
(2015) 03 DEL CK 0087
In the Delhi High Court
Case No : LPA No. 255/2004

Radha Rani Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Citation : (2015) 3 AD 541

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : Vinay Kumar Garg, Senior Advocate, Amicus Curiae, Imran Ahmad Abhasi, Pushpinder Yadav and Ankur Chibber, for the Appellant; Arti Singh and Pooja Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This intra-court appeal impugns the judgment dated 21st January, 2004 of the learned Single Judge of this Court of dismissal of W.P.(C) No.1318/2000 preferred by the appellant. The appellant had preferred the said writ petition impugning the orders dated 22nd July, 1999 and 19th August, 1999 of the respondent No.2 being the Disciplinary Authority of UCO Bank imposing punishment, in respect of one charge sheet against the appellant of lowering of basic pay by two stages for a period of two years, for each of the two charges levelled, to run with concurrent effect and in respect of other charge sheet of removal of the petitioner from service and lowering of basic pay by two stages for a period of two years for each of the two of the three charges levelled, to run with concurrent effect.

2. Notice of the appeal was issued and the record of the writ petition from which this appeal arises requisitioned. The appeal, on 21st November, 2006 was admitted for hearing and ordered to be listed in the category of regular matters as per its own turn. The hearing in the appeal was concluded on 13th December, 2012 but reopened on the request of the appellant. Arguments were heard on 12th February, 2015 and judgment reserved.

3. The appellant filed the writ petition pleading:

(i) that she was appointed as an Accounts Clerk in UCO Bank on 4th October, 1977;

(ii) that she was harassed by the union people / some staff members, at the behest of the respondent No.2 Disciplinary Authority and the respondent No.3 Deputy General Manager (who have not been impleaded by name but only by post) of the Bank, since July, 1989;

(iii) that the Union Secretary / Workmen Director, on 6th August, 1991 made criminal assault on the person of the appellant;

(iv) that the appellant was suspended from service on 7th August, 1991 and charged with misconduct;

(v) that she was however reinstated in service in February, 1994;

(vi) that she was transferred from the Parliament Street office of the Bank and posted at the place of respondents No.2and3 where the victimization of the appellant continued;

(vii) that the appellant on 11th July, 1997 made complaint to the Chairman of the Bank and on the failure of the Bank to take any departmental action, to local police on 8th December, 1997;

(viii) that she was served with a charge sheet dated 18th December, 1997, accusing her, (a) of making derogatory remarks ?Chandni Chowk Ka Badmash aa gaya phir. Harami Kutta Badatameez? against one peon; and, b) of on 5th December, 1997 having scored out the entry of leave against her name in the attendance register;

(ix) that she filed a reply dated 27th December, 1997 denying the charges;

(x) that inspite of her repeated demands, she was not supplied with copy of the complaint made by the peon against her and was thus deprived of fully meeting the charge against her;

(xi) that the complaint by the peon also was at the behest of respondents No.2and3 and as is evident from the said peon having been conferred undue benefits of posting to his native place and cash benefits;

(xii) that the appellant had submitted leave application for 5th December, 1997 and at 10:00 a.m. on that date also submitted a complaint and thus the question of her wanting to change her intention to avail leave and join duty on 5th December, 1997 of which she was charge sheeted, did not arise;

(xiii) that the respondent No.2 became furious on seeing the reply of the appellant to charge sheet dated 18th December, 1997 and at the behest of the respondents No.2and3, the appellant on 5th March, 1998 was criminally assaulted on her person by the Deputy Chief Officer (General Administrative

Department) and others who tried to outrage her modesty;

(xiv) that the appellant, on 5th March, 1998 itself, on reaching her house in the evening was served with an order of suspension and a letter of the respondent No.3 alleging the appellant to be abnormal and directing her to appear before the Medical Board for her mental checkup on 9th March, 1998;

(xv) that the appellant was thereafter served with a charge sheet dated 3rd April, 1998 accusing her of, on 5th March, 1998, when called to accept the aforesaid two letters, having uttered "Zonal Manager is abnormal, Zonal Manager is mad, B.N. Kaul is abnormal";

(xvi) that the charge sheet dated 3rd April, 1998 was also vague and false;

(xvii) that the appellant filed reply dated 7th April, 1998 to the charge sheet dated 3rd April, 1998;

(xviii) that the same Inquiry Officer who was appointed to conduct inquiry qua the first charge sheet was entrusted with the inquiry qua the second charge sheet also;

(xix) that the inquiries were conducted on day to day basis;

(xx) that the Inquiry Officer also misbehaved with the appellant, abused her, threatened her and pushed her out of the inquiry venue and proceeded with the inquiry in the absence of the appellant, as agent of the respondents No.2 and 3;

(xxi) that no opportunity was given to the appellant to cross examine the witnesses of the Bank;

(xxii) that no independent witness was produced by the Bank;

(xxiii) that though the appellant sought change of Inquiry Officer but the same was also not allowed;

(xxiv) that the appellant was not allowed any defence representative from outside the Bank Employees Union / Trade Union or to engage an advocate to defend herself; since the Workmen Director of the Employees Union of UCO Bank was against the appellant, the appellant did not trust any of the employees of the Bank;

(xxv) that the appellant was wrongly meted out the punishments aforesaid;

(xxvi) though the appellant preferred departmental appeal but the same was not considered; and,

(xxvii) that the appellant had earlier filed W.P.(C) No.5149/1999 but the advocate engaged by her did not appear and another advocate present in court volunteered to appear as her advocate; however the said advocate also withdrew the said writ petition to make some necessary correction to file a fresh petition but did not file a fresh writ petition, compelling the appellant to prefer the writ

petition in person;

The appellant thus in the writ petition sought the relief of reinstatement with all consequential benefits and continuity of service.

4. The learned Single Judge, while dismissing the writ petition, in the impugned judgment has found/observed/held as under:

(a) that it had come on record that the appellant had filed separate departmental appeals against the two orders; the appeal filed against the order dated 22nd July, 1999 was dismissed vide order dated 25th March, 2000 and the appeal against the order dated 19th August, 1999 was dismissed by another order dated 25th March, 2000, modifying the penalty awarded to that of compulsory retirement from the bank's services with superannuation benefits;

(b) that since the appellant was pursuing the writ petition on her own, assistance of an advocate of considerable standing at the Bar was provided to her; however, the appellant on the next date of hearing refused to be represented by any advocate;

(c) that during the pendency of the petition, the Bank on 16th August, 2002 made a concession that it was willing to give up all the punitive action against the appellant save and except the order of compulsory retirement; this would have amounted to the appellant drawing pension at the salary last drawn and not at reduced scale ? however the appellant did not accept the same;

(d) that during the hearing before the learned Single Judge on 18th December, 2003, the appellant was inchoate and emotional in making her submissions and often burst into tears, she was in a highly disturbed state of mind;

(e) that the report of both the inquiries was summoned from the Bank and perused;

(f) that the grievances urged by the appellant were, i) that she was a victim of deep rooted conspiracy by the male staff of the Bank, right from Peon to the Directors, all of whom wanted to exploit her body, being an unmarried woman, ii) that the charge sheets against her were a counterblast to the complaints lodged by her against the said male staff of the Bank, iii) all this was also evident from the manner in which she was suspended and served with the letters on 6th March, 1998, iv) that the charge sheets were vague, and, v) that proper opportunity had not been granted to her in the departmental proceedings because she was not permitted to engage the services of an advocate and the Inquiry Officer was biased against her;

(g) that from the complaints made by the appellant including to the police and the pleadings in the petition, it appeared that the appellant suffers from some kind of delusion, of everyone having an evil eye on her body;

(h) that it was evident from the record that the appellant had been summoning the police to the premises of the Bank and which obviously disturbed the working

of the Bank;

(i) that the appellant had gone to the extent of stating that the male staff of the Bank followed her to her residence and knocked at her door at the dead of night;

(j) that the complaints of the appellant ex facie reveal the delusion from which the appellant suffered and it could not be said that the charge sheets issued were mala fide or motivated out of vendetta;

(k) that the charge sheets were not vague ? each and every article of charge had been precisely stated in the reference;

(l) that as per the terms of the Bipartite Settlement dated 19th October, 1966 between the Bank and the Union, advocates could not be engaged as defence assistant;

(m) that it is not the case of the appellant that the Inquiry Officer was an advocate or a person with legal background;

(n) that the appellant could not demand that she be represented in the inquiry through an advocate, that too at the cost of the Bank;

(o) that even before the Court, the appellant had refused to be assisted by an advocate and had chosen to argue herself;

(p) that a perusal of the record of the inquiries showed that full opportunity had been given to the appellant and it was the appellant who had taken a recalcitrant attitude; and,

(q) that on the basis of the evidence on record, the appellant was indeed guilty and it could not be said that there was no evidence on record to support the findings arrived at.

5. Before proceeding further, we may also record the manner in which this appeal was proceeded. The appeal was filed by the appellant in person and came up for hearing on 5th March, 2004, the order of which date records that though the appellant was heard but it was felt that she was not in a position to deal with the legal aspect of the matter; accordingly Ms. Avnish Ahlawat, Advocate was appointed as Amicus Curiae and requested to assist the appellant in the matter. On 29th November, 2012 and 13th December, 2012, the Amicus Curiae appointed by this Court and the counsel for the Bank were heard. However after the hearing was concluded, the appellant stated that she wanted to make further submissions through a Legal Aid counsel. Accordingly, Ms. Avnish Ahlawat, Advocate was discharged and the appellant given liberty to approach the Delhi State Legal Services Authority (DSLISA). The appellant however thereafter filed an application stating that she did not want the services of legal aid counsel and she may be heard in person. The appellant was heard in person on 11th December, 2014 when it was again felt that assistance of a legally trained person was necessary in addition to the written submission filed by the appellant. Accordingly, Mr. Vinay Garg, Senior Advocate was appointed as Amicus Curiae.

We may record that even during the hearing before us, the appellant continued to intervene inspite of the senior counsel being on his legs.

6. The senior counsel / amicus curiae has contended:

(I) that the departmental inquiry held was in violation of principles of natural justice inasmuch as the charge sheet served on the appellant was without any list of documents, documents or list of witnesses, all of which were not supplied to the appellant even inspite of demand; (II) that the departmental inquiry was also in violation of the principles of natural justice for the reason of not allowing legal counsel to the appellant;

(III) that though all the said grounds were taken in the writ petition but have not been dealt with by the learned Single Judge;

(IV) that the punishment imposed is disproportionate to the charge;

(V) that for similar charges different punishments have been meted out;

(VI) that no evidence was produced before the Inquiry Officer to substantiate the charges;

(VII) that the appellant on 23rd September, 1997 had been entrusted with the additional work in the Law Department and vide another order dated 7th November, 1997 was entrusted with additional duties in the Zonal Office; all this indicated that she was found capable of additional duties;

(VIII) that the appellant vide order dated 4th March, 1998 was selected for training in the ALPM operations which would entitle her to special allowance of Rs.350/- per month and which is again indicative of the appellant having been found intelligent to undertake the said course;

(IX) that on the other hand, the appellant vide another letter dated 4th March, 1998 was accused of abnormal behaviour and was asked to present herself for medical examination before a Medical Board; the said letter is palpably false;

(X) that the appellant was not paid any subsistence allowance and the cheque given to her of subsistence allowance was dishonoured; the appellant had no other source of income;

(XI) reliance is placed on:

(A) para 160 of Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., to contend that violation of principles of natural justice itself amounts to prejudice and no independent prejudice is required to be shown;

(B) Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, and State of Maharashtra Vs. Chandrabhan Tale, to contend that if subsistence allowance is not paid despite demand, the same also vitiates the inquiry;

(C) Kashinath Dikshita Vs. Union of India (UOI)and Others, , State of U.P. and

Others Vs. Saroj Kumar Sinha, and Shobha Sinha Vs. The State of Bihar and Others, to contend that non supply of documents and list of witnesses amounts to violation of principles of natural justice;

(D) that the Inquiry Officer, by advising Bank to re-examine a witness, had acted as the prosecutor also and had disentitled himself from continuing as the Inquiry Officer; reliance in this regard was placed on Saroj Kumar Sinha (supra);

(E) Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, to contend that the Court can look into the evidence to examine whether the findings of the Inquiry Officer are perverse;

(F) Deputy Commissioner, KVS and Others Vs. J. Hussain, to contend that the Court has power to interfere with the punishment.

7. On enquiry by us, it was informed that the appellant has already attained the age of superannuation and the relief of reinstatement is thus now not possible and has to be monetary only.

8. The counsel for the Bank also has argued with reference to his written submission on record of the writ file and in which it is contended:

(aa) that the appellant was in the habit of making false, baseless statements of sexual harassment against senior bank officials, clerks down to the peon including trade union leaders; therefore none of the bank employees were ready to assist the appellant in her defence in the inquiry proceedings; the Bipartite Settlement does not allow engagement of advocate for defence ? hence the Inquiry Officer was right in denying the legal assistance sought by the appellant;

(bb) that the grievance of the appellant of non receipt of the complaint made by the peon A.K. Pathania against her is incorrect inasmuch as the appellant during the course of the inquiry proceedings had admitted having received the said complaint;

(cc) that the grievance raised by the appellant of non supply of list of witnesses is also incorrect inasmuch as the appellant in the proceedings before the Inquiry Officer was handed over the list of witnesses;

(dd) that the appellant cross-examined the witnesses produced by the Bank before the Inquiry Officer and participated in the inquiry proceedings without any hindrance.

9. The senior counsel / amicus curiae in rejoinder has drawn attention to the plea taken in the inquiry proceedings of incapability to defend owing to non payment of subsistence allowance.

10. We have considered the rival contentions and have minutely perused the inquiry proceedings on record of the writ file.

11. The first charge against the appellant, in the charge sheet dated 18th December, 1997 was of having indulged in disorderly or indecent behaviour on

the premises of the bank and which as per the Bipartite Settlement is a gross misconduct. The second charge in the charge sheet dated 18th December, 1997 was of tampering with the Bank's record which amounted to doing an act prejudicial to the interest of the Bank and is also a gross misconduct.

12. The first charge against the appellant in the charge sheet dated 3rd April, 1998 was of on being presented the letter asking her to undergo medical examination having shouted derogatory words amounting to misconduct, being disorderly, indecent behaviour on the premises of the Bank.

13. The second charge against the appellant in the charge sheet dated 3rd April, 1998 was of having refused to acknowledge the receipt of the said letter, amounting to willful disobedience of lawful / reasonable order of the management and which also as per the Bipartite Settlement aforesaid is gross misconduct.

14. The third charge against the appellant in the charge sheet dated 3rd April, 1998 was of having called the police at the Zonal Office on a false complaint, disrupting the work of the Bank and doing act prejudicial to the interest of the Bank amounting to misconduct.

15. A perusal of the inquiry proceedings on record shows:

(i) the inquiry proceedings having been held over several dates and being adjourned from time to time on the request of the appellant;

(ii) the appellant having been given all the documents sought to be relied upon by the Bank during the inquiry proceedings as well as the list of witnesses of the Bank during the course of inquiry, well before the said witnesses were examined;

(iii) the appellant having indulged in lengthy cross examination, spanning over several pages, of each of the witnesses of the Bank.

16. We therefore do not find any merit in the contention of the senior counsel / amicus curiae as well as made in the written submissions of the appellant on record, of the departmental inquiry being vitiated for violation of the principles of natural justice. The counsel for the Bank in this regard has relied on:

(i) Union of India (UOI) and Others Vs. Manab Kumar Guha, laying down that the power of judicial review over orders of Disciplinary Authority is different from appeal and does not permit appraisal of evidence unless the findings are perverse and that as long as the findings are based on material on record on proper appreciation of evidence, the same cannot be interfered with;

(ii) State of Meghalaya and Others Vs. Mecken Singh N. Marak, laying down that the jurisdiction of the High Court to interfere with the quantum of punishment is limited;

(iii) National Aviation Company of India Ltd. Vs. S.M.K. Khan, laying down that where an order of compulsory retirement purports to be one under a Rule

providing for such premature retirement, the proper approach of the Court would be to consider whether the order is sustainable with reference to the requirement of relevant rule; and,

(iv) Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, laying down that the power of compulsory retirement is a doctrine of pleasure, to weed out the dead wood in order to maintain efficiency and initiative in the service.

17. Though, we on minute reading of the evidence of the witnesses examined in the departmental proceedings are also satisfied with the conclusions reached of guilt being not perverse but may also state that from the conduct of the appellant before the Court (one of us Rajiv Sahai Endlaw, J. was also a member of the Bench which had heard the appeal earlier when the appellant expressed dissatisfaction with her lawyer who had then argued as well as the member of the Bench before which thereafter this appeal was listed) also we have no doubt whatsoever in our mind of the Disciplinary Authority of the Bank being justified in meting out the punishment to the appellant of removal from service and which the Bank during the pendency of the proceedings before the learned Single Judge agreed to be modified to compulsory retirement with all consequential benefits without giving effect to the orders for lowering of basic pay. When the appellant could repeatedly disrupt the proceedings of the Court, we have no doubt in our mind of her having indulged in misconducts with which she was charged with. For this reason, we do not deem it necessary to discuss the evidence recorded in the departmental proceedings.

18. As far as the plea of the appellant, of denial of representation by an advocate in the departmental proceedings is concerned, as the aforesaid would show, the appellant even before the Court did not want to be represented by an advocate and disowned the most competent of the advocates offered to her by this Court.

19. We therefore do not find any merit in this appeal and dismiss the same, however clarifying that since the Bank had agreed before the learned Single Judge to modify the punishment meted out to the appellant to that of compulsory retirement with all consequential benefits without giving effect to the lowering of basic pay, the Bank would be bound thereby. The appeal is dismissed. The Bank is directed to pay all the consequential benefits to the appellant within a period of two months from today. Acceptance by the appellant of the said benefits shall amount to acceptance by the appellant of the order of this Court and the appellant thereby being not entitled to rake up the matter further.

No costs.