
(2000) 04 PAT CK 0066
In the Patna High Court
Case No : C.W.J.C. No. 5166 of 1996

Rajendra Kumar Rajjan

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 3 LLJ 134 : (2000) 3 PLJR 595

Hon'ble Judges : Asok Kumar Ganguly, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Asok Kumar Ganguly, J.—In this writ petition subject matter of challenge is an order of punishment in respect of the petitioner by Annexure-8 which is an order dated May 20, 1995, by which punishment of withholding of two increments with cumulative effect was imposed on the petitioner. The petitioner's appeal against the said order of punishment was also dismissed by the order of the appellate authority dated November 17, 1995.

2. It is not in dispute that a departmental proceeding was initiated against the petitioner on the following charges :-

I. Modern Electric Works deposited a cheque of State Bank of India issued by C.C.L. Dhori of Rs. 13,561/- on September 7, 1992 in their C/D A/c No. 698. In place of posting the aforesaid cheque, in Modern Electric Works, you posted the cheque in the CD A/c No. 675 of Modern Retraders. Subsequently, on September 16, 1992 you made the purported necessary correction in the CD A/cs of Modern Electric Works and Modern Retraders. While drawing the correct balance in C/D A/c of Modern Electric Works, the purported correct balance was drawn more by Rs. 10,000/-. While balancing the C/D ledgers of September 25, 1992 on November 13, 1992 the error of Rs. 10,000/- was located and while drawing the correct balance in the A/c, an overdraft of Rs. 8,663/- was created.

II. Shri Krishna Prasad is maintaining one S/B A/c. No. 1475 with Phusro Bazar Branch.

The balance in the aforesaid S/B A/c of Sri Krishna Prasad on March 27, 1991 was only 2919.63. You drew the purported correct balance in the A/c some day between March 27, 1991 and April 27, 1991 and made it Rs. 10,919.63. While balancing the S/B ledgers on November 21, 1991, the mistake was located resulting in overdrawing of the aforesaid S/C A/c by Rs. 7,370.37.

III. Star Motor Repairing Works was granted one CGC C/C facility by Phusro Bazar Branch of a limit of Rs. 25,000/- with margin stipulation of 50% on October 13, 1988.

The debit balance in the aforesaid A/c (C/C) was Rs. 24,835.35 on August 17, 1992. A cheque of Rs. 5,000/- was presented on August 17, 1992 over the counter by Star Motor Repairing Works. While discharging your clerical duties at C/D counter, you unauthorisedly allowed overlimit by Rs. 4835.35 in the aforesaid A/c.

IV. While discharging your duties at the cash payment counter On April 13, 1992, a cheque of Rs. 6,000/- drawn by Alam Welding Works was paid by you without being cancelled by the competent official. On the same day another cheque of Rs. 25,000/- drawn by Rahul Engineering Works was paid without its being cancelled. While discharging your duties as clerk on October 23, 1992, you posted a cheque in the CD A/c of R.K. Pandey & Co. of Rs. 1,58,548/- while the balance in the A/c was only Rs. 76,745.53 thereby creating an overdraft of Rs. 81,802.47.

3. After the said charges were communicated to the petitioner, he was also informed about the list of the witnesses by whom and also the list of documentary evidence on the basis of which charges are to be sustained.

4. In respect of those charges the petitioner filed his written statement. Thereafter Enquiry Officer and the Presenting Officer were appointed for holding regular enquiry.

5. The petitioner did not attend the enquiry. This Court is not satisfied with the explanation of the petitioner in the writ petition for not attending the enquiry. In fact, learned counsel appearing for the petitioner also did not advance any argument that the petitioner had any justification for not attending the enquiry. Therefore, the fact remains that, despite notice, the petitioner did not attend enquiry, and the enquiry proceeded ex parte. Even then from Annexure-4 which are the proceedings of the enquiry and Annexure-5 which is report of the enquiry, it appears that the disciplinary authority took care to prove the charges by producing both oral and documentary evidence, and by producing witnesses. So, even in the absence of petitioner, the Bank authorities took the trouble to prove their charges against the petitioner on the basis of relevant materials.

6. The Enquiry Officer after the aforesaid enquiry gave his report holding that all

the four charges have been proved. On the basis of the said enquiry report a show-cause notice was issued to the petitioner asking him to show cause why punishment of dismissal should not be imposed upon him.

7. At that stage also an opportunity of hearing was afforded to the petitioner and the petitioner availed of the said opportunity of hearing, and made his representation. Thereafter, on consideration of the representation of the petitioner, the proposed penalty of dismissal was reduced to a penalty of withholding of two increments with cumulative effect. As noted above, the petitioner's appeal against the said penalty failed and was dismissed.

8. Since despite opportunity being given to the petitioner to attend enquiry and since the fact that the notice of the said enquiry was admittedly served on the petitioner and the petitioner did not attend enquiry proceeding on any of the three days on which enquiry proceedings were held, this Court is of the opinion that no allegation of denial of reasonable opportunity of defence can be urged by the petitioner. In fact, realising such difficulty, learned counsel for the petitioner in his argument advanced three other points in assailing the departmental proceeding and the punishment imposed upon the petitioner. Those three points on which argument was advanced by learned counsel for the petitioner are as follows:

(1) The enquiry authority has found the petitioner guilty of charges which are not Included in the charge-sheet.

(2) In the charge-sheet it has been alleged that the acts of the petitioner amount to gross misconduct within the meaning of Clause 19.5(j) of the Bipartite Settlement. The said Clause 19.5(j) is as follows:

"Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."

It has been argued as a result of alleged acts of misconduct of the petitioner, the Bank has not been involved in any serious loss nor can the said act of misconduct of the petitioner amount to gross negligence or negligence involving any serious loss to the Bank. As such petitioner has not committed any misconduct within the meaning of Clause 19.5(j) of the said settlement.

(3) Uniformity of the punishment has not been maintained by the Bank in the matter of imposing punishment on the petitioner, inasmuch as, the petitioner has submitted that several other employees of the Bank have committed similar act of misconduct but they have, not been proceeded against.

9. Learned counsel appearing for the Bank has refuted all these charges and submitted that in the instant case opportunity of hearing has been given to the petitioner at every stage. He further submitted that all procedural requirements have been complied with in the matter of holding enquiry against the petitioner and the Bank authorities have kept their mind open till the last stage, inasmuch as, even after proposing the punishment of dismissal on the petitioner the Bank

authorities, after hearing the petitioner and after considering the representation of the petitioner, have reduced the proposed punishment of dismissal to a punishment of withholding two increments with cumulative effect. It has been alleged that the quantum of punishment which has been imposed on the petitioner is not at all excessive or harsh comparing the nature of allegation against the petitioner. Therefore, there is no reasonable ground for this Court to interfere.

10. Judging the rival contentions of the parties, this Court proposes to deal with the argument raised by the petitioner one after another.

11. Insofar first argument is concerned, this Court finds that in the charge-sheet the essentials of all the charges have been clearly stated with sufficient particulars, and in the enquiry report those charges have been enquired into, and have been proved on the basis of materials on record, and it cannot be said that the findings of the Enquiry Officer are not based on cogent and relevant evidence. In fact, findings of the Enquiry Officer have been made very systematically and specifically and the Enquiry Officer has dealt with each charge separately, and gave his findings before analysing the materials and evidence on the records in a general way. Particular reference in this connection has been made of the fourth charge by the learned counsel for the petitioner and some exceptions have been taken about the findings made by the Enquiry Officer on the fourth charge.

12. This Court has carefully considered the findings as against the fourth charge with the charge itself. It is obvious that while arriving at the findings there has been detailed discussion of evidence, and such discussion cannot be confined to the language of the charge itself. Therefore, in the process of such discussion the Enquiry Officer has to take into account various materials on records. But the findings on fourth charge proved against the petitioner have not gone beyond essentials of the charge mentioned against the petitioner. Therefore, there is no error in the findings of the Enquiry Officer. So this Court does not find any substance in this point.

13. So far as the second point is concerned, that the acts of misconduct alleged against the petitioner in the charge-sheet do not constitute a misconduct within the meaning of Clause 19.5(j) of the said settlement is also equally unsustainable. Clause 19.5(j) has various parts. First part deals with acts which are prejudicial to the interest of the Bank, the second part deals with acts of gross negligence or negligence involving or likely to involve the Bank in serious loss. These two parts are severable as they are joined by "or" which is disjunctive in this case. According to this Court, this is the correct mode of reading this clause. So the Bank employee can be proceeded against, if he either does any of the acts which is prejudicial to the interest of the Bank or he commits any misconduct or gross negligence involving or likely to involve the Bank in serious loss. In either of these situations, the employees can be governed under the said clause.

14. In the charge-sheet which has been served upon the petitioner it has been clearly mentioned that the petitioner has been proceeded against on the basis of the first part of the said clause, namely, doing acts which are prejudicial, to the interest of the Bank. It is obvious that the acts complained of against the petitioner in the charge-sheet are certainly acts prejudicial to the interest of the Bank. Therefore, this Court cannot accept the argument of counsel for the petitioner that the acts of misconduct alleged against the petitioner, even if correct, do not make out any case of misconduct under the aforesaid clause of the Bank. As such, second point is also over-ruled.

15. Insofar as third point is concerned, the petitioner has not given sufficient particulars of his case that in the similar cases Bank has not proceeded against the employees committing similar acts of misconduct. In para 18 the petitioner has vaguely referred to this point and referred to a chart. The said chart does not give sufficient particulars to make out a case that the employees who have been named there in the said chart committed any misconduct. On the basis of such vague allegation the aforesaid case of not maintaining uniformity in matters of imposing punishment against the petitioner cannot be made out. This Court could have appreciated the point if, in a similar case, charge-sheet had been issued against other employees of the Bank and thereafter they were let off with no punishment. But that is not the case here. As such there is no substance in this point.

16. On the question of following the procedural safeguards and ensuring uniformity in matters of punishment, learned counsel for the petitioner cited a few judgments. The first of which was in the case of High Court of The High Court, Calcutta Vs. Amal Kumar Roy, . In the case of Amal Kumar (supra) dispute was over right of promotion of the respondent to the post of subordinate Judge from that of Munsif, the post which the respondent joined. In the context of that dispute there is an observation in paragraph 5, page 1709 of the report that the Government servant proceeded against "has a right to insist upon the procedure being strictly followed". This principle is well settled. In this case, as noted above, the procedure has been strictly followed. So this decision is of no assistance to the case of the petitioner.

17. The next case is also on the requirement to observe procedural safeguards. In Union of India v. H.C. Goel, AIR 1964 SC 374 para 27 at Page 370 of the report, declared that even though technical rules of evidence do not apply to departmental enquiry, but scrupulous care should be taken to see that "innocent are not punished". In this case, the procedural safeguards have been very scrupulously observed and there is no reason to hold that the petitioner is totally innocent of the charges against him.

18. Counsel for the petitioner also relied on the decision in the case of E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another, . In that case, the Apex Court held that selective action of the authorities in singling out an individual for punishment while letting off others who are alleged to be co-accused is not

permissible. In paragraph 4 of the judgment, at page 261 of the report, the Apex Court expressed its opinion from a perusal of the materials placed before it that there are other officers who are equally culpable and are co-accused and ought to be proceeded against. But in this case, there is no co-accused or co-delinquent with the petitioner. Nothing to that effect has come on record. As already noted, the chart referred to in paragraph 18 does not make out any case that the petitioner has been singled out from amongst a group of employees. So accepting the principles laid down in T.V. Choudhary (supra), this Court holds that in the facts of the case those principles have no application.

19. The decision in the case of The Director General of Police and Others Vs. G. Dasayan, is also a case where for same acts of misconduct several persons have been charge-sheeted. Disciplinary authority exonerated some of them and imposed the punishment of dismissal on the respondent. In that factual context, the Apex Court restored the parity in punishment by setting aside the dismissal order. Here the facts are totally different. So the ratio in G. Dayasan (supra) has no application in the instant case.

20. About the quantum of punishment, there is hardly any scope for this Court to interfere. In all cases of financial irregularities in Banks and other financial institutions, the Apex Court has unfailingly refused to interfere with much graver punishment than the one imposed on the petitioner.

21. Therefore, considering all aspects of the case, this Court finds that sufficient opportunity was given to the petitioner, at each stage, and the Bank has proceeded in a rather very fair manner. This writ petition is therefore dismissed. No order as to costs.