

(2002) 10 JH CK 0051
In the Jharkhand High Court
Case No : CWJC No. 571 of 1995 (R)

Pankaj Kumar Srivastava

APPELLANT

Vs

Palamau Kshetriya Gramin Bank and Another

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 10 JH CK 0051

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.K. Prasad, for the Appellant; Satish Bakshi and M.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner has challenged the order of appointment dated 27.12.1994 passed by respondent No. 2 the Board of Directors of Palamau Kshetriya Gramin Bank being the appellate authority in a departmental proceeding whereby the award of with-holding five increments have been reduced to three increments.

2. Petitioner was appointed as officer in Palamau Kshetriya Gramin Bank (in short Bank) in 1983 and was posted as Branch Manager, Dumaria in the district of Garhwa. In September, 1987 he was posted at Hussainabad Block at Jharia and in 1991 he was transferred to Loharsi in Panki Block and from there to Tetrai Branch of the Bank in June 1991 and then Dalton-ganj Branch. In 1992, petitioner was put under suspension on the charges causing irregularities and carelessness during the period 1986 to 1990 and a disciplinary proceeding was initiated against him. Petitioner's further case is that in the said departmental proceeding the order of punishment was passed and against that order he filed appeal before the Board of Directors who is the appellate authority. The Board of Directors in its meeting considered the appeal of the petitioner and ordered to the Inquiry Officer to allow proper opportunity to the petitioner and to provide

him the documents so demanded by the petitioner. It is alleged that inspite of specific direction, documents were not supplied to the petitioner and the matter was again considered by the Bard of Directors in its meeting held on 31.8.1993 and the Board of Directors further directed to make available the documents to the petitioner. The appeal of the petitioner remained pending. Petitioner was supplied only two documents and was not allowed to peruse all the documents as the documents were not made available to the petitioners. It appears that a separate charge sheet was also served upon the petitioner on 9.11.1992 and ex parte inquiry was conducted against the petitioner and order of punishment was passed for reduction of four increments and against that order petitioner preferred appeal before the appellate authority. However, the appeal filed before the Board against two punishments was finally disposed of by the impugned order.

3. I have heard Mr. N.K. Prasad, learned counsel for the petitioner and Mr. Satish Bakshi, learned counsel for the respondent-Bank.

4. Mr. Prasad firstly submitted that petitioner was not heard properly both by the Inquiry Officer and the appellate authority and even the documents so demanded by the petitioner was not supplied to him. It is therefore contended that the inquiry was pending awaiting the Board's decision and in fact without supplying all the documents the Inquiry Officer submitted his report on, the basis of which impugned order of punishment was passed.

5. From perusal of Para 17 of the rejoinder to the counter affidavit filed by the petitioner it appears that he has admitted that the petitioner was supplied only the prosecution documents but not the documents demanded by him. The respondents have annexed the copy of the proceeding of the inquiry as Annexure-C to the counter affidavit. From perusal of the minutes of 3.2.1993, it appears that photocopies of about 38 documents demanded by the petitioner was supplied to him. Again on 4.2.1993 copies of 11 more documents were supplied to the petitioner. In para 14 of the counter affidavit it has been categorically stated that petitioner adopted highly uncooperative and dilatory attitude to delay the proceeding of inquiry. Petitioner first asked for copies of documents on 5.7.1992 and when copies of the relevant documents were made available to him during the inquiry he again came out with another list of documents demanded by him on 10.2.1993 and again he filed another list of documents called for by him on 2.7.1993 i.e. even after conclusion of the proceeding and knowing full well that the proceeding of enquiry had to be completed by 15.2.1993 in terms of an order passed by this Court in CWJC No. 3202/1992-R. It is stated that only such old documents which had no nexus with the involvement in the proceeding was not supplied to him and the facts were duly recorded in the proceeding of inquiry which is evident from the order dated 9.11.1993 passed by the Enquiry Officer.

6. Prima facie therefore it appears that the copies of all the relevant documents demanded by the petitioner were supplied to him and the Enquiry Officer after

giving full opportunity of hearing to the petitioner concluded the inquiry. The Disciplinary Authority and the Appellate Authority also gave full opportunity of hearing to the petitioner and passed the impugned order which is evident from the facts that the Appellate Authority after reappreciation of the entire evidence and the facts of the case reduced the quantum of punishment.

7. It is well settled that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer should be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the charges against the delinquent officer. The Court exercising jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity. The Court cannot embark upon reappreciating the evidence weighing the same like an appellate authority. In this connection reference may be made to the decision of the Supreme Court in the case of Bank of India and Anr. v. Degala Suryanarayana AIR 1991 SC 2407.

8. Similarly in the case of Union of India and Others Vs. Himmat Singh Chahar, their Lordships held that although the High Court is entitled to exercise its power to judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceeding or that the authority exercising jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an Appellate Authority permitting the High Court to re-appreciate the evidence in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the Competent Authorities.

9. In the case of Apparel Export Promotion Council Vs. A.K. Chopra, while considering the scope of interference with the disciplinary matter and punishment their lordships observed. "The High Court appears to have overlooked the settled position that in Departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case and appeal is presented to the Appellate Authority, the Appellate Authority has also the power/ and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact based on appreciation of evidence recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during Departmental proceedings, while exercising the power of judicial review, the High

Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent for that of the Departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonable supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Halton in *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, observed;

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court."

10. It appears from the minutes of the departmental inquiry that petitioner was supplied all the relevant documents and he was given full opportunity of hearing. Merely because some of the relevant documents demanded by the petitioner was not supplied by the respondents will not vitiate the entire departmental proceedings. This Court is not supposed to re-appreciate the entire evidence and to interfere with the order of punishment on the ground.

11. In the facts and circumstances of the case and the law discussed herein above, I do not find any reason to interfere with the order of punishment. There is no merit in this writ application which is accordingly dismissed.