
(2014) 08 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14637 of 2010

Ranjit Sharma

APPELLANT

Vs

General Manager Personnel Services, UCO Bank and Others

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 ADJ 196

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Sharad Malviya and A.N. Pandey, Advocates for the Appellant; T.P. Singh, V.K. Srivastava and S.C, Advocates for the Respondent

Judgement

Suneet Kumar, J.—Heard Sri Sharad Malviya assisted by Sri A.N. Pandey, learned counsel appearing for the petitioner and Sri T.P. Singh, Senior Advocate assisted by Sri V.K. Srivastava, learned counsel appearing for the respondents. The petitioner was working as Computer Terminal Operator (CTO) in Laxman Patti Branch of UCO Bank at Bhadohi, for committing irregularities was placed under suspension, a charge-sheet containing seven charges was issued to the petitioner. The petitioner submitted reply to the charge-sheet on 12.9.2006 denying the allegations, hence, an Enquiry Officer was appointed who after conducting the enquiry recorded a finding on 18.2.2009 that charge Nos. 2 and 5 are proved and charge Nos. 1, 3, 4, 6 and 7 are not proved against the petitioner.

2. The Disciplinary Authority disagreed with the findings of the Enquiry Officer in respect of charge Nos. 1, 3, 4, 6 and 7, but agreed with the finds in respect of charge Nos. 2 and 5 vide order dated 31.3.2008 and issued notice calling upon the petitioner to show-cause. The petitioner submitted his reply on 9.4.2008 to the Disciplinary Authority pertaining to the charge Nos. 1, 3, 4, 6 and 7. The Disciplinary Authority after giving opportunity of personal hearing, recorded a finding that the allegations against the petitioner stood proved and by the impugned order dated 16.5.2008 imposed major penalty in terms of para 6(a) of

Memorandum of Settlement dated 10.4.2002 dismissing the petitioner from service.

3. Aggrieved the petitioner preferred an appeal before the General Manager, Personal Services, UCO Bank, Head Office, Kolkata, the Appellate Authority considered the appeal and by detailed order dated 4.5.2009 affirmed the findings of the disciplinary authority, recording that for the reason of unsuitability and loss of confidence, quantum of punishment was being upheld.

4. Aggrieved, the orders dated 16.5.2008 and 4.5.2009 are being assailed in the writ petition.

5. Submission of learned counsel for the petitioner is that the petitioner had denied the allegations and once the Enquiry Officer had only proved two of the charges but the Disciplinary Authority without considering the findings and reasoning recorded by the Enquiry Officer has held all the charges proved thus holding the petitioner guilty, the findings are based on conjectures and surmises, no show-cause notice was issued by the Disciplinary Authority on disagreement with the findings of the Enquiry Officer, the findings are ex parte without adequate opportunity and the quantum of punishment is not commensurate to the guilt.

6. In rebuttal, learned Senior Advocate submits that the procedure, as prescribed under the agreement was duly followed, the petitioner was given ample opportunity to explain, the Enquiry Officer proved two charges and for the findings on other charges, Disciplinary Authority disagreed, accordingly, a show-cause notice was issued to the petitioner, to which, the petitioner replied, considering the reply and giving personal hearing the impugned order was passed. The Appellate Authority has also considered the appeal and recorded a finding affirming the findings of the Disciplinary Authority. Further the Senior Advocate submits that the petitioner has not approached the Court with clean hands, as the petitioner nowhere disclosed that the Disciplinary Authority had disagreed with the findings of the enquiry report in respect of unproved charges and a show-cause notice was issued which was replied to by the petitioner, hence the petition is liable to be dismissed on this count alone. In support of his submission, learned Senior Advocate has relied upon the following judgments; State Bank of Patiala and others Vs. S.K. Sharma, ; Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh, and S.R. Tewari Vs. Union of India (UOI) and Another, .

7. Rival submissions fall for consideration.

8. The Supreme Court in the case of The State of Madras Vs. G. Sundaram, , had explained the scope of judicial review: :

"7. It is well-settled now that a High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental

enquiry except when it be shown that the impugned findings were not supported by any evidence. It was so held in *The State of Orissa and Another Vs. Murlidhar Jena*, , where it was said at p. 408:

"Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate."

8. Similar view was emphatically expressed in *State of Andhra Pradesh Vs. Sree Rama Rao*, , wherein it was said at p. 1726:

The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. But the departmental authorities are, if the enquiry is otherwise properly held the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

9. It is, therefore, clear that the High Court was not competent to consider the question whether the evidence before the Tribunal and the Government was insufficient or unreliable to establish the charge against the respondent. It could have considered only the fact whether there was any evidence at all which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Article 226 of the Constitution. This view was reiterated in *Union of India v. H.C. Goel*."

9. In *State Bank of India and Others Vs. Ramesh Dinkar Punde*, , Hon"ble Supreme Court has held that:

"13. We are, therefore, clearly of the view that the High Court was erred both in law and on facts in interfering with the findings of the Inquiry Officer, the Disciplinary Authority and the Appellate Authority by acting as a Court of appeal and re-appreciating the evidence."

In the case of *Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K.*

Meerabai, , the plea of no loss or quantum of loss was rejected by the Court. It was pointed out at page SCC 267 para 29 as under:

"29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, respondent employee is found guilty of misappropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and Appellate Authority."

10. The Supreme Court recently in *Nirmala J. Jhala Vs. State of Gujarat and Another*, , after considering earlier judgments has again reiterated the principle of judicial review in disciplinary proceedings and held that in the departmental enquiry, the nature and standard of proof is not at par with the quasi judicial and quasi criminal proceedings; the principle of preponderance is applicable and not the doctrine of proof beyond reasonable doubt.

11. The Apex Court further considered the parameter of the Court's power of judicial review of administrative action or decision. The relevant portion of the judgment of *Nirmala J. Jhala* (supra) is as follows:

"The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the

decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

12. Supreme Court in the case of S.R. Tewari Vs. Union of India (UOI) and Another, , observed as follows:

"30. The findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, ; Kuldeep Singh Vs. The Commissioner of Police and Others, ; Gamini Bala Koteswara Rao and Others Vs. State of A.P. thr. Secretary, ; and Babu Vs. State of Kerala, .

31. Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible."

13. I have perused the record, it is not disputed by the learned counsel for the petitioner that there has been any illegality or infirmity in the procedure followed in conducting the disciplinary proceedings. The charges, briefly, against the petitioner is as follows:

(1) While working as, Computer Terminal Operator (CTO), petitioner by-using the pass word of Sri Paltoo Ram, Assistant Manager, in making entries i.e. debit and credit in the various books of accounts in spite of the petitioner having a separate pass word.

(2) While working as CTO the basic duty of the petitioner is to sit on the computer for doing the data work with the computer but for the last two months he was doing the balancing work of CFD and GLB under the instructions of the Manager. But on verification of records no such office order was issued to the petitioner for doing balancing work.

(3) The petitioner was taking the voucher lots from Sri Krishna Madhab continuously for some days for balancing work and used to return the vouchers in late hours. It was observed that while fluids was intentionally dropped on the account holders signature of Saving Banks Account Nos. 474 and 2323 on bearer cheque No. 342796 dated 3.8.2006 which was paid on 7.8.2006 thus the petitioner has tampered with the vouchers/cheque(s) to distort the genuineness of a/c holders signatures.

(4) While working as CTO the petitioner entered the cheque book serial Nos. in in-operative Savings Bank Account of Sri Rama Shankar Yadav and the same serial numbers was again entered in the in-operative Savings Bank Account No. 2323 of Smt. Pramila Devi on 1.6.2006 by changing the cheque series thus the petitioner by entering the cheque book in the inoperative savings accounts by using the pass word of Sri Paltoo Ram, Assistant Manager.

(5) Petitioner has obtained motor-cycle loan of Rs. 24,000/- from H.D.F.C. Bank without obtaining permission from Bank. Thus violating the rules of the bank.

(6) Due to aforesaid act committed by the petitioner, fraud of Rs. 1,75,500/- was committed in the in-operative Savings Banks Account and as such bank may suffer or likely to suffer a loss of the above amount(s).

(7) Petitioner was also issued charge-sheet on 27.12.2004 in connection with the composite frauds case at Branch Office Bhadohi where loss of Rs. 3.60 lacs. The petitioner was punished with recovery of Rs. 40,000/- for causing loss. Keeping in view of the petitioner's past record and involvement in fraud case in Branch Office Bhadohi, it appears that the activities/action of the petitioner is suspicious in nature and might have been involved in tampering of record/vouchers by using pass word of Sri Paltoo Ram, Assistant Manager.

14. The petitioner in his reply to the charge-sheet did not dispute the factum of the allegations but explained, by stating, that on the verbal orders of the Branch Manager, the petitioner was doing the work of balancing the accounts books apart from the allotted work, however, denied that he had used the pass word of Sri Paltoo Ram, who operate the computers, neither the signatures of Paltoo Ram nor of the petitioner have been found on the vouchers, regarding the irregularity of the cheque serial number, petitioner submitted that every employee of the bank is aware of the serial numbers, thus, denying that the petitioner had committed any fraud or misrepresentation, but admitted that fraud was committed in respect of the serial numbers using the pass word of Paltooram.

15. Enquiry Officer conducted the enquiry, which was held on several dates, as mentioned in the enquiry report, the petitioner pleaded his case himself and did not appoint any defense representative. The bank appointed its presenting officer and produced over 44 exhibits which include the copy of the cheques, signatures, vouchers, employment register, security print register, Assistance register, cheque leave status, withdrawal slip of savings bank account.

16. Apart from the exhibits, the presenting officer produced the witnesses on behalf of the bank.

17. The Enquiry Officer after considering the evidences found charges No. 2 and 5 proved and the rest not proved.

18. The disciplinary authority disagreed with the findings of the Enquiry Officer on the non-proved charges and issued a show-cause notice on 31.3.2008 conveying to the petitioner the disagreement on the Enquiry Officer's report

dated 18.2.2008. The disciplinary authority recorded that the Enquiry Officer failed to understand the modus operandi applied by the petitioner, who has very cleverly executed and succeeded in perpetrating the fraud of Rs. 1,75,500/- from in-operative accounts and clandestinely got authorized by using the pass word of Sri Paltooram.

19. Pursuant to the dissent note, petitioner submitted a detailed reply on 9.4.2008. Disciplinary Authority after considering the reply, issued a show-cause notice on 2.5.2008 regarding the proposed penalty, after considering the reply by a detailed order dated 16.5.2008, after giving personal hearing to the petitioner, imposed punishment of dismissal. Aggrieved the petitioner preferred an appeal, reiterating the facts stated in his reply to the charge-sheet as well as, to the show-cause notice, which was considered and rejected by the appellate authority by order dated 4.5.2009. The operative portion of the appellate order is extracted below:

"I have considered all aspects in the matter independently with an unbiased mind and find that although the involvement of Sri Sharma in the fraud was not conclusively proved in the enquiry beyond doubt but Disciplinary proceedings is not a criminal trial and is based on preponderance of probability and not a proof beyond at reasonable doubt. The charges leveled and proved in the enquiry against Sri Sharma are serious and grave in nature. Bank is a financial institution and it cannot afford to have such employees in whom the Bank has lost faith. Therefore, there is no room for showing any leniency in the matter. Accordingly I, as Appellate Authority, am not inclined to interfere with the order dated 16.5.2008 passed by the Disciplinary Authority and uphold the penalty imposed by him upon Sri Sharma. Hence, the appeal dated 31.5.2008 preferred by Sri Sharma to reinstate him in service, is rejected."

20. It is thus evident that the entire procedure as prescribed was followed, the petitioner was given ample and reasonable opportunity. The factum of the allegations is not denied by the petitioner, however, explanations was furnished which was not agreed to by the disciplinary authority as well as by the appellate authority. The Court finds no illegality with the impugned orders.

21. It is also relevant to point out that the petitioner has not approached the Court with clean hands, nowhere in the writ petition it has been pleaded that disciplinary authority had disagreed with the findings of the Enquiry Officer and a show-cause notice was given to the petitioner to which the petitioner submitted his reply, rather a specific stand and ground has been taken that no show-cause notice was issued by the disciplinary authority while disagreeing with Enquiry Officer.

22. In paragraph 7 of the writ petition it has been stated that on the basis of enquiry report, the petitioner was dismissed from service without giving any further notice calling upon the petitioner to submit his reply with regard to the proposed punishment.

23. Learned counsel for the petitioner emphasised on the plea that no show-cause notice was issued to the petitioner by the disciplinary authority while disagreeing with the findings of the enquiry report, thus, the enquiry stood vitiated, in support of his argument he has relied upon the judgment rendered in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . The Court on 5.8.2014 directed the learned counsel for the respondent to inform the Court, as to whether any show-cause notice was issued by the disciplinary authority while disagreeing with the findings of the enquiry officer. On 11.8.2014 a second supplementary affidavit was filed on behalf of the bank, bringing on record, the show-cause notice issued by the disciplinary authority, as well as, the reply filed by the petitioner pursuant thereof, thus, it is evident that the petitioner has tried to misrepresent with a view to obtain favourable order, thus, has not approached the Court with clean hands.

24. Supreme Court in the case of V. Chandrasekaran and Another Vs. The Administrative Officer and Others, , observed that a petition or affidavit containing misleading or inaccurate statement amounts to abuse of process of Court, a litigant cannot take inconsistent positions. The Court imposed cost of Rs. 25 lacs. Paras 45, 46 and 47 are as follows:

"45. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.

46. In Dalip Singh Vs. State of U.P. and Others, , this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of Court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

47. The truth should be the guiding star in the entire judicial process. Every trial is a voyage of discovery in which truth is the quest. An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: Ritesh Tewari and Another Vs. State of U.P. and Others, ; and Amar Singh Vs. Union of India (UOI) and Others, .

25. In Ram Chandra Singh Vs. Savitri Devi and Others, , Hon"ble Supreme Court held:

"23. Recently this Court by an order dated 3rd September, 2003 in Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education, held: (SCC pp. 316-317, paras 13-15)

"13. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry v. Peek, (1889) 14 AC 337)

14. In Lazarus Estates v. Beasley, the Court of Appeal stated the law thus: (All ER p. 345 C-D)

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

15. In S.P. Chengalyaraya Naidu v. Jagannath, this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."

26. Recently the Supreme Court in the case of Smt. Badami (Deceased) By her L.Rs. Vs. Bhali, , after considering earlier judgments was of the view that a party, who secures any order or judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof. Para 24 is reproduced:

"Yet in another decision Hamza Haji Vs. State of Kerala and Another, it has been held that no Court will allow itself to be used as an instrument of fraud and no Court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof."

27. The petitioner was given ample opportunity, the evidence was led by the bank against the petitioner which was proved on the basis of records available in the normal course of business. The factum of the allegations is not being denied by the petitioner, however, explanations have been given. Since the bank has lost money by fraud and manipulation committed by the petitioner while working as Computer Terminal Operator, his services was rightly terminated for loss of confidence and unsuitability by the Bank. The petitioner is guilty of not approaching the Court with clean hands.

28. In view of the law and reasons stated, herein above, the writ petition fails and is, accordingly, dismissed. Cost of Rs. 20,000/- is imposed upon the petitioner, payable to the respondent Bank within three months, for dragging the respondents into litigation on misrepresentation and suppression of material facts.