

(2011) 09 DEL CK 0171
In the Delhi High Court
Case No : Writ Petition (C) 1112 of 1996

Rajendra Kumar Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Central Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 4
Criminal Procedure Code, 1973 (CrPC) — Section 340
Specific Relief Act, 1963 — Section 41

Citation : (2011) 09 DEL CK 0171

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : D.R. Roy, for the Appellant; R.K. Aggarwal and R.S. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner who was working in Respondent No. 2, Central Bank of India (hereinafter "the Bank"), as Sub-Accountant challenges an administrative order dated 25th May 1993 issued by the Regional Manager of the Bank informing him that the Disciplinary Authority ("DA") has awarded him the consolidated punishment "removal from service which shall not be a disqualification for future employment" in terms of Regulation 4(g) of the Central Bank of India Officer Employees (D&A) Regulations, 1976 ("Regulations"). The Petitioner also challenges an order dated 24th November 1993 passed by the Appellate Authority ("AA") rejecting his appeal. The Petitioner prays for the setting aside of the above orders and for a direction to the Bank to reinstate him in service with full back wages and continuity in service.

2. The Petitioner joined the services of the Bank in 1962 and rose to the position of Chief Cashier/Sub-Accountant in 1979. While working as a Chief Cashier/Sub-Accountant in the Chawri Bazar Branch of the Bank on 28th January 1986 he alleged to have deliberately detained a DD cash receipt voucher for Rs.

1,55,250/-. He is stated to have initially countersigned the voucher and after the cash for making the DD was received in full by the receipt cashier, he cancelled the voucher and retained it with him. The Branch Manager had to take the voucher and himself countersign it and release it for preparation of the DD. Later in the evening, while closing the cash the Petitioner made a false hue and cry that there was a shortage of Rs. 90,000/- in the Cash Department. This was found to be untrue when the recounting of the cash took place. After this incident, the Petitioner was transferred to the Patparganj Branch of the Bank. The Petitioner filed Suit No. 107 of 1986 seeking a permanent injunction against the said transfer. The said suit came to be ultimately dismissed by the learned Sub-Judge, Delhi on 1st March 1986. Inter alia, it was held that the transfer order had been properly served on the Petitioner but it was he who refused to accept it. Consequently, the suit was rendered infructuous. Further, it was held that the Petitioner had No. right to be posted at the Chawri Bazar Branch permanently and that the relief of injunction was barred by Section 41 (e) of the Specific Relief Act, 1963.

3. It must be mentioned that in the said suit the Petitioner had filed an application u/s 340 Cr. PC alleging that the Bank had placed on the record of the suit a letter of transfer and a copy thereof purportedly to have been issued to the Petitioner and that either both or one of the two documents was forged. This application was dismissed by the learned Sub-Judge by a detailed order dated 17th December 1988. It was held that the Petitioner had failed to make out a case of forgery on part of the Bank.

4. The Petitioner was issued a memorandum dated 8th September 1986 and another one on 4th October 1986 in relation to the above incident of 28th January 1986. The Petitioner refuted the charges in his statement of defence dated 17th October 1986. In relation to the said charge, on 25th June 1992, at the conclusion of the enquiry, the DA awarded the Petitioner a consolidated punishment of "reduction of pay scale by one stage in the time scale applicable" in terms of Regulation 4(e) of the Regulations.

5. On 5th September 1987 the Petitioner was given an office order to work in the Accounts Department in the place of Mr. A.B. Pandey, Sub-Accountant on account of exigency of administration. When one Mr. Raj Kumar Sharma, a special staff of the Bank approached the Petitioner in order to communicate the said order, the Petitioner refused to accept it and append his signature by way of acknowledgement. The Petitioner stated to have become infuriated and entered into the cabin of the Branch Manager, misbehaved with him and threatened him with the dire consequence. On 4th February 1988 the Petitioner was issued a memorandum of the Bank stating that a departmental enquiry was proposed to be held against the Petitioner in relation to the above incident of 5th September 1987 as follows:

(i) On 5.9.1987, when Mr. R.K. Aggarwal was given an Office Order to work in Accounts Department in place of Mr. A.B. Pandey, Sub Accountant, due to the

exigencies of the Administration but he refused to accept/sign the lawful order of the management.

(ii) Mr. R.K. Aggarwal looking to the said order became infuriated and shouted loudly and abused the Branch Manager in his cabin and thus created indiscipline in the branch.

(iii) He thereafter also threatened the Branch Manager Mr. R.P. Hurria with dire consequences.

6. In relation to the said chargesheet dated 4th February 1988 inquiry was held. The Petitioner attended the enquiry at the first time on 22nd August 1988 and raised a dispute regarding non-receipt of chargesheet. He attended the enquiry on 5th and 29th September 1988 but did not answer the questions raised by the enquiry authority ("EA"). Thereafter, he did not attend the enquiry proceedings despite repeated notices. He was accordingly proceeded against ex parte. Ultimately, the EA submitted a report dated 27th April 1993 holding the charges to be proved. After perusing the comments of the Petitioner on the said report submitted on 13th May 1993, the DA passed an order dated 25th May 1993 awarding the Petitioner the punishment of removal from service. The appeal filed by the Petitioner was dismissed by the AA by the second order dated 24th November 1993. As regards the charge sheet dated 10th June 1988 for the serious lapses by the Petitioner, by an order dated 31st December 1992 the DA imposed on the Petitioner the penalty of reduction of basic pay by two stages in the time scale applicable. This order was confirmed by the AA on 12th November 1993.

7. The Petitioner states that the charges against him were false and manipulated and were on account of "bias, prejudice and personal animosity against the Petitioner by a particular group of officers of the Respondent." The actions of the Bank are alleged to be "arbitrary, illegal, unreasonable, unjustified, mala fide and ...a colourable exercise of the administrative power for ulterior motives". It is submitted that the punishment of removal from service imposed on the Petitioner was shockingly disproportionate to the gravity of the alleged misconduct.

8. The Petitioner assailed the finding of the enquiry officer ("EO") as being based on No. evidence. It was submitted that the punishment was shockingly disproportionate. Thirdly, the charge of use of abusive language against the superior had to be understood "in the environment in which the person is situated and the circumstances surrounding the event that led to the use of the abusive language". Lastly, it is submitted that the objection raised by the Petitioner to the report of enquiry had not even been considered by the DA. The exercise of power by the Bank was mala fide and for the ulterior motive of getting rid of the Petitioner.

9. This Court has considered the submissions of Mr. D.R. Roy, learned Counsel for the Petitioner and Mr. R.K. Aggarwal and Mr. R.S. Mathur, learned Counsel for the

Respondent Bank.

10. The scope of interference by this Court in disciplinary proceedings involving officers of a nationalised bank is limited. This Court does not sit as a court of appeal and re-appreciate the evidence. Unless the finding of the EO is shown to be perverse or biased or based on No. evidence or a mala fide exercise of power, this Court will normally not interfere.

11. The entire record of the enquiry proceedings have been placed on record. It contains the proceedings in each of the sittings of the EO. From 2nd November 1992 till 1st December 1992, the Petitioner did not attend the enquiry proceedings even though he was informed well in advance about the dates of the enquiry. Thereafter, when he failed to attend the proceedings on 22nd December 1992, the EO was left with No. alternative but to record the evidence of the management witnesses. A copy of the enquiry proceedings of 22nd December 1992 was delivered to the Petitioner and yet he did not appear on 29th December 1992. In the circumstances, the right of cross-examination of the management witness was closed and the enquiry was adjourned for 5th January 1993. Again the Petitioner did not attend the enquiry. The same position continued at the hearings on 12th January, 28th January, 2nd February, 10th February, 16th February, 23rd February, 2nd March and 10th March 1993. The Petitioner submitted his written brief on 26th March 1993.

12. This Court is satisfied that sufficient opportunities were indeed given to the Petitioner to participate in the enquiry proceedings. For reasons best known to him, he chose to remain absent. No. error can be found with the procedure adopted by the EO as sufficient opportunities were given to the Petitioner to participate in the enquiry proceedings, which he did not avail of.

13. On merits, the EO analysed the evidence of witnesses MW1 to MW4. The Petitioner repeatedly chose not to participate in the proceedings and therefore forfeited his right to cross-examine any of the witness. Accepting the evidence of MW1 and MW3, the EO held the charges to be proved. The discussion of the evidence by the EO is detailed and it is difficult for this Court to find any legal infirmity in it. With the Petitioner choosing to keep away from the enquiry proceedings and thereby not availing of the opportunities to cross-examine the witnesses, some of whom are eye-witnesses of the incident in question, it is not possible to find fault with the conclusion reached by the EO.

14. As regards the proportionality of the punishment vis-?-vis the misconduct of the Petitioner, the Bank has made a reference to the three incidents of misconduct in which the Petitioner had been awarded punishment. The Petitioner has been held guilty of the charge of refusing to accept lawful orders, abusing the Branch Manager and threatening him with dire consequences. In at least three decisions, i.e., *New Shorrock Mills Vs. Maheshbhai T. Rao*, *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, and *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others*, the Supreme Court has held, in similar

circumstances, that the award of punishment of removal from service for a misconduct of the employee not to be disproportionate. The decision of the Division Bench of the Bombay High Court in Niraj Kumar Singh a Union Bank of India 2008 LLR 209. It is therefore not possible to hold the punishment of removal from service to be disproportionate is to the same effect. It is therefore not possible to hold the punishment of removal from service to be disproportionate.

15. This Court is unable to find any legal infirmity in the impugned order dated 25th May 1993 of the DA awarding the punishment of removal from service to the Petitioner. The impugned order dated 24th November 1993 of the AA also does not call for interference.

16. The writ petition is dismissed, but in the circumstances, with No. order as to costs.