortunately, the above authority cited by Shri Cama does not take into account anything like a provision of the nature of Regulation 24 reproduced above. Thus, it does not help Shri Cama at all. In the case before me, Regulation 24 provides for acts of misconduct, as it takes into its sweep all the Regulations including Regulation 3 also. In the case before me, thus there is a specific provision in the Regulations specifying as to what acts would amount to misconduct and thus, as it covers Regulation 3 which although is couched in general terms, any breach of Regulation 3, in my opinion, would amount to misconduct and would be punishable. Shri Singh on the other hand cited an unreported decision of a learned single Judge of this Court in Writ Petition No. 2065 of 1988, *K.N. Majumdar v. Dena Bank*. The Regulations under consideration in the said matter were identical and the learned single Judge on considering Regulation 3 and Regulation 24, came to the same conclusion as I have done. Significantly, this authority was cited by Shri Singh. One would have accepted Shri Cama to have pointed out this authority to this Court in as much as he himself had appeared in the said matter for the petitioner. Anyway in view of the above, I see no substance in this submission advanced by Shri Cama.

6. It was next submitted by Shri Cama that the entire departmental enquiry was

vitiated in as much as that although the petitioner had asked for supplying of investigation report which had preceded the charge-sheet, the same was not supplied, with the result that the petitioner was handicapped in the conduct of the departmental enquiry in as much as he could not effectively cross-examine the witnesses examined by the respondent No. 1. Shri Cama further submitted that supply of documents, viz., copy of the investigation report and statements of witnesses examined at the preliminary enquiry were fundamental requirements of rule of natural justice and breach thereof ipso facto interfered with effective cross-examination and therefore the defence of the petitioner suffered. There is no dispute that the petitioner had in fact asked for a copy of the investigation report as well as copies of statements of witnesses recorded prior to charge-sheet. However, Shri Singh submitted that as far as the statements of witnesses were concerned, there were none and as far as the investigation report was concerned, in the facts and circumstances of the case, it was not necessary to furnish the same to the petitioner. Shri Cama cited several authorities including AIR 1961 SC 1623, *State of Madhya Pradesh v. Chintaman Sadashiv Vaishampayan* 1967 SLR 759, *The State of Punjab Vs. Bhagat Ram, Madhu Bala Vs. Narender Kumar and Others*, *Madhu Bala v. Narender Kumar & Ors.* 1986 2 CLR SC 49, *Kashinath Dikshite v. Union of India & Ors.* 1988 1 CLR SC 154, *Chandrama Tewari v. Union of India* 1995 1 CLR 839, *Satish Ganesh Saphtarshi & Ors. v. Kirloskar Oil Engines Ltd. & Ors.* and 1986 LIC 121 Bom., *Dr. Murlidhar v. The State of Maharashtra & Ors.* However, in my view, the point is completely covered by a decision of the Supreme Court in the matter of *Chandrama Tewari v. Union of India* reported in 1988 1 CLR SC 154, wherein the Supreme Court has after considering the entire case law on the subject inter alia held "It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the

delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case".

7. In view of the above observations, I have no hesitation in coming to the conclusion that there is no breach of principles of natural justice as complained by the petitioner. Nowhere in the charge-sheet any reference has been made to any investigation report. Shri Singh submitted that in fact no statement of any witnesses had been recorded prior to the charge-sheet. Apart from the fact that there is no mention of any such statements in the charge-sheet, even in the statement annexed to the charge-sheet there is no mention either of any statement of any witness or of any investigation report. It is not disputed that during the evidence, no mention was made by any of the witnesses to any investigation report. In fact, the witness, who had conducted the investigation, did not depose to any such investigation report. The enquiry report does not mention anything about either any statement by any witness or the investigation report. In view of this, it is clear that at no stage, either any statements are referred to or relied upon by the Respondent No. 1 or any investigation report has been referred to or relied upon. In view of this situation, there is no question of the same being supplied to the petitioner. It is significant to note that although the Respondent No. 1 examined several witnesses, no questions in cross-examination were put in respect of any prior statements made as alleged by the petitioner or any questions were put in respect of investigation report. In a situation like this where there is no reference nor any reliance on any earlier statements or any investigation report, where is the question of supplying the same to the petitioner ? The statement annexed to the charge-sheet and the enquiry report are bereft of any mention of any investigation report. The result of the enquiry was on the basis of the material produced before the Enquiry Officer by both the parties. At no stage, either any prior statement of any witness or investigation report was referred to or relied upon. In view of this, I find no substance in the said submission and the same is therefore rejected.

8. In view of the above position, I find no substance in any of the submissions made on behalf of the petitioner. In my view, there is no infirmity either in the Order dated 19th December, 1992 passed by the Disciplinary Authority or in the impugned order in appeal dated 7th April, 1993. In these circumstances, the petition requires to be dismissed and is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.