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In the Calcutta High Court

Case No : Writ Petition No. 9322 (W) of 2006

Pradip Kumar Mitra — APPELLANT

Vs

United Bank of India and Others — RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2014) 140 FLR 1103 : (2014) 2 LLJ 36 : (2014) LLR 194

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Pratyush Patwari, for the Appellant;Subir Sanyal, Advocate Ms. S. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—The petitioner is an employee of the United Bank of India, i.e. the respondent no. 1 herein. On February 12 1994 the Deputy General Manager passed an order placing the petitioner under suspension for having committed certain acts of misconduct. On October 26 1994 a charge memorandum was issued by the disciplinary authority. Subsequently, the said memorandum was substituted by another memorandum issued by the respondent no. 3. In the disciplinary proceeding that followed the petitioner was found guilty and his pay was reduced by 15 stages lower in the time scale of pay for a period of one year. It was mentioned that during this period he would not earn any increment of pay and on expiry of the period the reduction will have the effect of postponing future increment of his pay. On June 4 2003 the suspension order was revoked.

2. The petitioner filed an appeal before the Chairman and Managing Director against the order of punishment. The Appellate Authority disposed of the appeal by an order dated March 6 2006 confirming the order of the disciplinary authority. The Appellate Authority, inter alia, held that the misconduct alleged against the petitioner had been properly proved at the departmental enquiry.

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3. Both the orders - the disciplinary authority as well as the Appellate Authority have been assailed in the writ petition.

4. It appears that the petitioner''s main focus of challenge is the procedural impropriety on the part of the respondents which has, the petitioner alleges, resulted in the deprivation of his right to represent the case properly at the disciplinary proceeding. A further point taken by him was that the Appellate Authority had not properly disposed of the appeal.

5. The grievances made by the petitioner that the respondents did not conduct any preliminary enquiry is no longer a relevant consideration as the charge against the petitioners have been proved as the enquiry which has been affirmed by the Appellate Authority.

6. Mr. Patwary, the learned advocate for the petitioner submitted that a bare reading of the charge-sheet would show that the it was issued with a closed mind and a biased attitude.

7. A close reading of the charge-sheet, however, does not evince a prejudged mind. That apart this defence may not be available to the petitioner after the conclusion of an enquiry where the petitioner was given an opportunity to defend himself.

8. A persistent plea taken by the petitioner is that he was not supplied with the documents which he asked for and as a result thereof he has been seriously prejudiced in the matter of making his defence to the charges. This has been the recurrent allegation of the petitioner and at different stages he made repeated prayers for the supply of several documents. But as the same has not provided to him the bank authorities had prevented the petitioner from properly presenting his case during the enquiry. Neither any list of wittiness nor any list of documents proposed to be used against the petitioner was given before hand. The petitioner further submits that the disciplinary authority should have held that on the basis of the materials placed before the enquiry he could not be held guilty. The finding of the enquiry officer was without any material against him and the disciplinary authority had in turn passed order of confirmation mechanically on the basis of the enquiry report and the appeal in turn had been disposed of by an incompetent person without giving the petitioner an opportunity of hearing. He makes further submission that the respondents have violated their own rules and regulations and their circulars.

9. I have heard Mr. Patwary, the learned advocate for the petitioner, and the Mr. Sanyal the learned advocate for the bank. After hearing the learned advocates and after the going through the materials on record the allegations made by the petitioner does not really appear to have much substance calling for interference by the court. It is admitted that the first charge-sheet was substituted by the second charge-sheet dated November 16 1995. It may be mentioned that while the forwarding the second charge-sheet to the petitioner the disciplinary authority by a forwarding dated November 16/17 1995 intimated that the earlier

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charge-sheet had been replaced and substituted by the latter and the disciplinary authority even invited fresh reply from the petitioner. Thus the allegation that respondent had issued the second charge-sheet without cancelling the earlier does not bear a moment''s scrutiny inasmuch as the second charge-sheet replaced and substituted the first one. After a charge-sheet is replaced or substituted by another the former one does not simply exist and the question of cancellation a replaced charge-sheet does not arise.

10. This court also does not find than the petitioner can really make any grievance about the non-supply of documents by the respondents. Documents undoubtedly were wanted. But It cannot be gainsaid that the respondent had given an inspection of the same to the petitioner. The reason for the same has been mentioned by Mr. Subir Sanyal that the documents were voluminous at times running into 100 and odd pages and there were practical difficulties in supply of all the copies. In particular Mr. Saynal has relied upon letters dated February 6, 1996, July 26, 1996 and other letters issued by the disciplinary authority. The respondents had informed the petitioner about the list of documents to be used by the Bank at the enquiry. It may be mentioned that Regulation 10B of the said regulation inter alia provides that an officer employee may for the purpose of preparing the defence take inspection within five days of the order or within such further time not exceeding five days as the enquiring authority may allow the documents listed. The petitioner had not challenged the said regulations. As such it cannot be said that bank had failed to provide adequate opportunity to the petitioner in the matter of making his defence. The petitioners was informed that the relevant regulations, i.e. United Bank of India (Discipline and Appeal Regulation 1976) never cast any obligation upon the respondent bank authority to supply of copies of all the documents by which they proposed to prove the charges against the delinquent employee. But the respondents simultaneously had given the petitioner an opportunity to take inspection of those documents provided he was ready to furnish the certificate after the inspection is over that the inspection had been taken by him. By the same letter he was even given additional time to file his written statement after inspection of the documents were completed.

11. It may be mentioned that while a delinquent at a departmental enquiry has a right to know the nature of contents of documents to be used against him so that he may adequately prepare his defence. But he does not have an absolute right to ask for copies thereof, particularly in view of absence of any such provisions in the relevant regulations in respect of an officer. It may further be mentioned that under CPC as well a party is entitled to an only inspection of documents. The question is not so much whether certain documents were asked for and refused. The question is whether a delinquent was refused accesses to the documents so as to enable him to know the contests thereof. Wherever any such document is allowed to a charged employee for inspection the grievance that he was not sufficient opportunity to defend himself must be held to be an inappropriate defence. I do not find that that bank has in any manner violated any of the rights

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of the petitioner or the principles of natural justice.

12. It appears that the enquiry was a long drawn affair but after its conclusion the respondents had given a copy thereof to the petitioner to give him an opportunity to make in writing for submission on the findings of the enquiry officers. Thus the respondent were procedurally correct as an opportunity given to the petitioner for making an observation. The petitioner had availed himself of the same.

13. It appears that the Appellate Authority had disposed of the appeal being delegated by the competent authority. As such it cannot be said that the authority which passed the order was incompetent to do so.

14. The Appellate order was fairly elaborate. It has discussed the various pieces of evidence against the petitioner and how they were proved at the enquiry. What is important is that the Appellate Authority had discussed the charges and the documentary evidences on the point in support allegation against the petitioner. This detailed order by the Appellate Authority cannot be held to be either cryptic or passed in violation of the principles of natural justice.

15. The writ petitioner has referred to the case of Satyabrata Sen Vs. United Bank of India and Others, for a proposition that if a person commits any illegality or irregularity during his office tenure the service jurisprudence says that firstly a preliminary enquiry is to be conducted and an explanation is called for from the employee. If the authority is not satisfied with his explanation only then the question of charge-sheet arises. It is already been found that the petitioner cannot take this point after the conclusion of the disciplinary proceedings. Moreover, the initiation of disciplinary enquiry may be proceeded by an enquiry, fact finding in nature, to decide and find out whether a disciplinary enquiry should be initiated. This preliminary enquiry is not a departmental enquiry. A departmental enquiry is not rendered bad or becomes liable to be set aside if it is not proceeded by the preliminary, unless of course the Rules provide for it.

16. The petitioner has next relied on the case of The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu, for a proposition that in any departmental proceeding if any material is sought to be used in an enquiry copies of that material should be supplied to the party against whom such enquiry is held. This judgment in view of what has been discussed above cannot be said to have any application to the present case. It was found in that case that three of the charges were not proved and charge no. 1 though proved was not held to be an act of misconduct. There was allegation of vague charge-sheet. The authority was required to mention in details how the petitioner had violated the government order. There is thus considerable difference between the facts of the two cases.

17. The petitioner has further referred to the case of Central Bank of India and Another Vs. Kashi Nath Chakraborty, . The petitioner relied on paragraph 12 of the said judgment where it was observed that the disciplinary authority decided

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to hold departmental enquiry even after the submission of the reply to the charge-sheet by the employee. This however is not the case here. This court quite agrees with the submission made by the respondents that while submitting the charge-sheet it was proposed to hold a disciplinary proceeding against the petitioner which was implicit in the language of Regulation 10(3) of the relevant Regulations.

18. In the case of Sachindra Nath Dey Vs. State of West Bengal, the Divisions Bench observed that in the order of the appellate authority there was no proper application of mind. This, however, is not the case here. The order of the appellate authority was very detailed and was supported by reasons. Therefore, this judgment is also cannot be made applicable to the facts of the case.

19. The petitioner next relied on the case of Biswanath Bhattacharjee Vs. United Bank of India and Others, wherein a Division Bench of this Court had come to a specific finding that in terms of Regulation 7(3) the disciplinary authority had to come to a specific finding. The Division Bench also held that if the wording is in absolute terms the charged employee can very well contend that the same reveled a very closed mind. It has already been found that the charge in the present case did not disclose any closed mind on the part of the respondent. Moreover, in the present case that has been specific findings of disciplinary authority and the appellate authority. As such the judgment has no application.

20. The petitioner also relied on the case of the Voltus Limited - Vs.- Thasildar Thana and Others, reported in 2012 (7) Sup 34. The Supreme Court in that case had the occasion to hold that no penal order can be passed without any giving notice of hearing to the affected party. But in the present case the petitioner was given notice of enquiry and all the opportunities to defend himself were adequately given to the petitioner and as such it cannot be said that the order is bad for being passed by the respondent in violation of the principle of natural justice.

21. The other judgment relied on by the petitioner was Jagatbhai Punjabhai Palkhiwala and Others Vs. Vikarambhai Punjabhai Palkhiwala and Others, where the Gujarat High Court had held that the person who takes inspection of documents can also takes notes and even make copies of the same. There is no reason who was permitted to take inspection cannot take xerox copy of the same.

22. On the other hand in the case of Deokinandan Sharma Vs. Union of India and Others, the Supreme Court had held that plea that the enquiring officer had not afforded reasonable opportunity to adduce defence evidence, not having been raised before such authorities, cannot be raised before the Supreme Court.

23. Mr. Sanyal further relied on case of Commissioner and Secretary to the Govt. and Others Vs. C. Shanmugam, for a proposition that the Tribunal was not right to reappreciate the evidence in order to arrive at the conclusion that in the absence of independent evidence the enquiry report cannot be accepted.

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24. It is a settled principle of law that the conclusion reached by a disciplinary enquiry cannot be interfered with lightly by a Court of law unless the same is perverse or is such that no man of ordinary prudence would arrive at it on the basis of the materials on record. In writ jurisdiction the petitioner cannot ask for a reversal of the concurrent findings of the enquiring officer, the disciplinary authority and appellate authority. None of the orders suffers from any of the vice as mentioned

25. I find no merit in the writ petition the same is dismissed.

26. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

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