
(2013) 04 AHC CK 0125
In the Allahabad High Court
Case No : Service Single No. 3277 of 2006

Prem Nath Panday

APPELLANT

Vs

Managing Director, Gramya Vikas Bank Ltd. and 2 Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 — Regulation 84(a)
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 — Regulation 84(a)
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 — Regulation 84(a)

Citation : (2013) 04 AHC CK 0125

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Aditya Tiwari, Mata Prasad Yadav and R.K. Upadhyaya, for the Appellant; Singh Vinod Kumar and N.N. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Petitioner was working as a Field Officer with the U.P. Sahkari Gramya Vikas Bank Ltd. During his posting at Faizabad, he was put under suspension and a department inquiry was instituted against him for acts of misconduct and irregularities. He was submitted with a charge-sheet containing as many as 48 charges and five additional charge-sheets whereupon inquiry report was submitted by the Inquiry Officer on 18.2.2002 and most of the charges were found to be proved against him. On the basis of the inquiry report a show cause notice dated 20.3.2002 was issued by the disciplinary authority and on consideration of the reply of the petitioner thereof, petitioner was ordered to be dismissed from service vide order dated 15.10.2005 passed by the Managing Director (Annexure - 1 to the writ petition).

2. At the very outset the Court inquired as to whether petitioner has a departmental remedy against the aforesaid order, whereupon counsel for the

parties submitted that the services of the petitioner are governed by the U.P. Co-operative Societies Employees" Service Regulations, 1975 (In short "Regulations") and that there is no specific provision for any departmental remedy against the order of dismissal.

3. I have perused the aforesaid regulations and find that clause (i) of Regulation 84 lays down the various punishments which can be imposed upon the employees of the bank which include the punishment of dismissal. Regulation 86 of the Regulations provides for appeal against the punishments referred in clause (a) to (d) of Regulation 84 which excludes the punishment of dismissal. As such, there is no remedy of departmental appeal against the impugned order.

4. I have heard Sri. R.K. Upadhyaya, learned counsel for the petitioner and Sri. N.N. Jaiswal, learned counsel for the respondents.

5. Learned counsel for the petitioner has attacked the impugned order on the sole ground that in the departmental proceedings no oral evidence of either side of the party was recorded and, therefore, the inquiry as well as the order of punishment stands vitiated for non-compliance of principles of natural justice.

6. Initially, when the petition was filed no averment to the above effect was made in the petition and no ground regarding violation of principles of natural justice was taken. However, the writ petitioner was later on got amended and paragraph 26-C was added which reads as under:

26-C. That the learned Enquiry Officer never fixed any date, place and time for holding oral enquiry. No witnesses were examined or cross-examined and no document cited by the prosecution in support of the charges was proved by its respective author of the witness before the Enquiry Officer and the enquiry report was submitted in an arbitrary manner.

7. The averments made in aforesaid paragraph 26-C have been replied by the respondents through their counter affidavit filed to the amended writ petition wherein in paragraph 9C the reply is as under:

9C. That the contents of para 26-C of the amended writ petition are also incorrect and misconceived, hence denied and the petitioner was given full opportunity of hearing during the course of the inquiry by the Inquiry Officer and during the pendency of the inquiry proceedings before the Inquiry Officer neither the petitioner has made any request to him for providing any further opportunity of personal hearing or for examining or cross examining any witness nor any such objection was made on behalf of the petitioner before the Disciplinary Authority while submitting the reply to the Show Cause Notice to him and as such the averments made in para under reply appears to be incorrect on the fact of the record, hence denied.

8. Thus, there is no specific denial to the fact that oral evidence was not adduced to prove the documents or the charge-sheet.

9. The inquiry report on record reveals that the petitioner participated in the inquiry and he has even submitted reply in respect of each and every charge framed against him and it is on consideration of the documentary evidence on record which was specified in the charge-sheet that the Inquiry Officer concluded that the petitioner is guilty of most of the charges which were of very serious nature.

10. In view of all the recitals of the inquiry report, it cannot be said that the petitioner was not associated with the inquiry or that he was denied opportunity to participate in the same. He had full opportunity to defend himself and to adduce evidence of his choice.

11. In such circumstances, the only point which remains for consideration is whether under the facts and circumstances when the charges against a delinquent employee stands proved on the basis of the documentary evidence, is it still necessary for the department to adduce oral evidence.

12. The above aspect of the matter would not detain me for long as it stands answered by the Apex Court in *Roop Singh Negi Vs. Punjab National Bank and Others*, wherein it has been held that mere production of documentary evidence is not enough unless the contents of the same are proved by examining witnesses. It was reiterated that the proceedings of departmental inquiry are quasi judicial in nature and the Inquiry Officer performs quasi judicial functions. Therefore, misconduct/guilt of the delinquent employee though not required to be proved beyond reasonable doubts as in criminal case and the strict rules of Evidence Act may not be applicable but the Inquiry Officer is duty bound to follow the principles of natural justice and the evidence collected during the investigation could not be treated to be evidence in the absence of examination of the witnesses to prove the said documentary evidence.

13. A Division Bench of this High Court in *Parasu Ram Singh Vs. Secretary of Agriculture 2008 (26) LCD 1522* held that it is an obligation of the department to prove the charges levelled against the employee and where no witness was examined by the department to prove the charges the order of dismissal from service cannot be sustained.

14. Another Division Bench of this Court in *Abdul Salam Vs. State of U.P. and Others*, following the decision of the Supreme Court in *State of U.P. and Others Vs. Saroj Kumar Sinha*, wherein it was observed that "since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents", held that the inquiry proceedings which are completed on the basis of the charge-sheet and the reply submitted by the delinquent employee without examining witnesses in support of the charges is not in accordance with well settled principles of law propounded by the Apex Court.

15. In short, in view of the above decisions, the conclusion is that the documentary evidence to prove the charges is not sufficient unless the

documents are proved by adducing oral evidence and thereafter the charges are found to be proved.

16. Since no such procedure has been followed in the present case and no person by the department was examined either to prove the documents produced in evidence or to prove the charges levelled against the petitioner, the entire departmental inquiry stands vitiated and the order of dismissal passed on its basis cannot be sustained.

17. Sri. Jaiswal has not addressed the court on the above aspect and has only submitted that as the services of a bank employee is that of utmost trust and in view of certain decision of the Supreme Court, namely, Union Bank of India Vs. Vishwa Mohan, , Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, Chairman and Managing Director, Bank of India and Others Vs. T. Jogram, Bank of India and others Vs. T. Jogram, no interference in the matter is required when the misconduct is a lit large and the conduct of the employee is likely to shake the confidence of the public in the bank.

18. The aforesaid decisions are on equitable principles and concern the scope of interference by the Court by way of judicial review in the matter of departmental inquiry but none of the above decisions anywhere lay down that where the inquiry itself stands vitiated on account of non compliance of principles of natural justice, the court can shut its eyes and refuse to interfere in the matter as the banking business requires utmost devotion, integrity and honesty on the part of its employees.

19. The aforesaid decisions as such, are of no aid to the respondents and the inquiry report and the order of dismissal deserve to be quashed on the short point that the charges were not proved by adducing oral evidence. The writ petition is accordingly allowed and the order of dismissal dated 15.10.2005 passed by the Managing Director (Annexure - 1 to the writ petition) is quashed with liberty to the respondents to proceed with the departmental inquiry, if necessary, from the stage of submission of the charge-sheet and reply by the petitioner and to pass afresh order in accordance with law.