
(1999) 04 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 3139 of 1997 (R)

Ramesh Prasad Gupta

APPELLANT

Vs

Chief Manager, State Bank of India and Others

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Citation : (1999) 47 BLJR 1415 : (2001) 3 LLJ 647

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has prayed for quashing of the order dated September 5, 1997 whereby the respondent No. 3, the Assistant General Manager, State Bank of India, dismissed the petitioner from service.

2. I have heard Mr. K.N. Prasad, senior Counsel appearing for the petitioner and Mr. Kameshwar Prasad, learned counsel for the respondent-Bank and perused the affidavits filed by the parties. The parties have been heard at length and with their consent the writ petition is disposed of at the stage of admission.

3. The facts relevant for the purpose of this application are that the petitioner was employed as Bank Guard. It appears that the petitioner was chargesheeted on various allegations and was directed to submit his show cause. The respondent after finding the show cause unsatisfactory appointed inquiry officer for holding an inquiry. The inquiry officer conducted the inquiry and found that the charges were not proved. The Disciplinary authority, however, after minutely considering the inquiry report did not agree with the finding recorded by the inquiry officer and after going through all the evidences on record came to finding that charges against the petitioner have been proved. The Disciplinary authority, therefore, decided to inflict on the petitioner the punishment of dismissal and accordingly, the petitioner was noticed by the Disciplinary authority to show cause as to why the above punishment should not be imposed on him.

The petitioner accordingly filed show cause and the Disciplinary authority after considering the show cause and after hearing the petitioner finally passed the impugned order of dismissal of the petitioner from service.

4. Mr. K.N. Prasad, learned senior counsel appearing on behalf of the petitioner assailed the impugned order of punishment as being illegal, arbitrary, capricious and without jurisdiction. Learned counsel firstly submitted that the inquiry officer after considering all the evidences both oral and documentary adduced by respondent-Bank and the petitioner came to a finding that the charges levelled against the petitioner have not been proved and the petitioner was exonerated from the charges. But, the Disciplinary authority without issuing notice to the petitioner and without giving opportunity of hearing disagreed with the finding of the inquiry officer and decided to inflict punishment of dismissal of the petitioner from service. According to the learned Counsel, therefore, the action of the Disciplinary authority is wholly arbitrary, illegal and mala fide. Learned counsel: submitted that the Disciplinary authority before recording a finding ought to have given an opportunity of hearing to the petitioner and the notice to show cause issued by the disciplinary authority only on the quantum of punishment is violative of the principles of natural justice. In this connection, learned Counsel relied upon a recent decision of the Apex Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

5. On the other hand, Mr. Kameshwar Prasad, learned senior Counsel appearing on behalf of the respondent-bank firstly submitted that this writ application is not maintainable for the reason that the internal remedy was available to the petitioner either by filing an appeal against the impugned order of punishment or by approaching the Labour Court under the Industrial Disputes Act. Learned counsel then submitted that the Disciplinary authority while deciding to disagree with the finding of the inquiry officer has proceeded in accordance with the law inasmuch as the Disciplinary authority gave an elaborate reasoning while differing with the inquiry report and thereafter, issued show-cause notice to the petitioner informing him about his finding and asking him to show cause. According to the learned Counsel after filing show cause by the petitioner the Disciplinary authority again gave an opportunity of personal hearing to the petitioner and came to a finding that the tentative decision taken by the Disciplinary authority cannot be altered or reviewed. According to the learned Counsel, therefore, the ratio decided by the Apex Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, does not apply.

6. After having heard the learned counsel appearing for the parties and on perusal of the affidavits of the parties, the only question which falls for consideration is whether the finding recorded by the Disciplinary authority in the show cause (Annexure 1) was justified and consequently the order of punishment finally passed by respondent No. 3, the Disciplinary authority, can be sustained in law.

7. It is true that the inquiry officer's report is not binding upon the Disciplinary

authority and it is open to the Disciplinary authority to differ with the finding recorded by the inquiry officer and to come to its own conclusion on the charges levelled against the delinquent employee. But, the Disciplinary authority while disagreeing with the finding recorded by the inquiry officer has to follow certain mandatory requirements of law.

8. At this stage, it would be appropriate to refer to some of the decisions of the Apex Court where similar question has been considered. In the case of Ram Kishan Vs. Union of India and others, a question arose as to whether the Disciplinary authority while issuing notice to show cause as to why he should not differ with the finding recorded by the enquiry officer, has to give reasons of disagreement. It was observed:

"The purpose of the show-cause notice in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the enquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the enquiry officer. In the absence of any ground or reason in the show cause notice, it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order, some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."

9. In the case of State of Assam and Another Vs. Bimal Kumar Pandit, a Constitution Bench of the Apex Court has considered similar question and held that if the dismissing authority differs from the findings recorded in the inquiry report, it is necessary that its provisional conclusion in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the inquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. Their Lordships further observed that if the dismissing authority accepts all the said findings in their entirety, it is another matter but if the dismissing authority accepts the finding recorded against the delinquent officer and differs from some or all of those recorded in this favour and proceeds to specify the nature of the action proposed to be taken on its own conclusion, it would be necessary that the said conclusion should be briefly indicated in the notice.

10. In a recent decision in the case of Punjab National Bank v. Kunj Bihari Mishra Apex Court again has dealt with similar question and after considering its earlier decisions observed:

"These observations are clearly in the tune of the observations in Bimal Kumar Pandit (supra) case earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding as per Karunakar case the first stage required an opportunity to be given to the employee to represent the disciplinary authority even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiry officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report has to be given to the delinquent officer but disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceeding stands concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry 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, imposed 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 case. 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. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

11. It is, therefore, clear that the disciplinary authority has every right to differ with the finding recorded by the inquiry officer and can come to its own conclusion. But, when the disciplinary authority differs with the finding of the inquiry officer and proposes to come to a different conclusion then before finally recording its own conclusion and before holding that the charges have been proved, it would be incumbent upon him to give opportunity of hearing to the delinquent. The disciplinary authority is not supposed to record a final finding on the charges before issuing show cause notice and before giving an opportunity of hearing to the delinquent.

12. In the instant case, it would appear that the inquiry officer held a fullfledged inquiry and after considering all the evidences both oral and documentary came to a positive finding that the charges levelled against the petitioner were not proved. The first charge was that the petitioner was allegedly engaged in another business and was possessing assets disproportionate to the known source of income. The second charge was that the delinquent remained absent from duty without sanctioned leave and the third charge was that the delinquent submitted T.A. bill on the ground of transfer from Latehar to Chakradharpur and withdrew money without actually transporting his household articles by vehicle.

13. In the show-cause notice, the disciplinary authority agreed with the finding recorded by the inquiry officer as against second charge. However, the disciplinary authority disagreed with the finding recorded by the inquiry officer as against first and third charge. It transpires from the show-cause notice (Annexure 1) that the disciplinary authority expressly recorded its conclusive finding on charge Nos. 1 and 3 and disagreed with the finding recorded by the inquiry officer. The relevant portion of the show-cause notice reads as under:-

"Thus, it is proved that you without transporting your household goods and family members from Latehar to Chakradharpur claimed truck hire charges and Bus fare by submitting a fake bill with fake receipt.

I, therefore, on the basis of the evidences in the inquiry hold charge Nos. 1 and 3 as proved.

6. In view of the gravity of the charges proved, I have tentatively decided to

inflict on you the punishment as under:

Dismissal without notice."

14. It is, therefore, evident that the show-cause notice was issued by the disciplinary authority calling upon the delinquent petitioner to appear and show cause as to why tentative punishment decided by him should not be inflicted. The disciplinary authority, therefore, finally reached to its own finding holding the delinquent guilty of the charges and holding that the charges have been proved before issuing notice to show cause to the petitioner as to why he should not differ with the finding of the inquiry officer. It further appears that pursuant to that show-cause notice, the petitioner appeared and filed a detailed show cause justifying the finding recorded by the inquiry officer. The said show cause was disposed of by the disciplinary authority by the impugned order whereby he held that there is no reason for him to differ with the finding already recorded by him before issuing show-cause notice. The disciplinary authority, therefore, by the said order inflicted punishment of dismissal of the petitioner from service.

15. Having regard to the aforesaid facts, in my opinion, therefore, such procedure adopted by the Disciplinary authority is not in consonance with the principles laid down by the Apex Court in the decisions referred to hereinabove. In the show-cause notice (Annexure 1), the disciplinary authority ought to have disclosed some evidences on the basis of which he proposed to differ with the findings of the inquiry officer and the delinquent should have been called upon to file show cause as to why the charges levelled against him cannot be said to have been proved on the basis of those evidences. It is only after submission of the show cause and giving opportunity of hearing to the delinquent, the Disciplinary authority should have recorded his own finding on the charges levelled against the petitioner. Since the same has not been done by respondent No. 3, the impugned order of punishment cannot be sustained and is liable to be quashed.

16. Having regard to the facts and circumstances of the case and the law discussed hereinabove. I am of the opinion that the action of the respondent in dismissing the petitioner from service is bad in law.

17. In the result, this writ application is allowed. The impugned order of dismissal is quashed. The respondent concerned is directed to reinstate the petitioner in service with all consequential monetary benefits.