

(2000) 09 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 173 of 2000

Nikhil Ranjan Bowmik

APPELLANT

Vs

Tripura Gramin Bank and Others

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLT 293 : (2001) 2 LLJ 133

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : Mr. B. Das and Mr. H. Chakraborty, for the Appellant; Mr. U.B. Saha and Mr. K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ application has been filed challenging the order dated 26.9.1998 (Annexure-E) imposing on the petitioner penalty of with-holding ten yearly increments and recovery of a sum of Rs. 1,15,175 along with interest thereon and also the purported appellate order said to be passed by the Board of Directors, Tripura Gramin Bank and communicated by the General Manager of the Bank on 6.3.2000 and received by the petitioner on 29.3.2000 (Annexure-G).

2. The petitioner herein entered into service under the Tripura Gramin Bank, respondent herein as Filed Supervisor in 1980 and later on he was promoted as Branch Manager. On 11.8.1994 when the petitioner was working at Kadamtala Branch of the respondent Bank as Branch Manager, a Memo was issued to the petitioner asking him to show cause as to why a disciplinary action should not be initiated against him for sanctioning loans violating Head Office instructions that is Annexure-A to the writ application. The charges are broadly as follows :-

"While working as branch Manager of our Kadamtala branch the Block level scrutiny committee of C.C.D.P. sponsored a numbers of name to our Kadamtala branch for extending loans under C.C.D.P.

But now from respective scrutiny papers and rejection lists prepared by yourself it reveals that in a numbers of instances you shown sanction of loans altering the names of the proponents or the father's names of the respective proponents or the addresses of the proponents or both from those of respective applications."

3. Thereafter, vide Annexure-C charge sheet was issued against the petitioner along with the articles of charges and the list of witnesses etc. That chargesheet along with documents is a voluminous bunch. A reply was sent. Thereafter, Inquiry Officer was appointed. The petitioner herein was given defence assistant and the enquiry proceeded and in the enquiry on 15.1.1996 the following was recorded :-

Thereafter the C.S.O., Sri Bhowmik is asked he has understood the charges leveled against him and whether he agrees all the charges. In reply the C.S.O. stated that he has understood the charges and has admitted all charges levelled against him.

He (C.S.O.) is again asked whether he has submitted any statement to the Enquiring Officer in his defence on the charges levelled against him.

The C.S.O. replied that he has examined the charges levelled against him and he has also considered and reconsidered that he, as the Branch Manager could not shark of the responsibilities of the irregularities, so he admits the charges brought against him and appeals to the authority for consideration. He has further stated that he did not have submitted any written statement in his defence to the Enquiring Officer earlier after receiving the chargesheet.

Shri Manoj Kanti Das, the P.O. is asked whether he wants to prove the charges as the C.S.O. Sri Nikhil Rn. Bhowmik has agreed the charges. In reply the P.O. stated that he wants to prove the charges on the strength of management exhibits and he submitted as following :-

Regarding charge No. 1 & 2

Serial 53, 120, 67, 100, 62, 122, 119, 118, 116, 74 and 101 of ME-I in column No. 2 shows the application form No. 178, 189, 1522, 143, 5753, 197, 5752, 107, 5361, 106 and 35481."

4. On the basis of the above, it is argued by the learned counsel for the respondents that the petitioner herein admitted the charges. Be that as it may, subsequently the petitioner filed an application and stated that he did not admit the charges. Thereafter, the inquiry proceeded. The witnesses were examined on behalf of the Management of the respondent Bank. The delinquent employee also examined witnesses. Thereafter, the Inquiry Officer submitted the Inquiry Report and the said Inquiry Report has not been annexed to the writ application either by the petitioner or by the respondents. But at the time of argument the learned advocate for the respondent Bank produced the same before me and I have asked the learned advocate for the respondent Bank to furnish a photo copy of the same to be kept in the record.

5. The Charge No. 1 was for extending credit facilities under Crash Credit Delivery Programme from the proposals sponsored by the Block Level Scrutiny Committee of Panisagar and the allegation was that the petitioner showed sanction and disbursed loan altering the names of the proponents or the father's name of the respective proponents or the addresses of the respective proponents which are detailed in the inquiry report and they are 26 in number. It was found by the inquiry Officer that these persons named therein are not traceable in their given name, father's name and addresses:

The second charge was that some names were rejected by the Block Level Committee, but the delinquent official showed sanction and disbursement of the loans against the rejected proposals.

The third charge was that the petitioner showed disbursement of loan in the name of six persons after imposition of credit restriction vide the Circular of the Head Office.

The fourth charge was that a loan of Rs. 2,300 was sanctioned in the name of one Mr. Akram Ali, but the petitioner showed disbursement of Rs. 5,000 in the said name and account of that person on 13.2.1989.

The fifth charge was of changing the scheme of the respondent Bank.

The sixth charge was that there was an instruction to obtain the photographs of the borrowers, but the petitioner disbursed loan to a number of persons without obtaining photograph of the respective borrowers.

The seventh charge was that a document was prepared in the name of one Md. Mahijul Islam Chowdhury, but the document was signed by Md. Mahijul Islam. Again the petitioner gave loan in the name of Shri Paresh Chandra Nath, but in the pronote there was no revenue stamp.

The charge No. 8 was change in signature of the borrowers in the application for loan and documents thereof.

The charge No. 9 was again some defect in the sanction of loan.

The charge No. 10 was issuing a no dues clearance certificate wrongly.

The charge No. 11 was that by giving loan to fictitious persons, when ledger entries were made on a particular date the payment vouchers for the said entries were prepared on another date and sometimes payments were shown on other dates.

The charge No. 12 was that because of this the respondent Bank suffered a loss of Rs. 2,25,489 being the outstanding amount as on that date.

6. Before the Inquiry Officer as many as 147 sets of documents were produced and they were marked as Exhibits. The Management also examined 21 witnesses. In the inquiry report, the Inquiring Officer also examined the case of the defence. It is noted in the Inquiry Report as follows:-

"On the onset of the enquiry Sri Bhowmik, C.S.O. admitted the charges before the enquiry on 15-1-1996. But during the process of enquiry he contested the charges. The C.S.O. made a statement before the enquiry on 16-9-1997."

7. On behalf of the defence 49 documents were produced and he also examined nine witnesses. The learned enquiry officer considered the charges in serial. Regarding Charge No. 1 it was found as follows :-

"Now considering all the exhibits and witness of management as well as considering the exhibits and witnesses of defence as discussed hereinabove under item no 7(a) to 7(f). I am clear in my mind that the charges of showing sanction and disbursement of loans in the name of non-existent persons by altering names/ father's names/addresses alleged in Sl. No. 5, 6, 7, 8, 9, 10, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 under article of charges No-1.0 & 1.1 have been proved and that Sl. No. 1, 2, 3, 4, 11, 12, 13, 15, 26 of article of charge No. 1 have been conclusively proved." Regarding Charge No. 2, it was found as follows :-

"considering the evidence of MW-3, 8, 10, 12, 16 and also considering the argument of defence I am clear in my mind that Sri Bhowmik, C.S.O. has sanctioned and disbursed loan against the rejected proposals and committed misconduct for which he has been charged under item No. 2.0 to 2.1 of article of charges."

Regarding Charge No. 3 it was found as follows :-

"now considering the management exhibits ME-I-1, I-2, F-1, F-4, F-13, F-14, F-18, F-25, E-1, 4, 13, 14, 18, 25, N-1, 6, 14, 16 as well as considering the defence argument I am clear in my mind that the charge No. 3.0 to 3.1 has been proved and Sri Bhowmik committed misconduct for which he has been charged."

Regarding Charge No. 4, it was found as follows :-

"Now considering the management exhibits ME-B-27, F-27, E-28 and N-13 as well as considering the argument of defence and deposition of defence witness DW-2.1 am clear in my mind that Sri Bhowmik has committed misconduct for which he has been charged under charge No. 4.0 to 4.1."

Regarding Charge No. 5 it was found as follows :-

"Now considering the management evidences ME-I-3 and I-4 and ME-B-27, F-27 and E-28 as well as considering the argument of defence, I am clear in my mind that Sri Bhowmik has committed misconduct for which he has been charged under article of charges item No. 5.0 to 5.1."

Regarding Charge No. 6, it was found as follows :-

"Now considering the management evidence ME-I-5, B-4, 5, 6, 7, 8, 13, 20, 21 and 26, as well as the argument of the defence I am clear in my mind that Sri

Bhowmik has committed misconduct for which he has been charged under article of charges in item No. 6.0 to 6.1."

Regarding Charge No. 7, it was found as follows :-

"Now considering the management evidence ME-B-18, F-18, B-17 as well as the considering the defence exhibit C.S.O. E-30 and also considering the argument of the defence I am clear in my mind that Sri Bhowmik has committed misconduct for which he has been charged under article of charges in item No. 7.0 to 7.1."

Charge No. 8": Not proved.

Charge No. 9 ; Held to be proved.

Regarding Charge No. 10, it was found as follows :-

"Now considering the management exhibit ME-O, P, Q & R as well as considering the argument putforth by the defence, I am clear in my mind that the charge no. 10.0 to 10.1 under article of charges has been proved."

Charge No. 11 : Not proved.

Regarding Charge No. 12, it was found as follows :-

"Now considering the argument and counter argument of both management side and defence side as well as my finding under charge No. 1 and 41 am clear in my mind that the charge No. 12 of article of charge has been partially proved."

8. So, out of the 12 charges, the Inquiring Officer found that 10 charges were proved and the disciplinary authority considered the matter in details and passed the order of punishment vide Annexure-E to the writ application, relevant portion of which reads as follows :-

"4.(i) Stop page of ten yearly increments from the next due date of increment;

(ii) Repayment of the full outstanding balance as on 30.9.1994 of first nine numbers of loan accounts noted hereunder and 50% of the outstanding balance as on 30.9.1994 of the rest seven numbers of loan accounts, for the creation of which accounts another officer was also found guilty, as calculated and noted below aggregating to Rs. 1,15,175 (Rupees one lakh fifteen thousand one hundred seventy five) only in the monthly installments of Rs. 4,000 (Rupees four thousand) only per month from the next month of resumption of duties with interest at rate of 12-4% (twelve point five per cent) per annum thereon from 1-10-1994 till the date of repayment thereof by you."

9. Against the aforesaid order, an appeal was filed vide Annexure-F to the writ application as provided under the statute and the appeal was rejected as will be evident from Annexure-G to the writ application. Though the appellate order was not produced before me by the learned advocate for the respondent Bank, he produced certain documents to show that this matter was considered in the 121st meeting of the Board of Directors of the respondent Tripura Gramin Bank

held on 02.2.2000 and in that meeting the Chairman did not participate as he was the punishing authority. It further appears that the Board of Directors even took a legal opinion on the matter as to whether the matter can be sent back as two other charges were not proved. The legal opinion was taken and decided not to proceed with the matter in this regard. Thereafter, the appeal was dismissed. Hence this writ application.

10. I have heard Mr. B. Das, learned senior counsel, assisted by Mr. H. Chakraborty, learned counsel for the petitioner and Mr. U.B. Saha, learned senior counsel, assisted by Mr. K. Bhattacharjee, learned counsel for the respondents.

11. Mr. Das, learned senior counsel for the petitioner makes the following submissions :-

(1) There is no evidence in support of the findings arrived at by the Inquiry Officer and the report is based on no evidence ;

(2) The Inquiry Officer did not consider the statements made by the defence witnesses and ignoring of the evidence vitiates the inquiry ;

(3) The second show cause notice was not furnished before imposing the punishment;

(4) The copy of the appellate order was not furnished to the petitioner and the communication is a cryptic one without any reason and as such the appellate order has no validity in the eye of law.

12. Let us first take up the third ground urged by Mr. Das. It is submitted by Mr. Saha, learned senior counsel for the respondents that no doubt the copy of the enquiry report was not furnished to the petitioner before imposing the punishment, but it was furnished to the petitioner along with the punishment order and that will be evident from the appeal filed by the petitioner which is Annexure-F to the writ application. Mr. Saha further submits that non-furnishing of the copy of the enquiry report has not caused any prejudice to the petitioner and accordingly, this ground has no legs to stand upon.

13. It is the requirement of law that before punishing a person, the copy of the enquiry report should be furnished to him so that he can make comments on it, but at the same time in the decision which is the trump card on this point, that is (1993) 4 SCO 727 (Managing Director, ECIL, Hyderabad and others, appellants v. B. Karunakar and others, respondents) in Paragraph 31, the Supreme Court *inter alia* has pointed out as follows :-

"31. xxxxx xxxxx xxxxx The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettedly being done at present. The court should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would

be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

14. That aspect of the matter also came up for consideration before the Supreme Court in Union Bank of India Vs. Vishwa Mohan, and the Supreme Court relying on the earlier judgment of ECIL (supra) pointed out as follows :-

" 10 In our considered view, the High Court has failed to apply its judicial mind to the facts and circumstances of the present case and erroneously concluded that non-supply of the enquiry report/ findings has caused prejudice to the respondent."

15. To the same effect, there is another decision reported in S.K. Singh Vs. Central Bank of India and Others, wherein the Supreme Court has pointed out that if the employee fails to show/is unable to show that any prejudice was caused to him by non-supply of the enquiry report, the High Court should refuse to interfere with the order of removal on that ground. That being the position of law, the question which we must consider in this case is that whether non-supply of the enquiry report before punishment has caused any prejudice to the petitioner. Mr. Das failed to draw my attention to any prejudice and as a matter of fact in the writ application also there is no such specific pleading. So, this ground urged by Mr. Das has no legs to stand upon.

16. Now, let us take up the first and second grounds urged by Mr. Das. The law on this point was settled long back by the Apex Court in State of Andhra Pradesh Vs. Sree Rama Rao, wherein the Supreme Court in Para 7 pointed out as follows :-

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by a authority competent in that behalf, and according to the procedure described in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may

undoubtedly interfere where the departmental authorities have held the proceeding against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in/ proceeding for writ under Article 226 of the Constitution."

17. That being the position of law, in order to exercise writ jurisdiction of the court to interfere with an order in exercise of the power under Article 226 of the Constitution (judicial review), it must be a case of no evidence. If there is some evidence, the question of interfering with the order does not arise. I have already quoted above the finding arrived at by the enquiry officer and it will be seen from the findings arrived at by the enquiry officer that the finding was on consideration of the materials on record, both oral and documentary. Whether that evidence is sufficient or inadequate that is beyond the jurisdiction of this court. This court can touch such an order only when there is blatant error and patent error. Any latent error will not give jurisdiction to the court. The blatant error as is understood is that when a person calls black the white, horse the elephant, but if it is a case twilight zone the question interference does not arise. That is what I find in the instant case. Accordingly, that contention also shall fall through.

18. The next is the question of the appeal. Mr. Das rightly submits that an appeal is not a mere empty formality. The statute itself gives the right to the petitioner to file an appeal and that appeal must receive due consideration on the hand of the authority. It is not the requirement of law that an appellate authority should write a judicial judgment, but it must be shown from the record that it received attention in their hand or there was application of mind before rejecting the appeal. In this connection, Mr. Das places reliance on (1998) 2 GLR 50 (Shri G. Jaydass, petitioner v. Union of India and others, respondents), where the Division Bench of this court pointed out as follows :-

"The appellate authority has to give a finding as to whether the findings of the disciplinary authority are warranted by the evidence on record. The authority has also to consider whether the penalty imposed is proportionate to gravity and misconduct or negligence."

19. As objection has been raised by Mr. Das that as the order of the appellate authority has not been furnished to the petitioner, the respondents can not produce the same before this court, that is prejudicial to the petitioner. I do not

understand this argument in view of the fact that the respondent Bank is to produce the record and if it is found that there is such an order, the court can take notice of it. The appeal was disposed of by the Resolution No. 12 of the 121st meeting of the Board of Directors of the respondent Bank held on 2nd February, 2000 after detailed discussion and that resolution reads as follows :-

"Resolved that the contents of the office Note No. 121/11/2000 dated 25.1.2000 regarding appeal of (i) Sri Nikhil Rn. Bhowmik. (ii) Sri Swapan Kr. Bhowmik. and (iii) Sri Ashok Kr. Nandy, all officers, be and are hereby disposed of with the observations as laid down in the Summary Record of Discussion."

Thereafter, this communication vide Annexure-G was made. This is evident from the proceeding book which was produced before me by the learned advocate for the respondent Bank. This appeal received consideration at the hand of the Board of Directors of the respondent Bank. That will be evident from the extract of the Summary Record of Discussion of the 121st Meeting of the Board of Directors of the respondent Bank held on 2.2.2000. Mr. Das submits that there was no meaningful discussion but as indicated by me earlier, the appellate authority in such a matter has no obligation to write a detailed Judgment. What I again reiterate is that there should be application of mind and the matter should be considered fairly, properly and in a reasonable manner. That I find to have been done in this case.

20. For the reasons stated above, I find no merit in this writ application and accordingly, it shall stand dismissed. Stay order, if any, passed earlier shall stand vacated.