
(2004) 06 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 617 of 2003

Rampal Chouhan

APPELLANT

Vs

Marwar Gramin Bank and Another

RESPONDENT

Date of Decision : 03-06-2004

Acts Referred:

Marwar Gramin Bank (Staff) Service Regulations, 1980 — Regulation 30(1)

Citation : (2004) 4 RLW 2700 : (2004) 3 WLC 514

Hon'ble Judges : N.N. Mathur, J;K.K. Acharya, J

Bench : Division Bench

Advocate : M. Mridul, sisted by Gajendra Maheshwar, for the Appellant; M.D. Purohit, assisted by Anand Purohit, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—The instant special appeal is directed against the judgment of the learned Single Judge dated 22nd July, 2003 dismissing the writ petition.

2. The appellant was dismissed from service under the provisions of Regulations 30(I)(f) of the Marwar Gramin Hank (Staff) Services Regulations, 1980 (hereinafter referred to as the Regulations of 1980) having been found guilty of the charge of misconduct leveled against him while he was posted at Sarnau Branch of the respondent Marwar Gramin Bank in District, Jalore. A complaint came to be filed by some of the loanees against him alleging inter alia that he demanded bribe for providing them relief under the Agricultural Rural Bank Relief Regulations. A preliminary enquiry was conducted by Shanti Lal Sharma, who recorded the statements of the Manager, Field Supervisor and other staff members and also recorded the statements of the complainants. After conducting the preliminary enquiry, disciplinary proceedings were initiated under Regulation 30 of the Regulations of 1980. The appellant was served with a memorandum dated 6.9.91 whereby he was informed that enquiry is proposed against him on the charges set out in the statement of charges and explained in the statement of allegations. The charges against the appellant set out are as

follows:-

"Charge No. 1

That the petitioner demanded Rs. 100/- from one Narsi as bribe for closing his account and he told the loanccs to give money and take the deposit receipts later on and because of not giving of receipts by him, the loanees did not deposit the money in the Bank and therefore, he did not watch the interest of the Bank and thus, he violated Regulations 17 and 19 of the Regulations of 1980.

Charge No. 2

That the petitioner did not give correct information to Gancsna and Mohanlal in respect of their accounts and he harassed the loanees and by not giving correct information to the loanees and harassing the loanees, he violated Circular dated 27.7.1981 and further, lie collected Rs. 232.65 more from Mohanlal as bribe and thus, he violated Regulations 17 and 19 of the Regulations of 1980.

Charge No. 3

That the petitioner demanded Rs. 200/- as bribe from one Karmi and further, the petitioner was given Rs. H00/- towards loan amount by Karmi, but the petitioner did not deposit that money in the bank and kept that amount with him unauthorisedly and thus, he did not deposit the amount received from the loanees in the Bank and thus, violated the Circular dated 18.2.1984 and further by demanding bribe and keeping the recovered amount towards loan with him, he violated the provisions of Regulations 17 and 19 of the Regulations of 1980.

Charge No. 4

That similarly, the petitioner also demanded bribe from Teja and further, he took Rs. 1300/- from Teja, but did not deposit that money in the bank and kept that amount with him unauthorisedly and. therefore, he violated the instructions contained in the circulars dated 27.7.1981 and 12.2.1984 and also violated the provisions of Regulations 17 and 19 of the Regulations of 1980.

Charge No. 5

That the petitioner did not give correct information to the loanees in respect of balance and already deposited loan amount and he harassed the loanees and also gave wrong information to them and thus, he lowered clown the image of the Bank.

Charge No. 6

That on 25.10.1990, he was Cashier and cash book was not closed by him on that day and though the amount was actually received on 26.10.1990, but he issued the receipts in the date of 25.10.1990 and thus, violated the instructions contained in Circular dated 18.2.1984.

Charge No. 7

That on the vouchers dated 25.10.1990, the petitioners did not mention the description of notes."

3. The appellant submitted a reply to the charges denying all the allegations. One Shri G.B. Bhati was appointed as Enquiry Officer. It is significant to state that the charge No. 1 has been framed on the basis of complaint of Narsi, Charge No. 2 on the basis of complaint of Ganesh and Mohanlal, Charge No. 3 on the basis of complainant of Karrni and Charge No. 4 on the basis of complaint of Teja. Thus, during the course of enquiry Narsi, Ganesha, Mohanlal, Karmi and Teja were summoned on 16.6.93 for their statements being recorded. Instead of recording their statements during the enquiry, their statements recorded during the preliminary enquiry were taken on record. They were just asked if those statements were given by them in the course of preliminary enquiry. They accepted that they had given by them in the course of preliminary enquiry. They accepted that they had given the statements during the enquiry. On that day as the defence assistant could not remain present, the case was adjourned to 10.9.93 for cross examination. On 10.9.93 when they were sought to be cross examined, all the witnesses made a joint application stating that they were not prepared to face cross examination and whatever they had said in their earlier statement was correct. The case was adjourned to 27.10.93. A request was made on behalf of the appellant for cross examination but the request was rejected on the ground that the witnesses have already declined to face cross examination. The appellant on his part requested to call Sarva Shri Shanti Lal Sharma, Kalu Ram Field Supervisor and Mangla Ram as defence witnesses. Mangla Ram refused to appear as a defence witness. Shanti Lal did not appear. On 29 & 30 March the appellant's witnesses Sarva Shari Bhojraj Meghwal, Ishwar Singh and Suit. Gawari Devi were examined. The appellant sought to examine Het Ram as defence witness, but the prayer in that regard was rejected. The Enquiry Officer found appellant guilty of Charges No. 2, 3 & 4 and for the rest charges he held that same are not proved against the appellant. A show cause notice dated 24.5.95 was served upon him. The Disciplinary Authority passed the order dated 8th August, 1995 dismissing the appellant from service. It appears from the order Annexure-1 dated 8.8.95 that the Disciplinary Authority did not agree with the exoneration of the appellant by the Enquiry Officer on the charges No. 1, 5, 6 & 7. He found all the charges proved against the appellant. The matter was unsuccessfully carried in appeal by the appellant. The appellant challenged the order by way of writ petition which came to be dismissed by the impugned order of the learned Single Judge dated 22nd July, 2003. The learned Single Judge after referring to various decisions of the Apex Court held that High Court in the proceedings under Article 226 of the Constitution of India does not act as an appellate authority and has no jurisdiction to go into the truth of allegations of the charges unless they are perverse. The learned Judge carved out the following four exceptions for calling interference with the findings of the Disciplinary Authority and the Appellate Authority :-

- "(i) There is violation of natural justice or statutory regulations;
- (ii) If the order is passed on extraneous considerations to the evidence;
- (iii) If the conclusion reached by the Disciplinary Authority is wholly arbitrary, perverse or capricious;
- (iv) There is error of law or procedural errors leading to manifest injustice or violation of principles of natural justice."

4. The learned Single Judge rejected the contention that the previous statements of the witnesses recorded during the preliminary enquiry cannot be read and relied in regular enquiry. The learned Judge referred to a decision of the Apex Court in *State of Mysore v. Shivta,asappa Shivappa Makapur* (1), wherein it is held that the rule of natural justice are matters not of form but of substance and when the previous statements given by the witnesses are read over during the regular enquiry and opportunity to cross examine them is given to the delinquent official, in such a case, previous statements could be looked into. The learned Judge further held that the principles of Indian Evidence Act do not apply to the departmental trials but in the interest of justice, it is very much expedient that the examination-in-chief of witnesses is normally not recorded behind the back of the official charged, but if it is recorded and the official charged is afforded an opportunity to cross examine them, then it cannot be regarded as fatal and reliance can be placed on such evidence in regular enquiry. Dealing with the question of cross examination the learned Judge observed that the natural justice requires only than an opportunity of cross examination should be given and if that is given, it can easily be said that in a particular case, rules of natural justice are not violated. The learned Judge referred to a decision of the Apex Court in *State Bank of Patiala v. S.K. Sharma* (2), wherein it is held that violation of the particular facet of natural justice i.e. Denial of opportunity of cross examination does not render the decision void ipso jure but the complainant must be examined on the touchstone of prejudice. Applying to the acts of the case, it was held that it was not the enquiry officer, who refused that the witnesses should not be put to cross examination but the witnesses themselves made a joint application declining to come forward for cross examination. It would be convenient to extract the finding of the learned Judge recorded in Para 23 of the judgment as follows:-

"In the present case, it appears that it is not the Inquiry Officer, who refused that witnesses should not be put for cross examination as the case of the petitioner himself is that the witnesses themselves did not put for cross examination and they made joint application declining to come forward for cross examination and they further stated that whatever had been stated by them earlier, that should be treated as correct proposition of their statements."

5. With utmost respect we are unable to agree with the view subscribed by the learned Single Judge. At the first instance the normal rule is that statement of a witness should be recorded in the presence of the delinquent officer even if there

is departure to normal rule, such a statement has to be subjected to cross examination. Strangely the learned Single Judge has stated that the Enquiry Officer had not denied to give opportunity to examine the witness but the witnesses themselves by submitting a joint application declined to face cross examination. If this proposition of law is accepted it will mean that in every case the witnesses examined against a person would decline to face cross examination and those statements will be open to be relied upon. Non-application of evidence is one matter and fulfillment of principles of natural justice is another. The requirement of principle of natural justice is that no evidence is taken into account unless the person against whom the same is to be relied upon has had an opportunity to contradict him or impeach his credit by cross examination to show that what is said in the c-xamination-in-chief is not correct. Reference be made to *The Fertilisers Chemicals Travancore Ltd. v. Kerala State Electricity Board and Anr.*(3), The Apex Court in *M/s Bareilly Electricity Supply Co. Ltd. v. The Workmen and Ors.* (4), has observed in Paras 13 & 14 as follows:

"It is now well settled that the balance-sheet cannot be taken as proof of a claim to what portion of reserves has actually been used as working capital and that the utilisation of a portion of the reserves as working capital has to be proved by the employer by evidence on affidavit or otherwise after giving opportunity to the workmen to contest the correctness of such evidence by cross examination (*Sec Petlad Turkey Red Dye Works Ltd. v. Dyes & Chemical Workers' Union.*")

14. An attempt is however made by the learned Advocate for the Appellant to persuade us that as the Evidence Act does not strictly apply the calling for the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observations of Venkatarama Aiyar J., in *Union of India v. Varma*, 1958 -2 bab L.J-259 at pp. 263- 64 (AIR 1957 SC 882) to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirement relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the public servant in which he complained he was not permitted to cross-examine. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross examine him was not followed, but that the enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognised rules of procedure, in these circumstances it was observed at page 264:

"Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial

in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of Law."

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by reasons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX CPC and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 19-17 and the rules prescribed therein permit it, it is inconceivable that Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt."

6. Mr. M.D. Purohit learned counsel appearing for the respondent Bank submits that there are serious charges against the appellant and as such it is not obligatory on the part of Bank to allow such an employee to remain in service. Reliance has been placed on a decision in Allahabad Bank and Anr. v. Deepak Kumar Bhola (5). We have gone through the said judgment. The said matter pertains to suspension of an employee of the Bank wherein CBI had conducted investigation which resulted in filing of the case. Another case on which the learned counsel has placed reliance is Bank of India v. Apurba Kumar Saha (6). In the said case the employee did not file written explanation answering the charges. He refused to cross-examine the witnesses. At the subsequent stage the employee boycotted the enquiry. In these circumstances the court held that Bank employee had refused to avail the opportunity provided to him in disciplinary proceedings. In the instant case, the appellant was prepared to

cross-examine the witnesses but the witnesses themselves filed an application refusing to face the cross-examination. Even on the next date of hearing an application was filed for recalling the witnesses for cross-examination but the same was also rejected on the ground that the witnesses are not prepared to face the cross examination. Thus, this case also does not advance the case of the respondents.

7. Another case relied upon by the learned counsel is *Rai Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh and Ors.* (7). In the said case the employee did not participate in the enquiry. As such the proceedings were conducted *ex parte*. The Court held that in proceedings under Article 226 of the Constitution of India the High Court does not act as an appellate authority, but exercises within limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In the said case no such error was pointed out. This case in fact supports the case of the appellant inasmuch as the procedural error leading to manifest injustice has been pointed out inasmuch as the Enquiry Officer has relied upon the statements of the witnesses in recording findings against the appellant irrespective of the fact that the witnesses had no courage to face the cross examination.

8. Another case on which reliance has been placed is *Tara Chand Vyas v. Chairman & Disciplinary Authority and Ors.* (8). It is held therein that the disciplinary measures are required to eradicate catastrophic corruption in banking service and to see that corrupt conduct does not degenerate the efficiency of service in banks. The said observations were made by the Apex Court while considering the contention on the question of quantum of punishment after the charges were established against the employee in accordance with law.

9. The learned counsel has further cited *Sudhir Vishnu Panvalkar v. Bank of India* (9). In that case the documents were filed by the Bank to justify the loss of confidence. On perusing the documents the Court found that the order of termination did not suffer from any vice. In the instant case, it is not the case of the Bank that if the ocular evidence is eschewed, there is sufficient documentary evidence to prove the charges. In fact there is no reference to any document to prove the charges. The entire case is dependent on the ocular testimony of the witnesses whose statements were not recorded during the regular enquiry but the same were taken on record. The witnesses refused to face cross-examination. Thus, this case is also of no help to the respondents. The last case relied upon is *Union of India v. Vishwa Mohan* (10). It was a case of severability of the charges. This case has also no relevance to the facts of the case.

10. In view of the aforesaid discussion, we are of the view that the impugned order of termination dated 8th August 1995 suffers from the procedural error leading to the manifest injustice or the vice of violation of principles of natural justice.

11. Consequently, special appeal is allowed. The order of the learned Single Judge dated 22nd July, 2003 is set aside. The writ petition is allowed. The order of the Disciplinary Authority dated 3rd August, 1995 - Annexure-I and the order of the Appellate Authority dated 28.12.1995 - Annexure-2 are quashed and set aside. It is directed that the appellant shall be reinstated in service with all consequential benefits.