
(2014) 06 CAL CK 0055
In the Calcutta High Court
Case No : F.M.A. No. 216 of 2014

Pradip Kumar Mitra

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Citation : (2014) 143 FLR 831

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—The appeal is directed against judgment and order dated 08.10.2013 passed by the learned Single Judge dismissing the writ petition challenging the order of Disciplinary Authority as well as the appellate authority holding the appellant guilty of misconduct and imposing penalty of reduction of pay by 15 stages lower in the time scale of pay for a period of one year and with a further direction that during such reduction he shall not earn any increment and on expiry of such period the reduction will have the effect of postponing future increment of pay.

2. The appellant was an employee of the respondent bank and was promoted as Officer in February, 1980. During his employment he was posted at Manager of Panchrol Branch on 02.05.1994 under Midnapore (North) Region and was subsequently transferred to Midnapore (North) Regional Office.

3. On 24.01.1994, the appellant was placed under suspension and a charge memorandum dated 26.10.1994 was served upon him. Enquiry Officer was appointed for holding enquiry in respect thereof.

4. Thereafter, the appellant was served with a substituted charge memorandum on 16/17.11.1995 on the self-same charges. The appellant made representation

dated 07.12.1995 against the substituted charge memorandum and called upon the Disciplinary Authority to supply him documents referred to in the said charge sheet. On 06.02.1996, the Disciplinary Authority furnished a list of documents to the appellant which they proposed to rely on to prove the charges.

5. The appellant thereafter made representations dated 16.02.1996 and 24.07.1996 calling upon the Disciplinary Authority to supply him the relevant documents. The Disciplinary Authority in terms of Regulations 10(B) of United Bank of India (Disciplinary and Appeal) Regulation 1996 (hereinafter referred to as "the Regulation") gave inspection of the documents as they were voluminous. Appellant duly took inspection of the same and without demure participated in the enquiry. In the enquiry the respondent bank exhibited 200 documents, copies whereof were furnished to the appellant. The appellant exhibited 15 documents. The respondent examined one witness, namely, Sri Shamapada Patra, a former Manager of Panchrol Branch of the said bank to prove its charges.

6. The appellant cross-examined the management witness but did not adduce any oral evidence in his support. He submitted a written brief in support of his defence.

7. In conclusion of enquiry, the Enquiry Officer submitted a report dated 07.02.2003 holding that all the charges levelled against the appellant have been proved. The appellant submitted a written statement against the findings of the Enquiry Officer before the Disciplinary Authority. The Disciplinary Authority, by impugned order dated 31.05.2003 concurred with the findings of the Enquiry Officer and held the appellant guilty of charges levelled against him and imposed penalty upon the appellant, as aforesaid.

8. The Appellate Authority by impugned order dated 08.01.2004 affirmed the order of the Disciplinary Authority.

9. The said orders of the Disciplinary Authority and the Appellate Authority were challenged before the learned Single Judge. Learned Single Judge by impugned judgment and order dated 08.10.2013 dismissed the writ petition. Hence, the present appeal.

10. Mr. Pratyush Patwari, learned counsel appearing for the appellant submitted that initiation of the disciplinary proceeding without holding preliminary enquiry was bad in law. He further submitted that the charge memorandum was vague and also reflected a closed mind. He submitted that principles of natural justice were breached as copies of the documents relied upon had not been supplied to the appellant. He also submitted that the order of the Disciplinary Authority was a non-speaking one and reflected non-application of mind to the issues raised in his written representation. He relied on *Sachindra Nath Dey Vs. State of West Bengal*, and *Satyabrata Sen Vs. United Bank of India and Others*, in support of his contentions.

11. Mr. Subir Sanyal, learned counsel appearing for the respondent bank

submitted that there was no breach of Service Regulations in conducting the disciplinary proceeding. The appellant was given inspection of all the documents and therefore was not prejudiced in preparing his defence. He further submitted that such inspection was granted in terms of Regulation 10(B) of the Regulation and no demure was raised thereafter by the appellant on such score. He disputed that the charge memorandum was vague and took us through the elaborate charge memorandum including its annexures in support of his submission. He denied that the Disciplinary Authority had a closed mind while issuing the charge memorandum. He submitted that the order of the Disciplinary Authority was a well reasoned one and all issues had been duly considered.

12. We have considered the submissions of the parties.

13. Coming to the issue of non-supply of documents to the appellant, we find that in response to the representations made by the appellant for supply of documents the respondent bank had called upon the appellant to inspect the said documents in terms of Regulation 10(B) of the Regulation which enables the delinquent to take inspection of documents for preparation of his defence. Learned counsel for the appellant relied upon Circular letter No. PD/DIR/04/OM/353/91 dated 12th August, 1991 which, inter alia, provides that in order to minimize delay in conduct of disciplinary proceeding a list of documents to be relied upon by the management to substantiate the charges is to be supplied to the delinquent. The delinquent employee would be entitled to undertake inspection of all documents as contained in the list and also ask for any other document which he may find necessary for the purpose of replying to the charge memorandum. Learned counsel strenuously argued that non-supply of relied upon documents was in violation of the aforesaid circular.

14. We are unable to accept such contention. The aforesaid Circular merely gives a right of inspection of relied upon documents to the delinquent. Such opportunity has admittedly been given and availed of. There is nothing on record to show that after the inspection of documents the appellant had made any further claim for supply of any other document to prepare his defence. The appellant was duly satisfied after the inspection of documents and no prejudice can be inferred in the facts of the case due to non-supply of such voluminous documents, inspection whereof were duly given to him in terms of the relevant Service Regulation.

15. It is trite law that principles of natural justice are not a strait jacketed formulae but are means to achieve a fair procedure in administration of justice. We are satisfied that adequate opportunity was given to the appellant to prepare his defence in course of the disciplinary enquiry according to rules and no interference in judicial review is called for on this score.

16. With regard to vagueness of the charges, we find that the charge memorandum along with its annexures clearly depicted the particulars of the charges levelled against the appellant. We do not find any vagueness or

generalisation, as argued by the learned counsel for the appellant, which would have caused prejudice to the appellant in defending him against such accusation.

17. We are also not in agreement with the learned counsel for the appellant that the charge memorandum is couched in such language that it expresses a closed mind on the part of the Disciplinary Authority. On the other hand, a full-fledged enquiry was conducted in the instant case wherein all possible opportunity was given to the appellant according to rules to defend himself. The appellant chose not to adduce defence evidence and all issues canvassed by him in his written brief were duly considered.

18. For the aforesaid reasons, we are unable to accept the contention that the Disciplinary Authority proceeded with a preconceived notion of guilt and bias against the appellant.

19. The submission of the appellant that the preliminary enquiry ought to have preceded the disciplinary proceeding is also without substance. There is nothing in the Service Rules which envisages such a cross. In the absence of any specific provision to that effect, holding a disciplinary proceeding without resorting to a preliminary enquiry cannot be said to be bad in law. The authority relied upon by the appellant being *Satyabrata Sen Vs. United Bank of India and Others*, also does not appear to lay down any law of universal application in this regard.

20. Finally, we find that the representation made by the appellant against the findings of the Enquiry Officer are general and omnibus in nature and do not relate to each and every finding in the enquiry report.

21. The Disciplinary Authority having recorded its own reasons while concurring with the findings of the Enquiry Officer, such order cannot be called into question on issue of non-application of mind.

22. Decision reported in *Sachindra Nath Dey Vs. State of West Bengal*, is clearly distinguishable on facts.

23. For the aforesaid reasons, we upheld the order passed by the learned Single Judge. The appeal is dismissed. All connected applications are disposed of.

24. There shall be no order as to costs.

25. Later, learned counsel for the appellant submits that after the expiry of the penalty period, the pay and other emoluments of the appellant have not been released.

26. Learned counsel for the respondent bank disputes such fact and submits that it is not the subject matter of the appeal.

27. We clarify that the dismissal of the appeal would not stand in the way of the appellant making appropriate representation to the respondent bank in this regard and in the event such representation is made, the respondent bank shall consider the same as assured by the learned counsel for the respondent bank.