
(2011) 01 DEL CK 0235
In the Delhi High Court
Case No : Writ Petition (C) 1300 of 1988

P.N. Saluja

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0235

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Rajiv Kapur and Rohit, for the Respondent

Judgement

P.K.Bhasin, J.—The Petitioner has challenged his removal from the services of State Bank of India while he was working as an Officer (Junior Management Grade Scale-I). He was ordered to be removed from service by his Disciplinary Authority vide order dated 24th June, 1985 after he had been found guilty in a departmental enquiry of having committed various acts of misconduct. The order of the Disciplinary Authority when challenged by the Petitioner was confirmed by the Appellate Authority (Local Board) vide order dated 21st November, 1985. Then the present writ petition came to be filed under Article 226 of the Constitution of India.

2. The relevant facts may briefly be noticed before proceeding further to consider the grounds of challenge taken by the Petitioner in this petition. The Petitioner had joined the Respondent Bank in the year 1967 as a clerk on probation for six months. He was confirmed on the successful completion of probation period. Initially he was posted at one of the branches of the bank in Varanasi and thereafter in the year 1970 he was transferred to Kanpur and from there he was brought to Delhi in the year 1971. He came to be promoted as Officer Grade-II in October, 1977. The Petitioner was transferred to Gurgaon sometime in 1980 and after sometime to Palwal and finally sometime in 1983 he was transferred to Faridabad where he was suspended in June, 1983.

3. In October, 1983 the Petitioner was served with a charge-sheet on certain allegations of acts of misconduct. The allegations made against him were that:

1) He while posted at Mehrauli Road (Gurgaon), Palwal and Sarai Khwaja (Faridabad) branches left the stations of his postings and commuted daily from Delhi without obtaining prior permission of the controlling authority.

2) He submitted a false T.A. Bill for Rs 715/- on account of his transfer from Connaught Circus New Delhi to Mehrauli Road (Gurgaon) Branch wherein he claimed Rs. 500/- by way of incidental charges (packing, cartage etc.) when he was not entitled to it as he never shifted his residence/luggage to Gurgaon and daily commuted from Delhi.

3) He submitted a Mid-Academic Transfer Allowance bill for Rs. 740/- for the period 19th September 1980 to 30th April 1981 by concealing the fact of his having not shifted his residence to Gurgaon. Incidentally, he was relieved of his duties from Connaught Circus (New Delhi) Branch as at the close of business on the 18th September, 1980 on transfer to Firozepur Jhirka Branch and remained unauthorisedly absent from duty without reporting thereat. Subsequently, his transfer order was modified for Mehrauli Road, Gurgaon Branch and he reported thereat on the 27th November, 1980.

4) He while posted at Palwal Branch, again falsely claimed a sum of Rs. 1000/- as Mid Academic Transfer Allowance for the period July 1981 to April 1982 when he was not entitled to it as his children were already studying in Delhi while he was transferred from Mehrauli Road(Gurgaon) to Palwal Branch and he never shifted his residence to Palwal.

5) While posted at Palwal Branch, he took an advance of Rs 1500/- on 28/5/1982 for visiting Kanpur under Home Travel Concession during the period 16/6/82 to 30/6/82 by giving a false statement that his place of domicile was Kanpur whereas it was New Delhi as per Bank's record. The amount of advance has not been refunded by him so far despite reminder.

6) He was advised by our Palwal Branch Manager on the 17th August, 1981 to take over complete charge of Field Officer's duties from Shri M.L. Valecha, Officer JAGS-I, which he failed to do despite reminder as he was whiling away the time. On the 16th October, 1981, he advised the Branch Manager of having taken charge of only 60 borrowers' accounts out of 631. He against his halting allowance for which he would be entitled for, asking over charge of the Field Officers' duties. Instead of submitting any T.A. Bill, he again requested the Branch Manager on 1st May, 1982 to grant an advance of Rs. 5000/- to be adjusted on submission of the bill for taking over as Field Officer. His request was not acceded to by the Branch Manager and he was asked to submit bill, if any. He was relieved from Palwal Branch for Sarai Khwaja Branch on the 30th September, 1982. After reporting at Sarai Khwaja Branch he prepared a T.A. Bill for Rs. 4197/- in connection with his transfer from Mehrauli Road (Gurgaon) to Palwal Branch wherein he claimed halting allowance amounting to Rs. 3660/- for the

period 17th August to 16th December 1981 on account of taking over as a Field Officer. On the 11th January 1983, he unauthorisedly credited his own savings bank account, maintained at Sarai Khwaja Branch with the sum of Rs. 4197/- and debited Palwal Branch through Branch clearing General Account representing amount of claim in respect of the aforesaid T.A. Bill. Both the debit/credit vouchers were passed by him and the relative transfer responding advice was also signed by him. The following irregularities interalia have been committed in claiming the bill:

a) He claimed travelling expenses from R.K. Puram (New Delhi) to Palwal, whereas he should have claimed the account permissible from Gurgaon to Palwal.

b) He claimed halting allowance for the period of his availing of the leave from 28th September to 1st October 1981 and 19th October to 23rd October 1981;

c) He was not entitled to claim halting allowance for taking over charge of Field Officer's duties as he joined Palwal Branch on the 11th August 1981 as an ordinary officer and it was decided subsequently to entrust him the powers of Field Officer. Besides, he was also paid house rent allowance during the material period as per his entitlement.

7) He obtained an advance of Rs. 4000/- on the 11th November 1982 at Sarai Khwaja Branch to meet the travelling expenses of his going to Puri under Leave Fare Concession facility. While submitting the relative T.A. Bill for Rs. 3097.50 in February 1983, he did not refund Rs. 902.50, representing excess amount of advance obtained by him.

8) On the 8th June 1983, he while posted at Sarai Khwaja Branch, unauthorisedly absented himself from duty from 3.00 PM onward and left the station of his posting without obtaining prior permission from the Branch Manager. On the same day at about 4.20 PM, while Shri H.R. Magon, the Regional Manager was discussing various matters with Shri J.C. Malhotra, Administrative Officer (General Banking) and Shri G.R. Mittal, Officer JMG S-1 in his cabin, he entered his cabin without permission, shouted and thumped the table insisting on the release of his held up increment(s). Despite Shri Magon's explaining to him the position regarding the delay in the release of his increment(s) and asking him to behave properly, he shouted at the top of his voice and used derogatory language and threatened him(Shri Magon) with dire consequences. Some of the remarks passed by him are as under:

Tu Bada BM Aa Gaya hai. Tere jaise kai Dekhe. Bada apne ghar ka daftar bana rakha hai. Tu kursi ke upar baith kar bol raha hai, chal neechay, utar tumhen dekh lunga. Tujhe kaya samajhta hoon main." "Array, hum to Lord hain, hamsen poochhnay wala kaun hai. Tum aur tumhara Branch Manager kya hai. Mai kisi ki kia parwah karta hoon. Mujhse bada kaun hai.

9) He also misbehaved with Shri J.C. Malhotra, Administrative Officer (General Banking) and Shri M.L. Gauri, Officer JMGS-I who tried to intervene and pacify

him.

4. The Petitioner had refuted all these charges. As far as charges No. 8 & 9 in respect of the incident of 8th June, 1983 in which he had allegedly misbehaved and used intemperate language with some officers in the Regional Office of the bank in Delhi are concerned, the Petitioner had claimed that in fact that day he had been abused by the Regional Manager Mr. Magon when he had met him for the release of his increment which was long overdue. It appears that the disciplinary authority was not convinced with his response and so it was decided to initiate a regular departmental enquiry against him. An Enquiry Officer was appointed who conducted the enquiry during which eleven witnesses were examined from the side of the Respondent bank and the Petitioner herein besides examining himself also examined some witnesses in defence. The enquiry officer accepted the bank's evidence and not that of the Petitioner and held him guilty of all the charges except charge No. VI which was found to have been established partly. The disciplinary authority, as noticed already, accepted the enquiry officer's report and imposed the major penalty of removal from service upon the Petitioner and the Petitioner's departmental appeal before the appellate authority also came to be rejected.

5. The Petitioner then approached this Court and in the writ petition the Petitioner had prayed for quashing the entire departmental proceedings from the stage of his suspension and till the dismissal of his departmental appeal and for his re-instatement in service with all consequential benefits.. However, at the time of the hearing this Court was informed that the Petitioner had already crossed the age of retirement. The Petitioner had filed this petition through an advocate but at the time of hearing he presented and argued his case in person while the Respondent bank was represented by its counsel Shri Rajiv Kapur.

6. The Petitioner's grounds of challenge to the entire disciplinary proceedings, inter alia, were that the enquiry officer had not conducted the enquiry fairly and had violated the principles of natural justice on many occasions during the enquiry and further that he simply towed the line of the bank and accepted the bank's case simply after narrating and not discussing the huge amount of evidence adduced during the enquiry from both the sides and without giving any reasons had rejected the defence of the Petitioner. It was also contended that none of the charges stood established even on the scale of preponderance of probabilities and the disciplinary authority also accepted the perverse report of the enquiry officer blindly and not only that the appellate authority also rejected his appeal, in which he had pointed out several flaws in the enquiry and enquiry officer's report, by an unreasoned order and without even making any reference to his grounds of appeal and in this regard the Petitioner drew my special attention to that order of this Court whereby this writ petition was admitted after noticing the submission of the Petitioner's counsel that the appellate authority's order was a non-speaking order. Regarding the order passed by the Local Board in appeal, the Petitioner's further grievance was that since the Disciplinary

Authority(CGM) who had accepted enquiry officer's report was also a member of the local Board its decision was certainly biased.

7. On the other hand, learned Counsel for the Respondent bank submitted that the enquiry officer had conducted the enquiry fairly and had given full opportunity to the delinquent employee to demolish the bank's case and establish his defence and he had availed of that opportunity. The enquiry officer had upon proper appreciation of the evidence adduced before him during the enquiry from both sides, counsel argued, come to the conclusion that the Petitioner was guilty of commission of various acts of misconduct and this Court now cannot sit in appeal over his findings and arrive at different conclusions. It was also contended that this is not a case of no evidence in the enquiry but a case of more than sufficient evidence from the side of the employer and the defence evidence had been rightly found to be not sufficient and reliable to dislodge the bank's case against the Petitioner. Reliance was placed on some judgments of the Supreme Court in support of the submission that the writ Court does not act like an appellate Court while examining the findings of an enquiry officer. Mr. Kapur, however, did not dispute that if the enquiry officer's findings are found to be perverse then certainly writ Court can refuse to accept those findings and give appropriate relief to the aggrieved employee. It was also submitted that the enquiry officer had considered the entire evidence in detail and only then had concluded that the Petitioner was guilty of the charges of misconduct and since the appellate authority had concurred with the decision of the disciplinary authority which had accepted the enquiry officer's report it was not required to pass a speaking order and expression of general agreement by the appellate authority with the conclusions of the enquiry officer and the decision of the disciplinary authority was sufficient. In support of this contention Mr. Kapur placed reliance on a judgment of the Supreme Court in S.N. Mukherjee Vs. Union of India, .

8. I have gone through the enquiry record including the evidence of the witnesses, copies of which were made a part of this petition itself by the Petitioner and no dispute about their authenticity was raised by the learned Counsel for the Respondent bank and have also given thoughtful consideration to the rival submissions.

9. As has been noticed already, the enquiry officer had held the Petitioner guilty of various acts of misconduct and the disciplinary authority had accepted that report. It is not in dispute that the Petitioner had a right to file an appeal as per the relevant Rules before the Appellate Authority which was the Local Board. The Petitioner did avail of that right by filing an appeal before the Appellate Authority. That appeal ran into over forty pages containing various grounds of challenge. It was not disputed by the learned Counsel for the Respondent bank that the Appellate Authority was required to apply its independent mind to the grounds of appeal taken by the Petitioner and to come to an independent conclusion. However, learned Counsel also submitted, the Appellate Authority was not

required to pass a speaking order in the event of it deciding to concur with the decision of the enquiry officer and the disciplinary authority. Therefore, the submission of the learned Counsel for the Respondent was that no fault could be found with the decision of the Appellate Authority in the present case just because a detailed speaking order was not passed while affirming the decision of the disciplinary authority which already had taken into consideration the enquiry proceedings, the enquiries officer's report and the conclusions arrived at by the enquiry officer. As already noticed, in support of this submission Mr. Rajiv Kapur had relied upon one judgment of the Hon''ble Supreme Court reported in S.N. Mukherjee Vs. Union of India, . There is no doubt that in para No. 36 of that judgment the Hon''ble Supreme Court had observed that "The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge" but when that very judgment came to be considered by the Hon''ble Supreme Court subsequently, when similar controversy came to be raised before it in a matter arising out of disciplinary proceedings initiated against a public servant, it was held that even the order of affirmance passed by the Appellate Authority must contain brief reasons and it could not be said that the order of affirmance need not contain any reason at all. That view was expressed by the Hon''ble Supreme Court in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, . It would be advantageous to reproduce below the exact observations of the Hon''ble Supreme Court in the said judgment which are to be found in paras No. 4-9.

4. Shri Dhruv Mehta, learned Counsel appearing for the Appellant relied on a decision of this Court in State Bank of Bikaner and Jaipur v. Prabhu Dayal Grover and contended that an order of affirmation does not require any reasons.

5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao (vide SCC para 20: JT para 19), and in M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India (vide SCC para 6: AIR para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee v. Union of India*, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee* case it has been observed that: (SCC p. 613, para 36) "36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one-line orders stating that they agree with the view of the lower authority.

10. Similarly, in *Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao*, the Hon"ble Supreme Court had held that the Appellate Authority is required to give at least some reasons for rejecting an appeal preferred by a public servant who had been guilty in departmental enquiry. This is what the Hon"ble Supreme Court observed in para No. 20 of the judgment:

20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.

11. Reference may also be usefully made to the views of the Hon"ble Supreme Court expressed in *"Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India"*. It was observed as under:

... It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the Appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the Appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the

case of the Appellants had been properly considered by him

12. Therefore, in view of the aforesaid decision of the Apex Court the submission of the learned Counsel for the Respondent bank that since the Appellate Authority in the present case had concurred with the decision of the disciplinary authority which in turn had concurred with the findings of the enquiry report no speaking order was required to be passed by the Appellate Authority cannot be accepted. The Appellate Authority in the present case did not deal with various submissions made by the Petitioner in his appeal and had simply recorded its concurrence with the decision of the disciplinary authority. This is what the Appellate Authority had said in its order disposing of the Petitioner's appeal:

The Board has gone through the records of the case and given full consideration to the contentions/pleas made in the appeal preferred by Shri. Saluja (Appellant) vis-?-vis the comments of the Disciplinary Authority in regard thereto. The Board agrees with the conclusions arrived at by the Disciplinary Authority and the reasons on which these are based in respect of the articles of charge contained in the charge-sheet dated the 26th October 1983 served upon the Appellant. All the articles of charge, the gist whereof is as under, stand proved on the basis of the evidence produced during the course of departmental enquiry and no effective rebuttal thereof so as to warrant any interfering with the findings recorded in regard thereto, has been made in the appeal.

13. The said order of the local Board can certainly be not called a speaking order. It has simply concurred with the order of the Disciplinary Authority without making any reference at all to either the evidence adduced in the enquiry or to any of the grounds of appeal taken by the Petitioner as it was obliged to do even while affirming the decision of the authorities below.

14. Therefore, this writ petition is disposed of by setting aside the order dated 21st November, 1985 of the Appellate Authority and following the decision of the Hon"ble Supreme Court in two of its judgments referred to already Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, and Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others, . The matter is remanded back to the appellate authority of the Respondent bank for deciding the appeal filed by the Petitioner herein afresh in accordance with law by passing a speaking order. That should be done within a period of three months from today. The Petitioner shall be entitled to the costs of this petition.