
(2016) 09 JH CK 0065
In the Jharkhand High Court
Case No : W.P. (S) No. 3446 of 2014

Navin Kumar Sinha

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 262 : (2017) 2 JCR 34

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : M/s Kailash Prasad Deo and Anil Kumar, Advocates, for the Petitioner; M/s Rajesh Kumar, Amit Kumar and Mahindra Kr. Sinha, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter-alia prayed for quashing of the order dated 07.03.2012 whereby in purported exercise of power under Rule 67(j) of the State Bank of India the petitioner has been dismissed and the period of suspension was ordered to be treated as not on duty and for quashing of the order dated 29.10.2012 passed by the Appellate Authority and the order dated 16.01.2014 passed by the reviewing authority upholding the order of the appellate authority.

2. The facts as averred in the writ application, is that the petitioner entered initially the State Bank of India service way back on 08.06.1973, as Clerk typist. Thereafter, basing on service records, the petitioner was promoted in JMGS-1 with effect from 01.11.1980 and his further promotion was made in the position of MMGS-II with effect from 01.11.1999. As per the State Bank of India officer's (determination of terms and conditions of service) order, 1979, on completion of 30 years of service or attaining age of 58 years the bank officers are deemed to be retired. The petitioner completed 30 years of service in the year 2003. On 05.08.2003 the Assistant General Manager, State Bank of India vide letter dated

05.08.2003 intimated the petitioner for extension of services from 27.12.2003 to 01.10.2010 subject to the condition that the health of the petitioner is fit and his services is satisfactory as per Annexure-2 to the writ application. After 01.10.2010 the petitioner was never intimated for further extension of services and thus the petitioner would be deemed to have retired in terms of the State Bank of India Officer's (Determination of terms and conditions of services) Order, 1979. During the service extension period, the petitioner was issued memo of charge for alleged lapse during the posting as Branch Manager, Tangarbansali Branch and Dy. Manager (Accounts) at Torpa Branch during the period 19.01.2006 to 29.10.2008 and 23.01.2009 to 22.08.2009 respectively vide article of charges issued vide letter dated 18.08.2009 as per Annexure-3 to the writ application. Thereafter, the petitioner was placed under suspension on the allegations of irregularities in sanction, conduct and follow up of advance and irregularities in the DDP as per Annexure-4 to the writ application. The petitioner submitted his explanation requesting the DGM of the bank vide letter dated 28.08.2009 to provide inspection of documents basing on which allegations have been levelled and on 31.08.2009 the Deputy General Manager permitted to visit and peruse the document in the presence of the Branch Manager as per Annexure-6 to the writ application. The petitioner represented the Deputy General Manager on 14.09.2009 to provide 45 days time to scrutinize the voluminous documents and records. The Dy. General Manager instead of granting further time asked the petitioner to submit explanation within five days. The petitioner once again represented the Dy. General Manager on 23.09.2009 requesting therein to provide 15 days time for verification of records. On 24.09.2009 the petitioner was intimated refusal of opportunity to inspect the document and petitioner was asked to submit explanation within the time stipulated earlier. However, the petitioner submitted his explanation on 27.10.2009 despite denial of opportunity to inspect the voluminous documents. The disciplinary authority decided to initiate departmental proceeding vide letter dated 18.03.2011 containing article of charges and petitioner was asked to submit written statement of defence within 15 days. The petitioner on 03.05.2011 represented the Branch Manager, Tangarbansali to allow the petitioner to inspect the document but no heed was paid by the Branch Manager and thereafter, the petitioner represented the Dy. G.M to allow the petitioner to visit and verify the documents. On 05.05.2011 under compelling circumstances submitted his explanation and denied the allegations and requested to exonerate him from the charges. Unfortunately disciplinary proceeding was initiated against the petitioner. The departmental enquiry commenced on 24.05.2011 and 08.07.2011 was the date fixed in the departmental proceeding. Neither the list of witness nor the list of documents were enclosed with the charges. On 07.03.2012, the respondent General Manager issued order of dismissal in purported exercise of power under rule 67 (j) of the Service Rules as per Annexure-21 to the writ application. Being aggrieved and dissatisfied with the impugned order, the petitioner preferred an appeal before the Appellate Authority on 24.04.2012 in which he highlighted the infirmity in the conduct of

departmental proceeding and also raised the issue of excessive punishment of dismissal. The appellate authority rejected the appeal vide order dated 26.10.2012 vide Annexure-22 to the writ application and being aggrieved by the order of the appellate authority, the petitioner preferred revision against the order of punishment and the appellate order on 14.12.2012 and the re-visional authority vide order dated 16.01.2014 has been pleased to uphold the order of the appellate authority. Being aggrieved by the aforesaid order, the petitioner left with no other alternative efficacious and speedy remedy, has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Mr. K. P. Deo, learned counsel for the petitioner has strenuously urged that the order of dismissal dated 07.03.2012 is a nullity in the eye of law. Since the petitioner has already superannuated on 01.10.2010, no order of dismissal could have been passed against the petitioner being superannuated employee without extending his services. The judgment of the Hon'ble Apex Court in the case of Union of India & Ors. v. J. Ahmad reported in 1979 (2) SCC 286; paragraphs 15 and 16 of the said judgment has been referred to by learned Counsel for petitioner. Learned counsel for the petitioner further submits that the departmental proceeding conducted against the petitioner is even otherwise vitiated on account of the continuing departmental proceeding without extension of service of the petitioner after 01.10.2010 and the order of infliction of punishment being affirmed by the appellate as well as re-visional authority is accordingly void ab-initio. Further, it is submitted that the departmental proceeding is even otherwise vitiated from (a) non-furnishing of list of witnesses along with the memorandum of charges as required under Rule 68 of the Service Rule; (b) the denial of opportunity to verify the records on which the charges were based; (c) denial of documents for effective defence in the departmental enquiry; (d) non-consideration of 37 years unblemished service record of the petitioner while holding the petitioner guilty and inflicting punishment of dismissal; (e) punishment of dismissal for alleged misconduct under Rule 50 (4) i.e. general expectation of good behaviour is no misconduct warranting/punishment of dismissal. Learned counsel for the petitioner further submits that since the bank has not suffered any pecuniary loss and there is no case of embezzlement of money, rather case of lack of performance in procedural aspects has been found out therefore, the punishment of dismissal is exceedingly harsh and disproportionate to the alleged charges.

4. Per-contra a counter-affidavit has been filed on behalf of the respondent nos. 1 to 6 controverting the averments made in the writ applications. In the counter-affidavit, it has been submitted that the petitioner was served with the explanation as contained in Annexure-3 of the writ application and Articles of charges was served on the petitioner vide letter dated 18.03.2011 (Annexure-13) by which the series of allegations of financial irregularities were alleged. After service of article of charges, full opportunity was given to the petitioner and the petitioner submitted his defence to the enquiring authority

which is apparent from Annexure-16 of the writ application and against the enquiry report the petitioner submitted his reply which is Annexure-20 of the writ application. The competent authority after considering all the aspects of the departmental enquiry held by a speaking order dated 07.03.2012 that the petitioner while posted at Tangar Bansli Branch and also at Torpa Branch has failed to serve the Bank with utmost devotion, diligence, honesty and integrity in violation of Rule 50(4) of the SBI Officers Service Rule and thus he was imposed a penalty of dismissal in terms of Rule 67(j) of the SBI Officers Service Rules. The period of suspension will be treated as "not on duty". Being aggrieved by the order of the disciplinary authority, the petitioner preferred an appeal before the appellate authority and appellate authority after carefully examining the appeal on the ground as contained in Annexure-22 of the writ application by upholding the order of the disciplinary authority vide order dated 29.10.2012. Being aggrieved by the appellate authority, the petitioner filed a memo of appeal for reviewing the order of dismissal and the reviewing committee vide order dated 16.01.2014 has been pleased to uphold the order of the appellate as well as disciplinary authority. It has further been contended that it is apparent that while conducting the departmental proceeding against the petitioner, there was no lapse on the part of the respondent Bank in observing the principles of natural justice and thus committed no mistake and ample opportunity was provided to the petitioner to defend in the disciplinary proceeding. It has further been submitted that the petitioner came up with a new plea in the writ application only that the order of dismissal passed by the appointing authority is nullity in the eye of law because the petitioner's service in the State Bank of India came to an end on 01.10.2010. Since, the services has not been extended from 01.10.2010 as per the Rule 19(1) of SBI Officers (Determination of Terms & Conditions of the Service, 1979). This plea was never taken by the petitioner neither in the departmental proceeding nor in appeal nor in revision. It is admitted position that the petitioner was aware that he was to superannuate on 30.10.2012. It was deemed extension and the petitioner's service was very much a case of deemed extension after the age of 58 years and the bank has never given any letter of superannuation on 01.10.2010. It is further apparent from Annexure-20 where the petitioner filed his submissions on the finding of the enquiry officer wherein the petitioner has categorically stated that I once again invoke clemency jurisdiction and perspective of the fact and circumstances enumerated herein above to exonerate me from charges/drop the charges and allow me to serve the Bank with utmost sincerity and devotion as I am to superannuate on 30.10.2012. This goes to prove that the petitioner was very much aware that he is going to superannuate on 30.10.2012 and that is the reason he has never taken such flimsy plea before the appellate authority or the reviewing authority and thus the petitioner's case has got no legs to stand and is fit to be rejected in limine. It is further been stated that the petitioner had his last salary for August, 2009 and thereafter he was suspended and he continued to enjoy the subsistence allowance from 1st September, 2009 to 15th March, 2012 and thus now the petitioner should not be allowed to take such plea that his services came to an

end at the age of 58 years in the absence of any extension of service or that he was superannuated on 01.10.2010. With the aforesaid submissions, prayer has been made for dismissal of the writ application.

5. A rejoinder to the counter-affidavit has been filed by the petitioner while it has been submitted that it is now well settled principles of law that in a quasi-judicial proceeding like departmental proceeding the delinquent is entitled to full opportunity of defending his case and in the absence of fair opportunity of hearing as per Rule goes to the root of the case and render the entire departmental proceeding vitiated. The reference has been made to the decision of the Constitution Bench of the Hon'ble Apex Court noticing the importance of natural justice in quasi-judicial including departmental proceeding wherein it has been held that compliance of natural justice is sinequa-non in the decision making process as reported by the Hon'ble Apex Court in the case of Bachhittar Singh v. State of Punjab & Another reported in AIR 1963(SC) 395 and Union of India v. H.C. Goel reported in AIR 1964 (SC) 364. It has further been submitted that the averments made in the writ application regarding violation of principles of natural justice has not been controverted and hence hit by doctrine of non-traverse. The averments made in those paragraphs stands admitted in view of the judgment of the Apex Court in the case of Naseem Bano (Smt) v. State of U.P. & Ors. reported in AIR 1993 (SC) 2592. It is further submitted that the right to cross examination is essential ingredient of natural justice and fair play in the departmental proceeding which has been grossly violated in the instant case and in view of the judgment of the Apex Court reported in AIR 2002 (SC) 1248 in the case of State of Karnataka v. Saveen Kumar Shetty, the entire departmental proceeding is vitiated in law.

6. After hearing learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated here in below:

(I) Indisputably, on completion of 30 years of service in the year 2003, the services of the petitioner was extended till 01.10.2010 as per the State Bank of India officers (determination of term & conditions of services 1979). The alleged charges pertains to the extension period of the petitioner as Branch Manager, SBI, Tangerbansali Branch, Ranchi during the period 19.01.2006 to 29.10.2008 and 23.01.2009 to 22.08.2009. After submission of explanation to the alleged charges, the disciplinary authority decided to initiate departmental proceeding vide letter dated 18.03.2011 containing article of charges. In the disciplinary proceeding the order of dismissal has been passed under Rule 67(j) of the SBI Officers Service Rules which has been affirmed by the appellate as well as revisional authority. Admittedly, there has not been extension of service after 01.10.2010 nor any provision of relevant rules has been brought to the notice of this Court as to what would be effect the disciplinary proceeding after retirement. When there is no express order by the respondent bank for extension of services

after 01.10.2010, the said date is to be treated as the date of retirement in usual course. In the instant case, the charge sheet was issued on 18.03.2011 after the date of deemed retirement of the petitioner when there was no specific order by the banking authorities for extension of services. Therefore, on that score, the impugned order of dismissal dated 07.03.2012 passed by the appointing authority being affirmed by the appellate authority as well as reviewing authorities being not legally sustainable is liable to be quashed. The view of this Court gets fortified by the decision of Hon''ble Supreme Court in the case of Union of India v. J. Ahmad reported in 1979 (2) SCC 286 which still holds the fields the entire departmental proceeding initiated against the petitioner after non-extension of service in terms of State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 as substituted on 23.02.1984 and State Bank of India Officers Service Rules, 1992 the relationship of master and servant has come to an end after 01.10.2010. Therefore, the respondent bank had no jurisdiction to initiate departmental proceeding without extension of services of the petitioner beyond 01.10.2010. Apart from the aforesaid legal provision in the instant case as apparent from the pleadings of the parties the bank has not suffered any pecuniary loss for any act of omission or commission on the part of petitioner. In the aforesaid backdrop of fact the initiation of departmental proceeding and imposition of extreme punishment of dismissal from services is unreasonable, illegal and not legally sustainable.

(II) Assuming that the respondent bank authorities had power to initiate the proceeding after 01.10.2010 but considering the gravity of charges and the proved misconduct the impugned order of punishment of dismissal from services appears to be harsh, shockingly disproportionate to the proved misconduct so as to prick the conscience of this Court.

7. On the cumulative effect of the aforesaid reasons, the impugned order of dismissal from services dated 07.03.2012 vide Annexure-21 and the order dated 29.10.2012 passed by the appellate authority vide Annexure-22 and also the order of revisional authority dated 16.01.2014 vide Annexure-23 to the writ application are hereby quashed and set aside and the respondents are directed to extend consequential service benefits to the petitioner within a period of three months from the date of receipt of a copy of this order.

8. With the aforesaid direction, the writ petition stands allowed.