
(2004) 09 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34751 of 1992

Rakesh Kumar Verma

APPELLANT

Vs

Prathama Bank, Moradabad through its Chairman & Anr.

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Prathama Bank (Staff) Service Regulations, 1980 — Regulation 17, 30

Citation : (2004) 09 AHC CK 0157

Hon'ble Judges : R.B.Misra, J

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri R.K. Jain, learned Senior Advocate, assisted by Sri Rahul Jain, learned Counsel for the petitioner, and Sri P.K. Singhal, learned Counsel for the respondents.

2. Cause shown in the restoration application is sufficient, therefore, the restoration application is allowed, order dated 0772003 dismissing the writ petition in default is recalled, writ petition is restored to its original number and after restoring now the same is heard and decided on merits.

3. In this petition prayer has been made to quash the order dated 2921992 rejecting the appeal of the petitioner and order dated 1771991 dismissing the service of the petitioner.

4. The petitioner was served with a chargesheet dated 17/1881988 in reference to Regulations 17 and 30 (1) of Prathama Bank Staff Service Regulations, 1980 (hereinafter in short called as "Regulations, 1980") on the following charges:

(a) The chargesheeted employee refused to receive his transfer orders on dated 14588 in presence of the other staff members of the branch, and left the branch about 10.30 a.m. unauthorisingly;

(b) The chargesheeted employee misbehaved with the higher officials, present inside my cabin (Chairman's cabin) on 16588 on the issue of cancellation of the

said transfer orders;

(c) The chargesheeted employee misbehaved with the staff of the branch, committed the acts of disobedience towards the bank staff in spite of a warning issued to him in connection with an earlier incident of his quarrelling with one of his colleague. ?

5. The chargesheet was accompanied by the documents and evidences referred and relied upon and the petitioner was expected to file reply, however, the petitioner also demanded certain documents on 1781988 (Annexure4 to the writ petition), which were not given to the petitioner and the petitioner was again expected to give a reply and the petitioner had submitted the reply. Thereafter, inquiry was conducted and the disciplinary authority after perusing the reply of the petitioner and inquiry report had passed the dismissal order and without any show cause notice and without serving the inquiry report the dismissal order was passed and the inquiry report was only served with the dismissal order dated 1771991, however, the appeal preferred by the petitioner against the dismissal order too was dismissed summarily.

6. Both, dismissal order as well as appellate order are under challenge in the present writ petition on the ground that by not providing opportunity of hearing and by not serving the inquiry report before passing dismissal order and not providing of second opportunity of hearing, the entire action of the respondents is vitiated.

7. Learned Counsel for the petitioner has placed reliance on the order dated 13th September, 1991 passed by this Court in Writ Petition No. 17692 of 1991 (Babu Singh v. Prathama Bank, Moradabad through its Chairman and another), where the dismissal order was set aside while relegating the matter back to the inquiry officer to proceed the inquiry in consonance to the principle of natural justice, and to pass afresh order only on the ground that the inquiry report was not supplied to the writ petitioner and there was failure of principle of natural justice.

8. Counter affidavit has been filed, according to which there were three inquiry officers appointed in the case and at the instance of the petitioner the inquiry officers were changed and the documents along with the chargesheet were provided and the documents alleged to be indicated as in Annexure4 to the writ petition were only verifactory documents before filing the explanation and after filing explanation the supply of a particular document had no relevance, whereas, as indicated in para14 of the counter affidavit from 0361989 to 10111989 and 2211990 as many as 40 dates were fixed for inquiry and all the witnesses on behalf of Bank were examined and the petitioner had examined one of his defence witness on 21121989 and thereafter started prolonging the inquiry and at subsequent stage got the inquiry officer changed. On the basis of documentary and oral evidences and after taking into consideration the petitioner's reply in consonance to the principle of natural justice the inquiry was concluded on 1051990 and the inquiry officer submitted inquiry report to the

disciplinary authority. According to the respondents, in order to linger on the inquiry proceedings the petitioner challenged the inquiry proceedings by filing suit before the trial Court, wherein initially stay order was granted, however, at later stage on 16/7/1991 the suit was dismissed in default. Thereafter, the disciplinary authority after considering all the material on record and inquiry report passed the dismissal order dated 17/7/1991. The dismissal order dated 17/7/1991 passed by the disciplinary authority along with inquiry report was served upon the petitioner on 13/8/1991 and against which he filed appeal, which too was rejected.

9. According to the respondents, since "Regulations, 1980" did not require the second opportunity to be provided by serving report or show cause notice before passing the dismissal order, therefore, the inquiry report and show cause notice being not necessary requirement were not provided to the petitioner, however, since the petitioner has been given full opportunity to defend his case in the inquiry, therefore, order of dismissal is correct.

10. Regulation 30 of the "Regulations, 1980" deals with the penalty, which provides as under:

30. Penalties.(1) Without prejudice to the provisions of other regulations on officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests of the Bank or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties

(a) reprimand;

(b) delay or stoppage of increment or promotion;

(c) degradation to a lower post or grade or to a lower stage in his incremental scale;

(d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the officer or employee;

(e) Removal from service which shall not be a disqualification for future employment;

(f) Dismissal.

(2) No officer or employee shall be subjected to the penalties referred to in clause (b), (c), (d), (e) or (f) of subregulations (1) except by an order in writing signed by the Chairman and no such order shall be passed without the charge being formulated in writing and given to the said officer or employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers and in the later case his defence shall be taken down in writing and read to him.

Provided, that the requirements of this subregulation may be waived, if the facts, on the basis of which action is to be taken, have been established in a counter of law or Courtmartial, or where the officer or employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to him. In every case where all or any of the requirements of this subregulation are waived, the reasons for so doing shall be recorded in writing.

(3) The inquiry under this regulation and the procedure with the exception of the final order, may be delegated in case the person against whom proceedings are taken is an officer to any officer who is senior to such officer and in the case of an employee to any officer. For purposes of the inquiry, the officer or employee may not engage a legal practitioner.

(4) An officer or employee may be placed under suspension by the officer empowered to pass the final order under this regulation. During such suspension the officer or employee shall receive subsistence allowance equal to one-third of basic pay the officer or employee was receiving on the date prior to the date of suspension, plus dearness allowance and other allowances excluding conveyance allowance, entertainment allowance and special allowance calculated on the reduced pay for the first three months of suspension. For the subsequent period after three months he shall be entitled to draw 1/2 of the basic pay plus the dearness allowance and other allowances specified above, calculated on the reduced pay.

Provided that if no penalty under clause (b), (c), (d), (e) or (f) of subregulation (1) is imposed, the officer or employee shall be refunded the difference between the subsistence allowance and the emoluments which he would have received but for such suspension, for the period he was under suspension and that, if a penalty is imposed on him under all or any of the said clauses, no order shall be passed which shall have the effect of compelling him to refund such subsistence allowance. The period during which an officer or employee is under suspension shall, if he is not dismissed from service, be treated as period spent on duty, leave or period not spent on duty as the officer who passes the final order may direct. ?

11. The petitioner could not demonstrate by pleading or by taking any ground in the writ petition as to how he was prejudiced due to nonsupply of the inquiry report or how the findings of the inquiry officer are incorrect.

12. According to the respondents, in view of the decision of the Supreme Court in 1998(2) LBESR 35 (SC) : (1998) 4 SCC 310 (Union Bank of India v. Vishwa Mohan), which has been passed relying on the decision in (1993) 4 SCC 727 (Managing Director, ECIL v. B. Karunakar), where the writ petitioner was chargesheeted with the charges of misconduct and was dismissed from service on the basis of inquiry report, which was challenged on the ground that nonsupply of inquiry report before passing order of dismissal by disciplinary

authority being fatal and was depriving the writ petitioner from opportunity to assail the inquiry report, the assertions of the writ petitioner was held to be unjustified and the Supreme Court has held that nonsupply of inquiry report before dismissal order was not to deprive the writ petitioner from opportunity of hearing as the inquiry report was made available to the writ petitioner before filing appeal and the writ petitioner could have challenged the inquiry report in appeal, more so, when no prejudice shown to have caused to the employee/writ petitioner of the bank, therefore, the Supreme Court has observed that non supply of the report before imposition of penalty by the disciplinary authority was not to vitiate the inquiry and dismissal order in view of the Union Bank of India Officers/Employees (Disciplinary and Appeal) Regulations, 1976.

13. The Supreme Court in Vishwa Mohan (supra) has further held that the misconduct was serious in nature where the dismissal order was not disproportionate and has further held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee and in particular the Bank officers, and if this is not observed, the confidence of the public/ depositors would be impaired and no distinction could be drawn whether misconduct was committed while working in the ministerial cadre or as officer in the Bank. The Supreme Court in Para12 of Vishwa Mohan (supra) has held as under:

?12..... The respondent was unable to demonstrate before us how prejudice was caused to him due to nonsupply of the enquiry authority's report findings in the present case. It needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/ depositors would be impaired. It is for this reason we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of nonfurnishing of the enquiry report findings to him. ?

14. I have heard learned Counsels for the parties. I find force in the contentions of the respondents that the Regulation 30 of the "Regulations, 1980" does not provide any provision for giving second showcause notice or furnishing inquiry report and obtaining a second explanation before imposition of dismissal order. The petitioner could not demonstrate that by not supplying the inquiry report how the petitioner was prejudiced, more so when the petitioner was given sufficient as many as 45 occasions to defend his case and the petitioner did not avail to challenge the inquiry report in the appeal. In view of verdict of the Supreme Court in Vishwa Mohan (supra) nonsupply of inquiry report does not vitiate the inquiry or dismissal order. In these circumstances, no relief as prayed for could be given to the petitioner.

In view of the above observations, the writ petition is dismissed.