

(2012) 09 MP CK 0183

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10811 of 2008 (S)

Ranjan Sarvate

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 09 MP CK 0183

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Aditya Adhikari, for the Appellant; Anoop Nair, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Justice K.K. Trivedi

1. The petitioner, who was an officer in the respondent No. 1 Bank, holding the post of Manager, has come before this Court by way of filing this writ petition under Article 226 of the Constitution of India against the order of penalty imposed after a departmental enquiry by which he has been reverted from the post of Middle Management Grade-II to the post of Junior Management Grade-I in the lower pay scale and order by which the appeal has been dismissed against such order of penalty. It is contended that the petitioner was appointed as Field Officer in Scale-I in the respondent Bank, was promoted on 10.12.2001 to Scale-II MMG Grade. The petitioner has to his credit unblemished service record. However, a charge-sheet was issued to the petitioner making allegation that the petitioner has committed certain misconduct for which an enquiry was required to be conducted. The petitioner filed the response to the charge-sheet and refuted the allegations made against him. The Enquiry Officer and Presenting Officer were appointed by the Bank and the petitioner was provided a defence assistance. The enquiry was required to be conducted in terms of the provisions of Allahabad Bank Officer Employees" (Discipline & Appeal) Regulations, 1976

(herein after referred to as "Regulations"). However, in complete violation of the mandatory provisions of the Regulations, enquiry was conducted and a report was submitted. The Disciplinary Authority initially proposed to impose a punishment of withholding of three increments and gave second opportunity of hearing to the petitioner. Instead of adhering to the proposed punishment, a major penalty was imposed on the petitioner by the Disciplinary Authority by the impugned order dated 05.03.2008. The petitioner preferred an appeal as provided under the Regulations but the Appellate Authority dismissed the appeal, therefore, the petitioner was required to approach this Court by way of filing this writ petition. It is contended that the enquiry was not fairly conducted, petitioner was not granted due opportunity of defence in appropriate manner, no evidence was available on record to show that the petitioner was guilty of any such alleged misconduct, yet the penalty was imposed and the appeal against such penalty was not properly considered, therefore, the orders impugned are liable to be quashed.

2. On receipt of the notice of the writ petition, respondents have filed their return. It is contended by the respondents that the enquiry was rightly conducted. With respect to the specific allegations made in the writ petition, it was said that the Enquiry Officer was required to examine such witnesses, who were produced and it was not necessary for the management to produce all the witnesses, who were referred in the charge-sheet. Sufficient evidence was produced. Substantial proof of the misconduct was produced. There was no violation of any statutory provision of the rules. As such, it cannot be said that the enquiry was not properly conducted. It is contended by the respondents that these aspects were taken into consideration by the Appellate Authority and as the Appellate Authority was of the considered view that there was sufficient evidence available on record to hold the charges against the petitioner as proved, the guilt of the petitioner was properly proved and the appeal of the petitioner was rightly rejected. Though a rejoinder has been filed by the petitioner but much or less similar facts have been reiterated.

3. Heard learned Counsel for the parties at length and perused the record.

4. First question which is to be decided in this writ petition is, whether the procedure laid-down under the Regulations, which according to the law laid-down by the Apex Court is mandatory, was followed in true sense or not while conducting the enquiry against the petitioner. The complete set of the Regulations has been placed on record as Annexure P-1. Regulation-4 prescribes the penalties, both minor and major. Procedure for imposition of major penalties has been prescribed in Regulation-6. Sub-clause (1) of Regulation-6 of the Regulations specifically prescribes that no order imposing any of the major penalties specified in Clauses (f), (g), (h), (i) and (j) of Regulation-4 shall be made except after an enquiry is held in accordance with this Regulation. Sub-clause (5) of this Regulation prescribes that the Disciplinary Authority shall, where it is not the enquiry authority, forward to the enquiry authority a copy of

article of charges, copy of the written statements of defence, a list of documents by which and list of witnesses by whom the article of charges are proposed to be substantiated, copy of statements of witnesses, if any, evidence providing the delivery of articles of charge to the delinquent employee and a copy of the order appointing the Presenting Officer. Regulation further prescribes that on the fix date of enquiry evidence would be recorded by the Enquiry Officer and after recording of the evidence, as per Regulation 6(15), the delinquent employee will be asked whether he is required to produce any evidence in defence orally or in writing. Sub-clause (16) of Regulation-6 of the Regulations aforesaid prescribes that the evidence on behalf of the officer employee shall then be produced and the delinquent himself may examine him on his own behalf to prove his defence. The witnesses or even the delinquent employee is required to be cross-examined by the Presenting Officer. Sub-clause (17) of Regulation-6 of the Regulations prescribes that after closer of the evidence of the delinquent employee, the Enquiry Officer will examine the delinquent employee, if the delinquent employee has not examined himself for the purposes of questioning him on the circumstances appearing against him in the evidence produced by the Management.

5. These Regulations if looked into as also if the law laid-down by the Apex Court in various cases is considered, are mandatory and, therefore, violation is not permissible. If the provisions of the aforesaid Regulations are not complied with, it cannot be said that the enquiry is properly conducted. Learned Counsel appearing for the petitioner has placed reliance in several cases to put forth that these provisions are mandatory and are not to be ignored. Placing reliance in the case of Khem Chand Vs. The Union of India (UOI)and Others, , and reading paragraphs 19 and 20 of the report, learned Counsel for the petitioner contended that the provisions of the Regulations were mandatory and were to be adhered to. It is contended that the petitioner has asked for production of the defence evidence but such a prayer of the petitioner was rejected by the Enquiry Officer by saying that those defence witnesses were not required to be examined. The petitioner has placed on record the proceedings of the departmental enquiry as Annexure P-12. Taking this Court to the proceedings dated 10.09.2007, it is pointed out by learned Counsel for the petitioner that the application made by the petitioner for producing two defence witnesses, one Shri S.P. Rai, Manager and one Shri H.N. More, Senior Manager of the Bank, was rejected by the Enquiry Officer on the ground that these two witnesses have no relation with the case. It is submitted that the Enquiry Officer was not free to decide whether such defence witnesses were materially important or not as if the prayer for examining the defence witnesses was made, simply the permission was to be granted to examine the said defence witnesses and the said witnesses could have been cross-examined by the Presenting Officer in terms of the provisions of Regulation-6(16) of the Regulations.

6. These aspects are required to be examined first. As has been mentioned herein above, after the closer of the evidence of the Management, opportunity

was required to be granted to the delinquent employee to examine any defence witness. There are two provisions made in this respect, one in Regulation-6(15) and the other one in Regulation-6(16) of the Regulations. Both the Regulations are reproduced for proper appreciation :

6(15). When the case in support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

6(16). The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the inquiring authority.

A perusal of this will make it clear that if a prayer is made to grant permission to examine the defence witnesses, the same was not to be rejected cursorily, holding that such defence witnesses were not materially important. This discretion was not left with the Enquiry Officer if an application was made to examine any defence witness by the delinquent employee, strictly in terms of the provisions of the aforesaid Regulations. As has been held by the Apex Court in case of Khem Chand (supra) and as has been discussed at length in paragraphs 19 and 20, reasonable opportunity envisaged by the provision under consideration includes an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges leveled against him are, allegations on which such charges are based. An opportunity to deny his guilt and establish his innocence will also be granted in the manner of providing an opportunity to examine the witnesses in defence. The delinquent employee may be granted an opportunity to cross-examine the witnesses of the Management and at the same time granted an opportunity to examine himself or his defence witnesses. The Enquiry Officer was not clubbed with the power to hold that such defence witnesses were not materially important. Thus, it has to be held that the enquiry was not properly conducted and the opportunity of defence was not properly extended to the petitioner by rejecting his prayer to examine the defence witnesses.

7. Learned Counsel for the petitioner has placed reliance in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, . The contention raised by the learned Counsel for the petitioner is that if the enquiry is vitiated because of non-compliance of mandatory provisions, it was necessary on the part of the Appellate Authority to look into the said allegations, if specifically made. If such grounds were not considered even by the Appellate Authority, this Court was required to judicially review the order of penalty and the procedure on the basis

of which such an order of penalty was issued and was required to grant justice to the petitioner. The law is well settled in this respect. Normally the courts are not to act as appellate authority in the matter of departmental proceedings or disciplinary actions. The courts cannot substitute their own findings with respect to the guilt of a delinquent employee. Of course the Court can examine the correctness of conducting the departmental enquiry and if it is found that the enquiry was not properly conducted or that the opportunity of defence was not rightly granted, the Courts are authorized to put a knot on the order of penalty. In case of Kuldeep Singh (supra), the Apex Court has considered the aspect where delinquent employee was not extended opportunity of defence in appropriate manner, in complete violation of the provisions of the rules under which the enquiry was conducted and reached to the conclusion that such an enquiry was perverse. As has been discussed herein above, there was a specific prayer made by the petitioner for examining the defence witnesses. It was contended by him that he was acting as Branch Manager at the relevant time, has granted sanction of certain loan and the procedure which he adopted for granting sanction of the loan was normally being followed by the Bank and for the said purpose he was required to examine two witnesses, who too were working in the same capacity or senior capacity to the petitioner and were also the officers, who have dealt with matters of granting the loan. Thus, it was not open to the enquiry officer to say that those defence witnesses were not relevant and they were not to be examined. It is seen that such a ground was raised by the petitioner in his memo of appeal when the order of penalty was challenged before the Appellate Authority and he has categorically pleaded that he was not granted an opportunity of defence in appropriate manner by the Enquiry Officer as he was refused to examine the defence witnesses. It is seen from the order passed by the Appellate Authority that such a ground was neither considered nor dealt with in any manner. Thus, the enquiry initiated against the petitioner was vitiated as the mandatory provisions were not followed by the Enquiry Officer.

8. Further it is emphatically contended by the petitioner that there was non-compliance of provision of Regulation-6(17). The petitioner has not examined himself as a witness. The Enquiry Officer was, thus, required to record the statement of the petitioner questioning him in respect of the circumstances appearing against him in the evidence for the purpose of enabling the petitioner to explain any circumstance appearing in the evidence against him. The provision of Regulation-6(17) of the Regulations is reproduced for proper appreciation :

6 (17). The inquiring authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

9. Learned Counsel for the petitioner has put his reliance in the case of Moni Shankar Vs. Union of India (UOI) and Another, and in the case of Mohd. Yunus

Khan Vs. State of U.P. and Others, and has contended that as per the law laid-down by the Apex Court, this was a total failure on the part of the Enquiry Officer in not extending opportunity of defence to the petitioner in appropriate manner, resulting in violating the statutory provisions of the Regulations and vitiating the entire proceeding initiated against the petitioner. To appreciate such a submission of learned Counsel for the petitioner, it would be necessary to examine the law laid-down by the Apex Court in this respect. In the case of *Moni Shankar (supra)* the Apex Court has categorically held that the departmental enquiry is a quasi-judicial one and is required to be conducted adhering to the rule of natural justice. It is further held by the Apex Court that such a provision, which prescribes grant of opportunity to explain such facts, which have come in evidence against the delinquent, is imperative. It is held by the Apex Court that if there was non-compliance of the statutory provision, the departmental enquiry was not to be protected. Similar is the finding recorded by the Apex Court in the case of *Mohd. Yunus Khan (supra)*. Considering the previous law laid-down by the Apex Court, it is categorically held by the Apex Court in paragraph 16 thus :

16. We have to proceed keeping in mind the trite law that holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings. Though the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the enquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See *Bachhittar Singh vs. State of Punjab*, *Union of India v. H.C. Goel*, *Anil Kumar v. Presiding Officer*, *Moni Shankar v. Union of India* and *Union of India v. Prakash Kumar Tandon*.)

Therefore, this Court will not hesitate in holding that the enquiry conducted against the petitioner has in fact become vitiated because of the improper conduct of the enquiry by the Enquiry Officer.

10. After the enquiry was conducted and a report was submitted, the same was looked into by the Disciplinary Authority. Holding that all the charges were found proved, the petitioner was given an opportunity to explain the circumstances indicated against him in the enquiry report. Though it is alleged that a minor penalty of withholding of three increments of pay was proposed but since the matter was referred to the Vigilance Officer and a report was given by the said officer, major penalty was imposed on the petitioner. The respondents in their return have denied these facts saying that there was no minor penalty proposed by the Disciplinary Authority and the matter was never referred to the Vigilance Officer but by filing the rejoinder, the petitioner has produced the information

obtained from the Bank. A circular of the Ministry of Finance so issued on 21.07.1984 has been supplied to the petitioner under Right to Information Act wherein it is mentioned that such matters are required to be sent to the Chief Vigilance Officer. When petitioner made an application for production of such document, this document has not been produced nor anything has been shown to this Court to indicate that the matter was not referred to Chief Vigilance Officer, Head Office, Kolkata by the respondent Bank. It is the trite law that the Disciplinary Authority is required to take its own decision on the basis of material available on record and is not required to rest on the recommendation made by any Vigilance Commission or Vigilance Officer. Such a circular issued by the Ministry of Finance was quashed by the Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, . Thus, if at all the matter was referred to the Vigilance Officer and any information was obtained, that was not to be implemented by the Disciplinary Authority. However, no much debate is necessary on this issue because this Court has already held that the enquiry was bad inasmuch as the petitioner was not granted opportunity of defence in appropriate manner and the enquiry was, thus, liable to be quashed.

11. It is contended by the learned Counsel for the petitioner that virtually there was no evidence to show that any such misconduct was committed by the petitioner. It is contended that few witnesses examined by the Management were not sufficient to prove the guilt of the petitioner. In absence of conclusive proof of misconduct, the scanty evidence produced by the Management was not to be weighed holding that all the charges leveled against the petitioner were proved. True it is that this Court has power to judicially review the proceedings of departmental enquiry but such a power cannot be extended to the extent of appreciation of evidence. If there was no evidence at all, nothing could be said to be proved against the petitioner and the enquiry was to be closed. However, there was discussion of the evidence available and to some extent it was said that the misconduct was proved. It is not necessary to appreciate such evidence and to give a specific finding that the appreciation of such evidence by the Enquiry Officer was perverse or not. Suffice it to say that since there was no opportunity of defence extended to the petitioner to rebut all those factual aspects obtained after recording of the evidence, by not examining the petitioner to explain such circumstances, in terms of the provisions of Regulation-6(17) of the Regulations, it is to be held that because of such evidence, petitioner was not to be punished with such major penalty.

12. Now the only question would be whether the enquiry is to be quashed as a whole, the order of penalty is to be quashed as a whole or the matter is to be remitted back to the Disciplinary Authority to conduct the enquiry afresh against the petitioner. The fact remains that the enquiry was conducted in such a manner in complete violation of the procedure prescribed. These aspects were brought to the notice of the Appellate Authority by filing the appeal. The provisions of filing appeal are made in Regulation-17, which reads thus :

17. (i) An officer employee may appeal against an order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in regulation 12. The appeal shall lie to the Appellate Authority.

(ii) An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority.

The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Though specifically it is not mentioned in the provisions of Regulations that the Appellate Authority is required to examine the procedure followed by the Enquiry Officer in conducting the enquiry but if the Appellate Authority is clothed with the power to affirm the penalty, it is required to examine whether the enquiry was rightly conducted or not while deciding the appeal and if the appeal is statutory one, the Appellate Authority is required to give reasons and has to meet out each and every ground raised in the appeal. The appellate order has been placed on record as Annexure P-19. The memo of appeal filed by the petitioner is placed on record as Annexure P-17. In paragraph C of the memo of appeal, the petitioner has very categorically raised the contentions with respect to the violation of the provisions of Regulations-6(15), 6(16) and 6(17) and has further categorically raised the objection with respect to obtaining the information from the Chief Vigilance Officer. These grounds were required to be considered by the Appellate Authority. The order passed by the Appellate Authority on 05.07.2008 is silent on these issues. Nothing has been said whether the enquiry conducted against the petitioner was in violation of the provisions of the Regulations or was rightly conducted. Simply it was said that the Appellant Authority finds no merit in any such contentions of the appellant/petitioner. Thus, when the Enquiry Officer himself has not conducted the enquiry properly and after pointing out these facts to the Disciplinary Authority, no steps were taken by the Disciplinary Authority to remove such defects and get the enquiry conducted in appropriate manner as per the Regulations and when after passing of the order by the Disciplinary Authority, the Appellate Authority was apprised of all these facts, nothing was done by the said Appellate Authority also, it would not be justified for this Court to remit back the matter for conducting the enquiry afresh. In the considered opinion of this Court, such will not be proper course open. In fact the petitioner has already suffered the reversion and humiliation for a long time and at this stage remitting back the matter to the Disciplinary Authority for holding enquiry afresh would not be justified.

13. Consequently, this writ petition is allowed. The order dated 05.03.2008 (Annexure P-16) and the order dated 16.07.2008 (Annexure P-19) are hereby quashed. The petitioner will be entitled to the benefit of his continuance on the post of Middle Management Grade-II from the date of order of penalty and will also get the consequential benefits of the same. The writ petition is accordingly allowed to the extent indicated herein above. However, there shall be no order as to cost.