

(1997) 05 PAT CK 0070

In the Patna High Court

Case No : Letters Patent Appeal No. 261 of 1996 (R)

Nand Kishore Nag

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 01-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (1998) 1 BLJR 237 : (1997) 2 PLJR 108

Hon'ble Judges : S.K. Chattopadhyay, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this letters patent appeal filed under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules the appellant has challenged the order dated 1.10.1996 passed by the learned single Judge in C.W.J.C. No. 2113 of 1996 (R). The appellant is aggrieved by only that part of the order by which the learned single Judge, while holding that in the event, the Government appeal is not disposed of within four months the respondents shall withdraw the suspension order and further ordered that the respondents-bank shall proceed as per Clause 521(2) (c) of the Sastry Award.

2. The relevant facts which are necessary for the disposal of this appeal are as follows:

On 12.5.1980 appellant petitioner was appointed as Clerk cum-cashier in the State Bank of India and as such in the year 1982 he was posted in the State Bank of India, Doranda Branch, Ranchi. On 28.4.1984 a First information Report was lodged under Sections 467, 468 and 420 of the Indian Penal Code regarding forgery and defaulcation for a sum of Rs. 4,200/-. The First information Report was lodged against unknown. The police took up investigation and ultimately charge-sheet was submitted against the petitioner on 31.6.85 under the aforementioned Sections of I.P.C. on the basis of allegation made in the First

Information Report. The appellant petitioner was accordingly suspended on 11.1.1985 on the assumption that the appellant petitioner's involvement was there. The appellant petitioner was placed under suspension in terms of Clause 521(2)(a) of the Sastry Award. It is stated that although appellant-petitioner was suspended as far back as on 11.1.1985 but no charge-sheet was issued against the appellant petitioner and he remained under suspension for a long time without initiation of any departmental proceeding. In the year 1989 the appellant-petitioner was acquitted in the criminal case and thereafter, the appellant made several representation before the respondent No. 2, the Regional Manager State Bank of India for revoking the order of suspension on the ground that he was acquitted from the criminal case, but the authorities of the State Bank of India sat tight over his case and did not withdraw the suspension order. The appellant-petitioner, therefore, move this Court by filing the aforementioned C.W.J.C. No. 2113 of 1996 (R).

3. In the said writ application the respondents-Bank tried to justify the order of suspension on the ground, inter alia, that against the order of acquittal, special leave application was filed by the Government which was allowed and Government appeal is now pending against the judgment of acquittal and in that view of the matter, the appeal being continuation of the criminal proceeding the suspension order was not revoked. The learned single Judge after considering all the facts and relevant provisions of Sastry Award came to a finding that the petitioner cannot be made to suffer for an indefinite period only because of the fact that Government appeal which was filed in the year 1989 has not been disposed of for last seven years. The learned single Judge, therefore, directed the office of the High Court to put up Government appeal before an appropriate Bench for disposal within four months and ordered that if the same is not disposed of within the said time, respondents shall withdraw the suspension order. At the same time the learned single Judge further directed the respondents-Bank to proceed as per Clause 521(2)(c) of the Sastry Award for doing needful. The operative portion of the judgment and order of the learned single Judge is reproduced hereinbelow:

However, considering all facts and circumstance of the case, this writ petition is disposed of by directing the office of the High Court to put up Government Appeal No. 17/89 (R) on board within 15 days next and place before an appropriate bench for disposal within four months next. If the same is not disposed of within the time limit for no fault on the part of the petitioner, then the respondents shall withdraw the suspension order and shall proceed as per Clause 521(2)(c) of the "Sastry Award for doing needful accordingly."

4. Mr. A. K. Sinha learned Sr. Counsel appearing for the appellant petitioner submitted that the learned single judge has committed grave error of law in giving a direction to the respondents-Bank to proceed under Clause 521(2)(c) of the Sastry Award for doing needful against the petitioner. Counsel further submitted that there was no occasion for the learned single Judge to give such

direction when the appellant-petitioner only challenged the action of the respondents in keeping the appellant under suspension for the last 14/15 years on the ground of pendency of the Government appeal, although the appellant-petitioner was acquitted in criminal case. Mr. Sinha also submitted that taking advantage of the last two lines of the judgment of the learned single Judge, respondents-Bank while withdrawing the order of suspension again put the appellant petitioner under suspension in terms of Clause 521(2)(a) of the Sastry Award.

5. Mr. Kameshwar Prasad Learned Sr. Advocate, appearing for the respondents Bank, on the other hand, submitted that since the order of acquittal was challenged in appeal and the same has not been final disposed of the order of suspension was not withdrawn as the petitioner was not discharged from his bail bond. Counsel further submitted that in compliance of the judgment and order of the Learned Single Judge the suspension order of the appellant-petitioner was withdrawn by the Bank. On further investigation made into the conduct of the appellant petitioner it was found that although the appellant-petitioner was found that although the appellant-petitioner was acquitted from the criminal case but he was involved in other gross acts of misconduct and therefore in contemplation of an inquiry the appellant petitioner was placed under suspension with effect from 13.2.1997. Counsel further brought to our notice the fact that the petitioner-appellant has already challenged the order of suspension by filing a fresh writ application being C.W.J.C. No. 579/97 (R). Counsel also submitted that respondents-Bank has got right under Clause 521(2)(a) read with Section 521(10)(b) of the said award to put the petitioner under suspension pending enquiry.

6. Before appreciating the submission advanced by the learned Counsel appearing for the parties it would be useful to look into certain provisions of Sastry Award. Clause 521 is the relevant provision in the Sastry Award which lays down the procedure for taking disciplinary action.

The relevant portions of which are quoted herein below:

521. A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions.

(1) By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2)(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the Bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be

suspended.

(b) If he be convicted he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Sub-paragraph (5) below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Sub-paragraphs (9) and (10) infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowance minus such subsistence allowance as he was drawn and to all other privileges for the period of suspension; provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

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(10) The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered union of Bank employees or with the Bank's permission by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry he may be suspended but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have

been on duty and shall be entitled to the full wages and allowances and to all other privileges by the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employees and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowance, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the Bank does not, for some reason or other think it expedient to retain the employees in question any longer in service. Discharge in such cases shall not be deemed to disciplinary action.

7. From perusal of the aforesaid provisions of Sastry Award it is manifest that Clause 521(5)(c) says that in the event of acquittal of any employee in criminal charges, the management may proceed against the employee in the manner provided under Sub-clause (9) and (10) of Clause 521. Clause 521(1)(a) lays down the procedure for initiation of the disciplinary proceeding and giving a charge-sheet. According to this provision if a disciplinary action is contemplated against an employee then he shall be given chargesheet for submission of explanation. Clause 521(10)(b) contemplates suspension of an employee in the event disciplinary proceeding is initiated. In fact, while providing the procedure, Sub-clause (a) provides for issuance of charge-sheet and Sub-clause (b) provides for suspension pending enquiry. Therefore, it only shows that a person could be suspended pending an enquiry to be conducted in accordance with the procedure provided in Sub-clause (10). But there is nothing on the basis of which it could be inferred that suspension could be ordered before charge-sheet is issued and disciplinary proceeding is initiated. One more clause of the Sastry Award is worth to be noticed i.e. Clause 505 which reads as under-

505. As already stated we have tried to follow the regulations prescribed by the Sen Tribunal with modifications. We are very particular that a verdict of acquittal passed by a competent Court of law should not be lightly thrown aside by the Bank management in trying to institute departmental enquiries after the acquittal, as it would amount to a double trial in respect of the same offence. We have occasionally come across instances where a Bank management has persisted in its application u/s 33 inspite of an acquittal by an ordinary Court of the land after a full trial. The decisions of our Courts are entitled to the highest respect and the Bank managements should instate an employee who is honourably acquitted and pay him his full salary and allowances. The acquittal should not be lightly challenged by departmental enquiries for disciplinary action

unless the Bank management feels that there has been such a gross violation of the departmental rules as to necessitate a further enquiry in the interests of the institution on matters other than those in respect of which he has been already acquitted. If after the departmental enquiry the management still feels that the employee cannot continue in its service it can terminate his services only on payment of three months salary and allowance in lieu of notice.

8. In view of the aforesaid clause in the Sastry Award one has to Judge the legality and validity of suspension of an employee after acquittal as contemplated under Clause 521(10) of the said Award, particularly when order of suspension is passed after about 9 years of acquittal of an employee in the criminal case. Since the validity of the subsequent order of suspension of the appellant is not the subject-matter of this appeal, we are not expressing any opinion on this issue.

9. Mr. Kameshwar Prasad, learned Counsel appearing for the appellant, relied upon the decision of the Madras High Court in the case of Official Liquidator, Trauancore National Bank Subsidiary Co. Ltd. v. Official Liquidators, Travancore National and Quilon Bank Ltd. AIR 1940 Madras 258 and in the case of Honorato De Souza v. Pedro Manuel Purificacao De Souza and State 1966 Cri LJ 1418 for the proposition that the appeal is continuation of trial. Learned Counsel further relied upon a decision in the case of Vijay Kumar Moti Lal Vs. State of Maharashtra, for the proposition that when an employee is acquitted in a criminal case then a departmental proceeding should be expedited.

10. On the other hand, Mr. A.K. Sinha, learned Counsel for the appellant relied upon a decision rendered in the case of State of Madhya Pradesh v. Bani Singh 1990 SC 1308 and of Md. Badrud Doja v. The Heavy Engineering Corporation and Ors. 1991 (2) PLJR 330.

11. In my view, these decisions are not relevant for deciding the question involved in this appeal inasmuch as, as stated above, the question called for consideration of this Court is as to whether the learned Single Judge was justified in directing the respondent-Bank to proceed under Clause 521(2)(c) of the Sastry Award. However, I am constrained to reiterate the law settled in this regard that an employee after the acquittal in criminal charges should not be continued under suspension beyond a reasonable period and keeping an employee under suspension for a long period is an arbitrary exercise of power and is wholly illegal and violative of Articles 14 and 16 of the Constitution of India.

12. As noticed above, the appellant was kept under suspension for about 9 years even after he was acquitted in criminal case which was wholly illegal and unjustified and for that reason, the learned Single Judge rightly directed the respondent-Bank to revoke the suspension if the appeal arising out of the judgment of acquittal is not disposed of. However, in my considered view, the learned Single Judge was not, at all, justified by making a direction in the impugned judgment asking the management to proceed as per Clause 521(2)(c)

of the Sastry Award. There was no occasion for the learned Single Judge to make such direction particularly when the matter in issue in the writ application was as to whether continuation of suspension of the appellant for such a long period even after his acquittal in a criminal appeal was justified.

13. For the aforesaid reason, this letters patent appeal is allowed and that part of the impugned order of the learned Single Judge whereby the management was directed to proceed against the appellant under Clause 521(2)(c) of the Sastry Award is hereby set aside.