
(1999) 09 AHC CK 0072
In the Allahabad High Court
Case No : C.M.W.P. No. 35032 of 1994

Ramesh Chandra Pandey

APPELLANT

Vs

Central Bank of India and others

RESPONDENT

Date of Decision : 15-09-1999

Acts Referred:

Central Bank of India Officer Employees (Conduct) Regulations, 1976 — Regulation 21, 4, 6, 7, 7(2)

Citation : (1999) 4 AWC 3284 : (1999) AWC 3284 : (2000) 1 LLJ 1347

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Raj Kumar Jain, R.N. Singh, G.K. Singh and A.R. Sahai, for the Appellant; Sharad Verma and Tripathi, for the Respondent

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The petitioner, who at the relevant time was Assistant Branch Manager of the Central Bank of India, Branch Padrauna, has come up with a prayer to quash the Final Order dated 3.11.1993 of the Disciplinary authority (as contained in Annexure-11) in respect of Departmental enquiry regarding charge-sheet dated 2.12.1991 awarding consolidated punishment of discharge from service in terms of Regulation 4 (g) of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 with immediate effect and the Appellate Order dated 25.6.1994 (as contained in Annexure-15) dismissing his appeal, preferred against the order aforementioned.

2. Some brief relevant facts : Vide Memorandum dated 2.12.1991 of the Regional Office, Gorakhpur of the Bank (as contained in Annexure-5). the petitioner was informed of holding of a departmental enquiry against him in regard to the article of charges as contained In Annexure-1 thereto and statement of imputations of misconduct in support of article of charges as enclosed in Annexure-11 thereto asking him to submit his written statement in defence. A perusal of Annexure-5 shows that five charges, enumerated in

Annexure-11 were framed. Vide his written statement (as contained in Annexure-6) the petitioner denied the charges. The Enquiry Officer submitted a Report dated 31-3-1993 (as contained in Annexure-8A). Its perusal shows as follows : (i) Charge No. 1, not proved ; (ii) Charge No. 2 proved up to the extent that CSO has altered the entry of Rs. 800 without verification, etc., but is not found guilty of withdrawing Rs. 800 fraudulently, and thus, this part of the charge not proved ; (iii) Charge No. 3 proved to the extent that CSO has posted the voucher/ cheque in wrong account, but mala fide Intention has not been proved ; (iv) Charge No. 4. He is found guilty of passing his own conveyance bill without any power. But the other part of the charge that he derived undue pecuniary benefit could not be proved, (v) Charge No. 5-CSO has been found guilty for abusing his official position. Thereafter, the petitioner was given a show cause notice (as contained in Annexure-8 to the writ petition) along with the findings of the Enquiry Officer mentioned as above. A perusal of Annexure-8 does not show that the Disciplinary authority intended to differ with the findings of the Enquiry Officer. The petitioner filed his comments/reply to the show cause notice (as contained in Annexure-9). The petitioner filed a representation (as contained in Annexure-10) requesting to change the Disciplinary authority for the reasons stated therein.

2.1. A perusal of Annexure-11 shows that the Disciplinary authority without precisely recording any reason to differ from the findings of the Enquiry Officer proceeded to hold the charges as of very serious nature and awarded following punishments in relation to the charges in question :

"Charge No. 1 : Discharge from Service in terms of Regulation 4 (g) of Central Bank of India Officer Employee (Discipline and Appeal) 1976.

Charge No. 2 : Discharge from Service in terms of Regulation 4 (g) of Central Bank of India Officer Employee (Discipline and Appeal) 1976.

Charge No. 3 : "Reduction of two increments in a Time Scale" in terms of Regulation 4 (e) of Central Bank of India Officer Employee (Discipline and Appeal) 1976.

Charge No. 4 : "Censure" in terms of Regulation 4 (a) of Central Bank of India Officer Employee (Discipline and Appeal) 1976.

Charge No. 5 : "Censure" in terms of Regulation 4 (a) of Central Bank of India Officer Employee (Discipline and Appeal) 1976.

Looking to the above charges, I hereby award a consolidated punishment of DISCHARGE FROM SERVICE in terms of Regulation 4 (g) of Central Bank of India Officer Employees (Discipline and Appeal) Regulations. 1976 with Immediate effect."

2.2. As already stated, the appeal preferred by the petitioner was dismissed vide Annexure-15.

The Submissions :

3. Mr. R. N. Singh, learned senior counsel, appearing in support of this writ petition contended as follows :

(i) No reason having been given by the Disciplinary authority while differing from the findings recorded by the Enquiry Officer and that too without any notice to the petitioner, its order is violative of principles of natural justice as laid down by the three Judges Division Bench of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, another v. Shri Kunj Behari Misra, and the appellate order both are liable to be quashed. He points out that the Supreme Court was considering Regulation 7 of the Punjab National Bank. Regulation 7 of the Central Bank of India is word to word same. Thus, the ratio decidendi in Punjab National Bank and others v. Shri Kunj Behari Misra, (supra) squarely applies.

The relevant statements made in this regard in paragraph 22 of the writ petition have been answered by the respondents in Paragraph 20 of their counter-affidavit that notice was not required to be given and accordingly, no illegality has been committed in the conduct of the proceedings.

(ii) The disciplinary authority lacked Jurisdiction to pass its orders.

4. Shri Tripathi, learned counsel for the respondents on the other hand, contended that the disciplinary authority and the appellate authority both had correctly passed orders and have not committed any illegality and thus, this writ petition is devoid of any merit and be dismissed.

Our Findings :

5. Paragraph 22 of the writ petition reads thus :

"That no opportunity of any kind was provided to the petitioner giving him an idea of the show cause notice that the disciplinary

5.1. Paragraph 20 of the counter-affidavit reads thus :

"That in reply to the contents of paragraph No. 22 of the writ petition it is stated that under the Regulation of 1976 no opportunity was required to be given to the petitioner if the disciplinary authority disagreed with the findings of the Inquiry Officer, while arriving at a different conclusion."

5.2. Paragraph 22 of the Petitioner's Rejoinder to the counter-affidavit reads thus :

"That the contents of para 20 of the counter-affidavit are not admitted and denied and in reply to the same, the contents of para 22 of the writ petition are reiterated as correct. It is further submitted that the petitioner was legally entitled to an opportunity of hearing by the disciplinary authority as the disciplinary authority had disagreed With the findings of the enquiry officer and before he arrived at a different conclusion."

6. Regulation 7 of Central Bank of India Officer Employees" (Conduct) Regulations. 1976 and Regulation 7 of the Punjab National Bank, as quoted in Punjab National Bank and others v. Shri Kunj Behari Misra, (supra) are word to word same.

6.1. Regulation 7 reads thus :

"7. Action on the inquiry report :

(1) The disciplinary authority, if It is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

(2) The Disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record Its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its finding on all or any of the articles of charges, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on alt or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

6.2. Interpreting the aforementioned Regulation, as also Regulations 6 and 21 of the Punjab National Bank, the Hon"ble Supreme Court had held as follows :

"According to sub-regulation (3) of Regulation 7 the disciplinary authority, having regard to the findings on all or any of the articles of charge, imposes any of " the penalties specified in Regulation 4. This obviously implies that where the inquiring authority has found all or any of the charges proved against the delinquent officer and the disciplinary authority agrees with the said findings, then it can proceed to impose any of the penalties specified in the said regulation.

The controversy in the present case, however, relates to the case where the disciplinary authority disagrees with the findings of the inquiry authority and acts under Regulation 7 (2). The said sub-regulation does not specifically state that when the disciplinary authority disagrees with the findings of the inquiring authority. and is required to record its own reason for such disagreement and also to record its own finding on such charge. It is required to give a hearing to the delinquent officer.

".....It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority

differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of Inquiry as explained in Karunakar's case (supra)."

The result of the aforesaid discussion would be that the principles of natural Justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the Inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer."

6.3. As the regulations framed by both Banks, which are nationalised ones, are word to word same, the ratio laid down by the Hon'ble Supreme Court in Punjab National Bank and others v. Shri Kunj Behari Misra, (supra), extracted as above, is binding hand and foot on us. Following it, we, too, hold that principles of natural justice were violated as, admittedly, the petitioner was never told that the disciplinary authority intended to differ from the findings of the enquiry officer.

6.4. Consequently, we hold that the disciplinary authority has committed apparent errors in not giving notice/opportunity to the petitioner to have his say in the matter of its intention to differ from the findings recorded by the enquiry officer. For this legal infirmity, we hold that the punishment imposed on the petitioner stands vitiated. Consequently, we also hold that the appellate order, for the aforementioned infirmity, also stands vitiated.

7. In view of the findings recorded as above, we do not consider necessary to decide the second question urged by Mr. R. N. Singh.

8. In the result, we quash the Impugned orders and allow this writ petition. It will be open to the Bank to proceed in accordance with law, if it so chooses to do.

9. In the peculiar facts and circumstances, however, we make no order as to cost.

10. The office is directed to hand over a copy of this order within one week to Shri Tripathi for its communication to the Bank.