(2013) 03 DEL CK 0035

In the Delhi High Court

Case No : LPA 191/2007

Punjab National Bank and Others APPELLANT

Vs

H.N. Wadhwa RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 135 DRJ 633 : (2013) 137 FLR 737 : (2013) LLR 757 : (2014) 1 SCT 815 : (2014) 2 SLJ 417

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Judgement

V.K. Jain, J.—The respondent, who at the relevant time was working as a Manager with the appellant Bank was posted at Bhadoi in U.P. from 21st August, 1985 to 27th November, 1986. On the allegations that he had submitted as many as 15 fake hotel bills for Rs. 21257.20, the following charge-sheet was served upon the respondent:-

Shri H.N. Wadhwa, Manager (under suspension), Branch Office, Rana Pratap Bagh, Delhi, during his tenure as Manager on deputation at B/O, Badoi, fraudulently claimed payment of TA/DA bills from the bank, during the period 27.02.86 to 27.11.86 by submitting 15 fake hotel bills for Rs. 21,257.20 as detailed in enclosed statement of Allegations (Annexure-II).

He is, therefore, hereby charged for the same as follows, each charge being independent of the others;

1. For acting in a manner prejudicial to the interest of the bank;

2. For failure to discharge his duties with utmost integrity, honesty and diligence,

3. For failure to ensure and protect the interest of the bank;

4. For acting in a manner unbecoming of an officer of the bank;

5. For acting otherwise than in his best judgment while discharging his duties;

and

6. For making unlawful gains by claiming TA/DA bills on the basis of fake hotel bills.

The following was the statement of imputation accompanying the charge-sheet:-

Shri H.N. Wadhwa while functioning as Manager on deputation at Branch Office, Bhadoi (U.P) fraudulently claimed payment of TA/DA bills from the bank during the period 27.2.1986 to 27.11.1986, by submitting fake hotel bills for Rs. 21,257.20, purportedly to have been issued by Seth Lodging & Boarding, Gyanpur Road, Bhadoi, whereas there is not hotel at Bhadoi, under the name & style of Seth Lodging and Boarding, Gyanpur Road, Bhadoi.

In his reply to the charge-sheet, the respondent stated that during the stay at Bhadoi from 21st August, 1985 to 27th November, 1986, he had stayed in the guest house of Shri B.K. Seth and was provided furnished room with breakfast and lunch for which Mr. Seth had charged for him and issued him bills in the name of Seth Lodging & Boarding which he claimed from the Bank.

2. Since the appellant was not satisfied with the written statement of defence submitted by the respondent, an inquiry was instituted to go into the charges against him. During the pendency of the inquiry, the following additional charges were served upon the respondent:-

Being fully aware of the fact that Shri B.K. Seth is one of the partners of M/s. Seth Carpets which was granted certain credit facilities by Shri Wadhwa, Shri Wadhwa by misusing his official status obtained from Shri B.K. Seth, the abovementioned fake hotel bills thereby deriving pecuniary gain for himself from the bank in an irregular manner.

However, the respondent was not asked to submit a written statement of his defence to the additional charge and no list of documents or list of witnesses to prove the additional charge was forwarded to the Inquiry Officer or supplied to the respondent, in terms of Regulation 6(3) of New Bank of India Officers Employees'' (Discipline And Appeal) Regulations, 1982 which were applicable to the respondent. The charges against the respondent having been held to be proved, the Disciplinary Authority vide order dated 10th June, 1991 imposed penalty of removal of service upon him. The appeal filed by the respondent was dismissed by the Appellate Authority on 19th November, 1991 and the Review Petition filed by him was dismissed on 25th September, 1992.

3. Aggrieved from the orders passed by the Disciplinary Authority and Appellate Authority and Reviewing Authority, the respondent preferred W.P. (C) No. 3047/1993. The learned Single Judge vide impugned order dated December 20, 2006 held that the appellant had failed to give an opportunity to the respondent to file written statement of defence before commencement of inquiry and had also failed to supply the copy of CBI Report to him which failures were serious enough to vitiate the inquiry to the extent of the second part of charge-sheet.

However, since the first charge against the respondent was held to be proved, the learned Single Judge remanded the matter back to the Disciplinary Authority for the purposes of imposing a penalty commensurate with the charge proved against him. Being aggrieved from the order passed by the learned Single Judge, the appellant is before us by way of this appeal. Since the respondent is also aggrieved on account of the finding on the first charge being upheld, he has filed cross-objections challenging the order passed by the learned Single Judge.

4. Regulation 6 of New Bank of India Officers Employees'' (Discipline And Appeal) Regulations, 1982 prescribes the procedure for imposing major penalties and to the extent it is relevant, the said Regulation reads as under:-

6. Procedure for imposing major penalties

(1) No order imposing any of the major penalties specified in clauses (e), (f), (g) & (h) of regulation 4 shall be made except after an enquiry is held in accordance with this regulation.

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(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

(4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under sub-regulation (2) an inquiring authority for the purpose:

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The Disciplinary Authority shall, where it is not the inquiring authority, forward to inquiring authority:

(i) a copy of the articles of charges and statements of imputations of misconduct or misbehavior;

(ii) a copy of the written statement of defence, if any, submitted by the officer employee;

(iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;

(iv) a copy of statements of the witnesses, if any.

5. The purpose of giving an opportunity to the employee concerned to submit a written statement of his defence is to enable him to satisfy the Disciplinary Authority, by way of his reply, that the charges served upon him were not tenable and called for no inquiry. If the Disciplinary Authority is satisfied with the written statement of defence submitted by employee, he is not required to hold an inquiry against him and may decide to drop the proceedings initiated by him. Therefore, by not giving an opportunity to the respondent to file his written statement of defence, the appellant deprived him of this valuable opportunity to satisfy the Disciplinary Authority that the charges against him did not warrant an inquiry.

The purpose of providing the list of witnesses and the copies of documents by which the charge against the employee is sought to be proved, to the Inquiry Officer as well as the delinquent employee is to enable them to know what witnesses the disciplinary authority proposed to examine and what documents it was seeking to prove during the course of inquiry, to substantiate the charges. Supply of list of witnesses sought to be examined and copies of documents sought to be proved during the inquiry is of immense importance to the delinquent employee since he has to prepare his defence, taking into consideration the witnesses who are sought to be examined and the documents which are sought to be proved in the course of the inquiry. It is not possible for an employee to adequately defend himself, unless these vital documents are provided to him before the commencement of the inquiry. An employee who does not get such important document is bound to be prejudiced in making his defence and the inquiry certainly becomes vitiated on account of such prejudice to the delinquent employee. Therefore, we are in agreement with the learned Single Judge that as far as the additional charge is concerned, the inquiry got vitiated on account of the respondent not being given an opportunity to file his written statement of defence before commencement of inquiry and the list of witnesses and copies of documents relevant to the additional charge not being provided to him. Therefore, we find no merit in the appeal filed by the bank.

6. Coming to the cross-objections filed by the respondents, the only question which comes up for consideration is as to whether there was evidence produced during the inquiry to prove that the respondent had not stayed in a Guest House or had not paid the amount which he claimed from the appellant bank as lodging charges. It is settled proposition of law that the Court, while exercising jurisdiction under Article 226 of the Constitution does not act as an Appellate Authority and cannot interfere with the finding of fact recorded by the Disciplinary Authority/Appellate Authority unless it finds that there was absolutely no evidence to prove the charge or the finding recorded by the concerned authority was perverse in the sense that no reasonable person acting on the basis of the evidence produced during the inquiry could have taken the view which was taken by the Disciplinary Authority/Appellate Authority. It is in this backdrop that we have to examine whether the finding of the Disciplinary Authority in respect of the first charge which has been upheld by the Appellate

Authority as well as their Reviewing Authority and also found favour with the learned Single Judge calls for interference by us in this appeal.

7. Admittedly the respondent had submitted bills purporting to be issued by M/s. Seth Lodging and Boarding House, Badhoi. It has come in the deposition of MW-1 that there was no hotel/guest house by the name ''Seth Lodging and Boarding House'' at Badhoi. This witness was in Badhoi from April 1983 to January, 1984 and then from October 1986 till date he was examined. Admittedly, the bills submitted by the respondent to the appellant bank purported to be signed by Mr. Brijainder Kumar Seth. Despite the fact that the appellant had produced a witness who claimed that there was no Guest House by the name of Seth Lodging and Boarding House at Badhoi, the respondent chose not to examine from Brijainder Kumar Seth. The learned counsel for the respondent submitted that the respondent had filed an affidavit from Mr. Seth to prove that the aforesaid guest house was being run by him at Badhoi and the charges shown in the bill were paid to him. However, admittedly Mr. Seth was not produced for cross-examination. In the absence of an opportunity to the appellant to cross-examine Mr. Seth, the affidavit filed by the respondent cannot be read in evidence and consequently cannot be taken into consideration. The respondent did not lead any evidence such as production of Registration Certificate of the aforesaid Guest House, its electricity/water bills, etc. to show that any such Guest House was actually functioning at Badhoi. No employee of the aforesaid Guest House was produced by him in his defence. It also came in the deposition of MW-2 that there was no hotel at the address given in the bills submitted by the respondent which, in fact, was a residential building where the respondent was residing during his tenure at Badhoi and that building belonged to Mr. Seth who had taken a loan from the bank. This witness, on instructions from the bank had gone to Gian Pur Road, Badhoi and made inquiry from local people who told him that no such hotel/Guest House was functioning there. MW-2 also made inquiry about the existence of Seth Lodging and Boarding House and according to him some people had informed him that there was no such hotel. In these circumstances, it cannot be said that there was no evidence to prove the first charge against the respondent or that the finding recorded by the Disciplinary Authority in respect of the first charge is perverse. Consequently, no ground for interference with the impugned order as far as the first charge against the appellant is concerned, is made out. For the reasons stated hereinabove, the appeal as well as the cross-objections are dismissed. The matter is remitted back to the Reviewing Authority to take a fresh decision with respect to the penalty to be awarded to the respondent in respect of the first charge which is the only charge established against the respondent. The appropriate decision by the Reviewing Authority, in terms of this order shall be taken within eight weeks of a copy of this order being communicated to him. No orders as to costs.

