(2018) 04 GAU CK 0053

In the Gauhati High Court

Case No : WP(C) 4716 of 2009

PRAFULLA KUMAR DAS — APPELLANT

Vs

UNITED BANK OF INDIA and ORS. — RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 62, 66
Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0053

Hon'ble Judges : NELSON SAILO

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.Heard Mr. S.K. Medhi, the learned Senior Counsel assisted by Mr. A. Das for the writ petitioner and Mr. S. Dutta, the learned Senior Counsel

assisted by Mr. C. Sarma appearing for the respondent Bank.

2.The case of the petitioner in brief is that he joined the United Bank of India (the Bank) as Cash-cum-General Clerk on 05.05.1997 at the Jowai

Branch of the Bank. Thereafter, he was promoted to the rank of Scale-I Officer in the month of June, 1990 and further promoted to Scale-II Officer

the month of February, 2002. Between the period, May 2005 to March 2006, he was posted in the Itanagar Branch of the Bank and it is for the

misconduct alleged against him during this posting that a departmental proceeding was drawn against him.

3. The petitioner was placed under suspension vide order dated 15.09.2007 (Annexure-I) with immediate effect for misconduct alleged to have been

committed by him under Regulation 12(1)(a) of the United Bank of India Officer Employeesâ?? (Discipline and Appeal) Regulations, 1976 (the

Regulations). Following his suspension, an explanation was called from him vide communication dated 21.09.2007 (Annexure-II) which was to the

effect that while he was posted as Manager in the Itanagar Branch of the Bank from 24.05.2005 to 18.03.2006, he had committed irregularities in the

Branch by issuing a delivery order dated 16.02.2006 to one M/s Berial Engineering Private Limited, Guwahati for supply of vehicle i.e., Tata JD-315

Backhoe Loader costing Rs. 18,72,000/- (Rupees Eighteen Lakhs Seventy Two Thousand) only to one Mr. Tadar Tanaiya. Although the said delivery

order was said to have been issued against a loan sanctioned to Shri Tanaiya, the records of the Branch revealed that no such loan was

sanctioned/disbursed to him and as such, the delivery order was issued by the petitioner without any valid Term Loan being sanctioned. The vehicle

was delivered to the beneficiary on 17.02.2006 on the basis of the delivery order issued by the petitioner and following which, release of payment

towards the price of the vehicle supplied was being claimed by the firm. The Bank being exposed to a financial loss for the aforesaid amount besides

interest, the petitioner was thus asked to submit his explanation within 10 (ten) days from the date of receipt of the letter.

4. Although the petitioner tendered his explanation, the same having not been accepted, a charge-sheet was issued to him on 12.05.2008 leveling 3

(three) charges against him as below:-

â?? During the tenure of your service as Manager at Bankâ??s Itanagar Branch from 24.05.2005 to 18.03.2006, you had committed the under-

mentioned irregularities thereby failed to take all possible steps to ensure and protect the interest of the Bank and discharge your duties with utmost

integrity, devotion and diligence in contravention of regulations 3 (1) 3 (3) of United Bank of India Officer Employeesâ?? (Conduct) Regulations

1976 thereby committing misconducts in terms of Regulation 24 of the said Regulations.

1. You had issued Bank Guarantee No. ITA/BG/33/05 dated 10.01.2006 for Rs. 1918788.00 on behalf of M/s J.C. Constructions Pvt. Ltd. in favour

of Arunachal Rural Road Development Agency (ARRDA), Itanagar without observing the formalities, as prescribed under the extant guidelines of the

Bank.

2. You had issued delivery order No. ITA/ADV/RTO/TT/02/06 dated 16.02.2006 to

M/s Berial Engineers commitment on behalf of the Bank to make

payment of the price of the machinery to the supplier after delivery of the same to Mr. Tadar Taniya without any valid consideration.

3. You had given a false statement dated 06.03.2007 to the Bank denying issuance of delivery order dated 16.02.2006, even though the same was

issued by you only. â??â??

5. The petitioner was also given a list of documents relating to the article of charges on 12.05.2008 wherein, as many as 8 (eight) documents were

mentioned. Although, the petitioner was given 7 (seven) days time to submit his reply to the charge-sheet which was received by him on 24.05.2008,

he did not submit his reply and instead, vide his letter dated 30.05.2008, he requested for additional 10 (ten) days time for submission of his reply.

Thereafter, again vide his letter dated 10.06.2008, the petitioner requested for further 7 (seven) days time to submit his reply to the charge-sheet. Yet

again vide his letter dated 17.06.2008, the petitioner sought from the respondent Bank all the original documents for verification and submission of his

statement of defence. The respondent authority therefore, drew a presumption that the petitioner had no reply to the charge-sheet and decided to

proceed with the departmental proceedings without further reference to him and informed him about the decision vide communication dated

27.06.2008 (Annexure-IV). It was also mentioned that copies of all the documents on which the charges were based in the charge-sheet would be

provided to him during the enquiry and he will be given reasonable opportunity to defend his case with the help his defence representative if any. An

Enquiry Officer as well as a Presenting Officer was then appointed vide order dated 03.07.2008. The Presenting Officer on 19.09.2008 submitted his

written brief contending that the charges against the petitioner from the evidences on record were proved. The petitioner against the written brief

submitted his reply stating that the basis on which the charges were said to have been proved were wholly inadequate and therefore, the charges

framed against him should be dropped and he be exonerated. The petitioner submitted his reply on 05.11.2008 (Annexure-VII).

6. Upon conclusion of the enquiry, the Enquiry Officer submitted the enquiry report which was then furnished to the petitioner vide communication

dated 16.12.2008 (Annexure-VIII) asking him to submit his written submission on the findings of the Enquiry Officer. Upon receiving the enquiry

report, the petitioner submitted his response to the respondent authority vide communication dated 30.12.2008 (Annexure-IX) requesting the

Disciplinary Authority of the Bank to consider the objections raised by him and to exonerate him from all the charges. However, the Disciplinary

Authority not being satisfied with his reply decided to impose upon him a penalty of compulsory retirement in terms of Regulation 4(h) of the

Regulations vide the impugned order dated 21.01.2009 (Annexure-X).

7. Against the impugned order of penalty dated 21.09.2009, the petitioner preferred an appeal before the Appellate Authority vide his appeal dated

14.03.2009 (Annexure-XI). However, the Appellate Authority rejected his appeal and affirmed the punishment of compulsory retirement imposed

upon him vide order dated 30.05.2009 (Annexure-XII).

8. Mr. S.K. Medhi, the learned Senior Counsel appearing for the petitioner submits that the impugned order of penalty imposed upon the petitioner

cannot be sustained inasmuch as the entire departmental proceedings was conducted most illegally, irregularly and arbitrarily. He submits that the

Bank Guarantee that was alleged to have been issued by the petitioner as mentioned in Charge No. 1 was not even produced in original during the

departmental proceedings and instead, only an attested copy was produced. Therefore, an attested copy of the Bank Guarantee which was not proved

cannot be the basis for imposing a penalty upon the petitioner. He submits that the petitioner was denied of a reasonable opportunity to submit his

written statement of defence against the charge-sheet. He submits that the respondent authority failed to furnished him copies of the documents relied

upon by the management in the enquiry proceedings and therefore, the petitioner was clearly denied a reasonable opportunity of making an effective

defence. Mr. S.K. Medhi further submits that the Government Examiner who rendered opinion on the hand writing of the petitioner on the questioned

documents i.e., the delivery order dated 16.02.2006 was not summoned and examined during the departmental proceedings and therefore, the

petitioner was deprived of an opportunity to cross examine him. He therefore, submits that Charge No. 2 and 3 cannot be sustained and the entire

enquiry proceedings having been arbitrary conducted, the impugned order of penalty cannot be sustained.

9. Mr. S.K. Medhi further submits that although the writ petition was filed as far back as in the year 2009, the respondent Bank failed to file any

affidavit-in-opposition and therefore, in view of the decision rendered by the Apex Court in the case of Naseem Banu Vs. State of U.P. & Ors. 1993

Suppl. (4) SCC 46, the averments made by the petitioner in his writ petition should be deemed to be admitted by the respondents and the writ petition

should be allowed.

10. Mr. S.K. Medhi further submits that had the petitioner indeed issued the Bank Guarantee and the Delivery Order without proper procedure and

authorization, the respondent authorities should have taken appropriate action by proceeding against the person who produced such documents

departmentally or even by lodging an FIR. The same however having not been done, the respondent Bank by proceeding against the petitioner alone

cannot make him a scapegoat.

11. Mr. S.K. Medhi finally submits that enquiry was conducted and concluded in a day i.e., on 08.09.2008 and the petitioner who otherwise has not

faced any departmental proceedings during his entire service career of about 30 years was unable to put up a proper defence within such as short

time. He submits that it is a clear case of denial of reasonable opportunity to the petitioner to defend himself and therefore, the impugned findings and

the penalty imposed upon the petitioner warrants appropriate interference by this Court. Mr. S.K. Medhi in support of his submissions relies upon the

following Apex Court decisions:-

(i) Managing Director ECIL Hyderabad Etc. Vs. B. Karunakar Etc. (1993) 4 SCC 727.

(ii) Pritam Singh Vs. Union of India & Ors. (2005)9 SCC 748.

(iii) Government of India & Anr. Vs. George Philip (2006)13 SCC 1.

(iv) L. Michael & Anr. Vs. M/s Johnson Pumps Ltd. (1975)1 SCC 574.

(v) Naseem Banu Vs. State of U.P. & Ors. 1993 Suppl. (4) SCC 46

12. Mr. S. Dutta, the learned Senior Counsel appearing for the respondent Bank submits that although the Bank has not filed any affidavit-in-

opposition but the departmental proceeding records are available for production and he can very well justify and defend the decision arrived at by the

Bank. He submits that the records only reveal that the entire departmental proceeding was conducted as per the Regulations and the petitioner was given a fair opportunity to defend himself. The petitioner was given all the relevant documents relied upon during the departmental proceeding and he never denied of signing the Bank Guarantee as well as the Delivery Notice and therefore, obtaining the opinion of the Government Examiner or the hand writing expert was in fact really not necessary. He submits that Sections 62 and 66 of the Evidence Act will not be strictly applicable in case of a departmental proceeding conducted by the respondent Bank. He submits that the original Bank Guarantee could not be produced since it was in the custody of the firm concerned and therefore, an attested copy of the Bank Guarantee was relied upon in the departmental proceedings. The petitioner in fact did not raise any objection at the relevant time and therefore, he is estopped to take such a plea at this stage. Mr. S. Dutta by referring to the enquiry report submits that the original copy of the Bank Guarantee was held by Arunachal Rural Road Development Agency and the Executive Engineer of the concerned agency expressed inability to hand over the original copy of the Bank Guarantee. However, since an attested copy of the same was made available to the Bank by the Government Department in usual course of correspondence, the same was treated as original document. Mr. S. Dutta further submits that prior to issuance of a Bank Guarantee there are several formalities to be followed including application from the party concerned executing a Counter Guarantee Bond in favour of the Bank, depositing of Margin Money and concession against the Bank Guarantee etc., amongst others. The petitioner on the other hand having claimed to have worked in the Bank for over 30 (thirty) years failed to follow any all such formalities. The said procedure in fact is not just a mere formality but a necessity in order to safeguard the interest of the Bank. Therefore, the petitioner being a Bank Employee, wherein a higher degree of honesty and integrity is being expected has only shown gross misconduct which cannot be lightly overlooked. The penalty imposed upon him after following the procedure prescribed by the Regulation and after providing adequate opportunity to the petitioner is only just and proper. In support of his submissions, Mr. S. Dutta places reliance on the following decisions of the Apex Court:-

(i) State of U.P. & Others Vs. Nand Kishore Shukla & Anr. (1996)3 SCC 750.

(ii) Disciplinary Authority-Cum-Regional Manager & Ors. Vs. Kikunja Bihari Patnaik (1996)9 SCC 69.

(iii) Lalit Popli Vs. Canara Bank & Others (2003)3 SCC 583.

(iv) Chairman & Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar (2003)4 SCC 364.

(v) Ganesh Santa Ram Sirur Vs. State Bank of India & Anr. (2005)1 SCC 13.

(vi) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane (2005)3 SCC 254.

(vii) T.N.C.S. Corpn. Ltd. & Ors. Vs. K. Meerabai (2006)2 SCC 255.

(viii) Narendra Nath Bhalla Vs. State of Uttar Pradesh & Ors. (2007)15 SCC 775.

(ix) Ex-Constable Ramvir Singh Vs. Union of India & Ors. (2009)3 SCC 97.

(x) General Manager (P), Punjab & Sind Bank & Ors. Vs. Daya Singh (2010)11 SCC 233.

13. I have heard the learned counsels appearing for the rival parties and I have perused the materials available on record including the records

produced by Mr. S. Dutta, the learned senior counsel appearing for the Bank.

14. The petitioner was placed under suspension vide Office Order dated 15.09.2007 and thereafter, an explanation was called from him vide

communication dated 21.09.2007, asking him to submit an explanation within 10 (ten) days from the date of receipt of the communication for having

issued the Delivery Order dated 16.02.2006 to M/s Berial Engineers Private Ltd., Guwahati for supplying a Tata JD-315 Backhoe Loader costing

Rs.18,72,000/-(Rupees Eighteen Lakhs Seventy Two Thousand) only to Mr. Tadar Tanaiya without there being any sanction of loan to that person.

Thereafter, three charges were framed and issued to the petitioner on 12.05.2008 requiring him to submit his written statement of defence within 7

(seven) days from the date of receipt of the memorandum. On the same date i.e., 12.05.2008, the petitioner was also given a list of documents based

on which the charges were framed. However, the petitioner failed to submit his written statement of defence within the stipulated period and

therefore, vide communication dated 27.06.2008, the respondent Bank decided to proceed with the departmental proceedings and the petitioner was

informed that he will be provided copies of all the documents on which the charges were based at the time of enquiry and he will be given reasonable

opportunity to defend himself with the help of a defence representative if any.

Thereafter, the disciplinary authority appointed an Enquiry Officer and

Presenting Officer vide Office Order dated 03.07.2008. A written brief was submitted by the Presenting Officer on 19.09.2008 and likewise, the

petitioner also submitted his written brief on 05.11.2008. The Enquiry Officer then submitted the enquiry report on 13.12.2008 and a copy of the same

was furnished to the petitioner vide communication dated 16.12.2008 requiring him to submit his written submission on the findings of the Enquiry

Officer within a period of 7 (seven) days from the date of receipt of the communication. The petitioner thereafter, submitted his written submission

against the enquiry report on 13.12.2008 to the Disciplinary Authority. Consequently, the Disciplinary Authority vide Order dated 21.01.2009, decided

to impose upon the petitioner, a major penalty of compulsory retirement. Following the penalty imposed upon the petitioner, he filed an appeal to the

Appellate Authority on 14.03.2009, which however was rejected vide order dated 14/30.05.2009.

15. Regulation 4 of the Regulations provides both minor and major penalties. Under Regulation 4(f), the penalty of compulsory retirement is a major

penalty. Regulation 6 provides for the procedure for imposing major penalties. Regulation 6(1) provides that no order imposing any of the major

penalties specified in clauses (e), (f), (g) and (h) of Regulation 4 shall be made except after an enquiry in accordance with the Regulations. Regulation

6(2) also provides that whenever the Disciplinary Authority is of the opinion that there are ground for enquiring into the truth of any imputation of

misconduct or misbehavior against an officer employee, it may itself enquire into, or appoint any other public servant to enquire into the truth thereof.

Regulation 6 of the Regulations deals with the manner in which the enquiry is to be conducted and Regulation 6(7) particularly provides for the

charge-sheeted Officer to avail the services of a defence assistant. Regulation 7 of the regulations deals with the manner in which action is to be

taken on the enquiry report.

16. The departmental proceeding records reveal that a detailed hearing was conducted on 08.09.2008 in the Regional Office of the Bank at Dibrugarh.

On that day, the Enquiry Officer, the Presenting Officer, the petitioner and the Defence Representative of the petitioner were present. As many as 19

exhibits were made by the Presenting Officer. Two departmental witnesses i.e., Shri Dibakar Bhattacharjee posted as Senior Vigilance Officer,

Vigilance Department in the Head Office who had conducted the investigation and Shri. Jayanta Madhav Sharma, Manager of Hatilung Branch who

was posted as Officer (Operation) at the Itanagar Branch of the Bank from 18.06.2005 to 19.08.2008 before he joined Hatilung Branch were

examined. Both were also cross examined by the Defence Representative.

17. From a perusal of the manner in which the departmental proceedings were conducted, it can only be seen that the same was conducted as per the

Regulations. The departmental witnesses clearly identified each of the exhibits exhibited and contended that the procedures of the Bank were not

followed in issuing the Bank Guarantee and the Delivery Order dated 16.02.2006 and it was the petitioner who had issued them. In fact, Shri Jayanta

Madhav Sarma having worked at the Itanagar Branch of the Bank as Officer (operation) could identify the signatures on the documents/instruments

concerned to be that of the petitioner. Records also reveal that original copy of the Bank Guarantee although requisitioned could not be procured.

Though the defence representative raised objection in the reliance placed on the attested copy of the Bank Guarantee during the proceedings, it may

be noticed that the Executive Engineer, ARRDA, RWD, POMA Division at Itanagar expressed inability to hand over the original Bank Guarantee

vide his letter dated 17.05.2007 but however, an attested copy of the original was made available. In the case of State of Haryana â?"Vs- Rattan

Singh (1977) 2 SCC 491, which was referred to by the Apex Court in the case of Divisional Controller, KSRTC (NWKRTC) (supra) it was held that

in a domestic enquiry, the sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are

permissible, though departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow,

what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or

considerations and observance of rules of natural justice. If there is some evidence in support of the finding, Court will not interfere with such finding

to scrutinized sufficiency of such evidence.

18. In the case of Naseem Bano (supra) it was held by the Apex Court that averments not controverted should be proceeded with on the basis that

the said averments had been admitted. In the instant case, although the Bank has not filed affidavit-in-opposition, the fact remains that the petitioner has not specifically denied that the Bank Guarantee as well as the delivery order were not issued by him. Therefore, when the records reveal that the petitioner had indeed issued the Bank Guarantee and the Delivery Order, the decision would not come to the assistance of the petitioner.

19. The case of Managing Director, ECIL Hyderabad & Ors.(supra) cannot be applied to the case of the petitioner inasmuch as the petitioner was not denied of a copy of the enquiry report but in fact, he was given an opportunity to submit a written statement against the findings of the Enquiry Officer in his report. In the case of Pritam Singh (supra), it was also observed that the penalty of compulsory retirement is primarily to be considered on the ground that it is warranted in public interest particularly, when the employee concerned has rendered his services with embellished record of 31 years. However upon perusing the case of Pritam Singh (supra) and comparing it with the present case, it can be seen that the factual scenario are not the same. In Pritam Singh (supra), the charge against the appellant was issuance of an absentee statement which was used by the employee to challenge the disciplinary action against him. The action of the appellant was found to be a serious misconduct indicating his doubtful integrity. However, the Apex Court found the penalty of compulsory retirement to be disproportionate to the alleged misconduct said to have been committed and therefore, set aside the penalty. The case of George Philip (supra) is with regard to the punishment of compulsory retirement issued upon the employee on account of over-staying his leave. The Apex Court however found the penalty not to be disproportionate and therefore, the decision has no application to the present case. In the case of L. Michael & Anr. (supra), the Apex Court held that if the management is unable to establish the allegation against the employee, they cannot cover up the same by an ingeniously and innocent looking order of termination simpliciter. In such case, loss of confidence cannot be the ground for such termination. The facts in the instant case however are different inasmuch as the role of the petitioner in the issuance of the bank guarantee and the delivery order was clearly established during the enquiry proceedings and therefore, the decision referred to is found to have no application.

20. In the case of Nand Kishore Sukla & Anr. (supra), the Apex Court held that even if one charge is proved, the same is sufficient for the

disciplinary authority to impose a penalty. Therefore, the penalty of removed imposed upon the concerned employee was upheld. In the case of

Nikunja Bihari Patnaik (Supra), the Apex Court held that the penalty of dismissal from service imposed upon the Bank Officer who was found to be

acting beyond his authority in allowing advance and over withdrawals, several of which had become sticky and irrecoverable was justified.

21. In the case of Lalit Popli (Supra), the Apex Court held that the High Court while exercising jurisdiction under Article 226 of the Constitution does

not act as an appellate authority. Its jurisdiction is circumscribed to the limits of judicial review for correcting errors of law or procedural errors leading

manifest injustice or violation of principle of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

The Apex Court by further referring to the case of B.C. Chaturvedi â?"Vs- Union of India (1995) 6 SCC 749 observed that the scope of judicial

review is limited to the decision making process. Where the findings of the disciplinary authority are based on some evidence, Court or Tribunal cannot

re-appreciate the evidence and substitute its own findings. The Apex Court further observed that in a case of disciplinary enquiry, the technical rules

of evidence have no application and the doctrine of â??prove beyond doubtâ? therefore will have no application. Preponderance of probabilities and

some material on record necessary to arrive at the conclusion as to whether or not the delinquent has committed misconduct would suffice.

22. Coming to the instant case, from the materials available on record, it can be seen that the petitioner was given reasonable opportunity to defend

himself. He was also provided with a defence representative and was also supplied with the documents related to the charges and given the

opportunity to cross-examine the two departmental witnesses through the defence representative. Furthermore, the departmental witness Shri Jayanta

Madhav Sharma having been posted in the Itanagar Branch during the relevant time clearly contended that the signatures appearing in the bank

guarantee and the delivery order were that of the petitionerâ??s. Therefore, even if the attested copy of the Bank guarantee is to be discarded, his

signatures appearing in the other exhibits including the delivery order has clearly been identified by the departmental witness. Under the given circumstance and upon considering the materials available on record, I do not find any infirmity in the conclusion arrived at by the Enquiry Officer.

23. With regard to the penalty imposed upon the petitioner, it has already been noticed that the penalty of compulsory retirement is a major penalty

under the Regulations. The Apex Court in the case of Ganesh Santa Ram Sirur (supra) has held that the Bank Managers/Officers and employees of

the bank, nationalized or non-nationalized are to exhibit, act and discharge their functions in accordance with the rules and regulations of the bank.

Acting beyond ones authority by itself is a breach of discipline and trust and therefore, would amount to a misconduct. The charge of the appellant in

that case was that he as an employee of the bank had granted loan to his wife in violation of the regulation of the bank and as a result, he was

removed from service. The Apex Court by observing that the employee held a portion of trust where honesty and integrity are the inbuilt requirements

of functioning, it would not be proper for the matter to be dealt with leniently. The order of removal from service of the employee concerned was thus

upheld. Similarly, in the case of Chairman and Managing Director, United Commercial Bank & Ors. (supra), the Apex Court held that a Bank Officer

is required to exercise higher standard of honesty and integrity. Code of conduct and discipline are inseparable from the functioning of every

officer/employee of the bank. No defence is available on the ground that there was no loss or profit when the officer/employee acted without

authority. Acting beyond oneâ??s authority was therefore, by itself a breach of discipline and a misconduct.

24. In the result, upon considering the case in its entity as well as the decisions of the Apex Court as may be noticed above, I do not find any merit in

the writ petition and the same is accordingly dismissed. No cost.

