

(2008) 02 MP CK 0058
In the Madhya Pradesh High Court

Regional Manager and Others

APPELLANT

Vs

Ram Prasad Mandal

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) ILR (MP) 673 : (2008) 3 LLJ 911

Hon'ble Judges : R.S. Garg, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg and Prakash Shrivastava, JJ.—The appellants, officers of Central Bank of India, being aggrieved by order dated April 20, 2006 passed by the learned single Judge of this Court in Writ Petition No. 4079/1994 have filed this appeal submitting inter alia that the order passed by the learned single Judge is illegal, deserves to be interfered with and set aside in the appellate jurisdiction of this Court.

2. It is to be noted that being aggrieved by the order dated February 22, 1993 (Annexure-P/1) passed by the Disciplinary Authority dismissing the petitioner from service and order dated August 18, 1994 (Annexure P/2) whereunder the appeal preferred by the respondent was dismissed, the respondent/employee filed Writ Petition No. 4079/1994. The learned single Judge after going through the inquiry proceedings came to the conclusion that the conduct of the Inquiry Officer was unfair because on one side he was directing the department to produce and supply the documents demanded by the present respondent latest by February 13, 1991 and at the same time closed the proceedings.

3. The learned single Judge also found that the Inquiry Officer acted in a very hasty manner in closing the defence evidence less appreciating that the respondent/the original petitioner for the reasons stated by him could not produce his witnesses before the Inquiry Officer. It is also to be seen from the records that the documents were to be supplied latest by February 13, 1991 but

the evidence was closed on January 15, 1991 and the Inquiry Officer closed the further proceedings.

4. The learned single Judge after considering the pros and cons of the matter allowed the writ petition, quashed the orders (Annexures P/1 and P/2) and remitted the matter to the Inquiry Officer with direction to the present appellants to produce the documents as demanded by the petitioner and also required the Inquiry Officer to proceed with the Disciplinary Enquiry from the stage of recording the evidence of the present respondent's remaining witnesses.

5. Shri Pandey learned Counsel for the appellants/establishment submitted that the charge-sheet was issued to the present petitioner on May 4, 1990 and he was provided appropriate opportunity to file his defence and examine the witnesses in support of his case. According to him, the documents which were demanded by the respondent were immaterial and irrelevant and were not needed to decide any issue between the parties.

6. According to Shri Pandey Advocate, if irrelevant documents are not supplied or the documents which are not the foundation of the case of the department are not supplied then such non-supply would not vitiate the proceedings. For this purpose, he has relied upon certain judgments of the Supreme Court which he shall refer to later on. He also submitted that the Inquiry Officer was absolutely justified in not adjourning the case from January 15, 1993 to any other date because January 15, 1993 was fixed at the request of the respondent/Delinquent Officer, According to him, even otherwise, the witnesses were also immaterial and their non-examination has not caused any prejudice to the present respondent. He also submitted that in the present case the learned single Judge erred in observing that the order passed by the Disciplinary Authority is vitiated in view of the judgment of the Supreme Court in the matter of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and other judgments less appreciating that present was not a case where the Disciplinary Authority was totally disagreeing with the findings recorded by the Inquiry Officer.

7. Shri Pandey, advocate also submitted that the learned single Judge was not justified in observing that the appellate order was not a speaking order. According to him, the order meets the requirement as laid down by the Supreme Court in the matter of S.N. Mukherjee Vs. Union of India, and in the matter of State Bank of India, Bhopal v. S.S. Koshal 1995 (5) SLR 181 (SC) : 1994 AIR SCW 2901.

8. It was lastly contended that the respondent not being an honest man cannot be continued in the service of the bank because if the bank cannot bank upon its own employee or cannot repose its confidence in one of its employees then an institution like a bank has to show the exit to its employee. It is submitted by him that even otherwise in accordance with Clause 17(2) of Central Bank of India Officer Employees' (Conduct) Regulations, 1976, the appellate order is in accordance with law.

9. Shri Akash Choudhary, learned Counsel for the respondent, on the other hand, submitted that the judgment of the learned single Judge is impeccable and one cannot find any fault in it. He submitted that if the present appellants/petitioners have prejudged the matter by saying that the present respondent is a dishonest man then they should not be allowed to continue any inquiry. He submitted that the findings recorded by the learned single Judge are in accordance with law.

10. Before we proceed to decide the matter, on the merits, it would be necessary to refer to page 62 of the docket. It says that on January 14, 1991 the first adjournment was sought and the matter was adjourned from January 14, 1991 to January 15, 1991. On January 15, 1991, the delinquent representative made a request to the Inquiry Officer that as it was time of "local melas" (local fairs) and every witness was a businessman, therefore, they were busy in their business and the present respondent was unable to produce them. The Inquiry Officer observed that as the matter was listed on January 15, 1991 at the request of the employee representative, the matter could not be adjourned to any other date. The Inquiry Officer directed the Presenting Officer that on December 31, 1990, January 10, 1991 and January 12, 1991, he was advised to produce the documents demanded from the defence side, therefore, needful be done. The Presenting Officer informed the Inquiry Officer that as the documents demanded by the defence were to be taken from/prepared at Regional Office, Shahdol, some time be given to them, however, the Presenting Officer submitted that the documents were irrelevant.

11. The Inquiry Officer after hearing the parties observed that it was mutually agreed by all the participating parties that 25 days' time for production of documents be granted to the Presenting Officer, i.e. latest by February 19, 1991. The authority also directed that the documents demanded by the defence shall be marked as Defence Documents as Defence Exhibits 17 to 23 and copies of the said documents would be supplied to the defence representative at his present place of posting latest by February 13, 1991. On all this, the delinquent representative submitted to the Inquiry Officer that he was agreeable to supply all the documents latest by February 13, 1991 without which it would be difficult for him to proceed further.

12. We do not know as to how on the very same day, the Inquiry Officer could yet write another proceeding that the case stands closed. Even after record of such proceeding, the bank did not produce the said documents before the Inquiry Officer nor supplied the same to the Delinquent Officer. Without taking into consideration the earlier order-sheets and without taking into consideration the non-supply/non-production of the documents, the Inquiry Officer proceeded to prepare his report. Out of as many as eleven charges, he observed that ten charges were fully proved or partly proved. For one of charges, he observed that it was partly proved. The report was examined by the Disciplinary Authority which observed that the charge No. 7 in fact was proved in full. Without issuing any further notice to the delinquent, the Disciplinary Authority after supply of the

inquiry report held every charge to be proved and had imposed the. capital punishment of dismissal.

13. Being aggrieved by the said order, the respondent preferred an appeal to the Appellate Authority under Clause 17 and after the appeal was dismissed, he came to the Court-challenging the enquiry, imposition of punishment and the order passed by the Appellate Authority.

14. At this juncture at least it is not in, dispute before us that a direction was issued by the Inquiry Officer to the Establishment to produce the documents and supply the copies to the Delinquent Officer. Present is not a case where the Inquiry Officer rejected the prayer of the respondent/employee on the ground that the documents were irrelevant. Present is a case where despite objections by the Department/Establishment, the Inquiry Officer directed that copies of the documents be produced in the enquiry and be supplied to the Delinquent Officer.

15. Reliance has been placed on the judgments of the Supreme Court in the matter of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), , Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, , Debotosh Pal Choudhary Vs. Punjab National Bank and Others, and State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, .

16. We have gone through all the four judgments. In each of the judgments, the Apex Court has observed that if there is demand of irrelevant documents or documents which are not relevant for purpose of enquiry or the documents which have no connection with the . charge then non-supply of such documents would not vitiate the enquiry.

17. It is not in dispute before us that after the Inquiry Officer directed the present appellant/establishment to supply the copies, they conceded before the authority that they would supply and produce the copies and did not propose to challenge the said direction. The facts of the above referred four cases are different from the facts of this case. A judgment of any Court would be a judgment on the facts of the said case. Reading of the head note or pressing into-service of the head note of a particular judgment would not be the requirement of the law. The law is deliberated in the judgment and not in the head notes which show the wisdom of the editor who prepares the head, notes.

18. We are unable to hold that in view of the above referred four judgments of the Supreme Court, the Inquiry Officer was unjustified in directing the present appellants/establishment to supply the copies. Even otherwise, in a petition filed by the present respondent/Delinquent Officer, the Establishment would not be allowed to say that the direction to supply the documents was illegal, therefore, the High Court in its writ jurisdiction should not interfere in the matter.

19. So far as adjournment of the case from January 14, 1991 to January 15, 1991 is concerned, there is no problem in the adjournment but the real problem arose when the respondent/Delinquent Officer prayed for ten days" time to

produce the witnesses on the ground that because of the local fair, his witnesses are not available. At this stage, it would also be necessary to note that the Inquiry Officer was not concluding the enquiry on January 15, 1991 itself because in the first part of the order, he directed that the documents be supplied within twenty-five days latest by February 13, 1991 and if that was so then the heavens were not to fall if the case was adjourned for ten days enabling the Delinquent Officer to produce the witnesses.

20. Submission of Mr. Pandey, learned Counsel for the appellant that the witnesses were immaterial also cannot be accepted because nobody knows that what could be the statement of such witness. It would be height of an argument to say that if the witness was examined, his statement could be rejected as irrelevant. It would be prejudging the issue and that is not permissible in any enquiry. Even on that count/the learned single Judge, in our considered opinion, was justified in interfering with the inquiry proceedings.

21. Referring to the judgment in the matter of Punjab National Bank v. Kunj Behari Mishra (supra), it was submitted that if the Disciplinary Authority disagrees with the findings in toto then only a further notice is required to be issued and not otherwise. In the opinion of this Court, a fair reading and understanding of the judgment in the matter of Punjab National Bank v. Kunj Behari Mishra (supra), it would clearly appear that if the Disciplinary Authority; disagrees with the findings recorded by the" Inquiry Officer then it has to issue a notice to the Delinquent Officer. It would be immaterial in a given case that the findings are recorded partly in favour of the establishment or partly against, the Delinquent Officer. Once the Disciplinary Authority proposes to review the findings recorded by the Inquiry Officer and on basis of such reviewed finding, proposes to impose punishment then a person who was feeling, content and satisfied must be given an opportunity against the proposed review. The learned single Judge certainly was justified in following the judgment of the Supreme Court delivered in the matter of Punjab National Bank v. Kunj Behari Mishra (supra).

22. It was then submitted that the order passed by the Appellate Authority was absolutely valid and legal. Placing reliance upon Clause 17 of the 1976 Regulations, it was submitted that the Appellate Authority is required to consider whether the findings are justified or whether the penalty is excessive or inadequate can pass appropriate orders.

23. Learned Counsel for the appellant placed his strong reliance upon the judgment of the Supreme Court in the matter of S.N. Mukherjee v. Union of India (supra) and the judgment in the matter of State Bank of India, Bhopal v. S.S. Koshal (supra) to contend that if the order passed by the authority says that they have conceded every argument and have also taken into consideration the material available on the record then further discussion is not required.

24. In the matter of S.N. Mukherjee v. Union of India (supra), the Supreme Court

observed that in view of the expanding horizon of the principles of natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of Judicial or quasi-Judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect.

25. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case. Therefore, except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The said] purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial reviews.

26. Therefore the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority: has given due consideration to the points in controversy. The needs for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

27. From this judgment of the Supreme; Court, it would clearly appear that reasons are required to be recorded while passing an administrative order except in cases where requirement is dispensed with expressly or by necessary implication. Clause 17(2) of 1976 Regulations does not dispense with the requirement of recording the reasons, Even if we read Clause 17 in favour of the present appellants, we would still be unable to find that by express provision or

by necessary, implication, the Appellate Authority has been exempted from giving the reasons.

28. The order passed by the Appellate Authority is annexed with the writ petition as Annexure P/2. The order says "on thorough scrutiny of the above records, I find that the Disciplinary Authority has applied its mind and has properly analyzed all the facts brought in the enquiry and has arrived at the correct conclusion." The appellant has not come out with any new or relevant fact that may merit my consideration. As such, I do not wish to interfere with the final orders...by the Disciplinary Authority. "I therefore, hereby reject the appeal preferred by the appellant and order accordingly." This is the sum total of the consideration.

29. In the Constitution Bench judgment of the Supreme Court in the matter of S.N. Mukherjee v. Union of India (supra), the Supreme Court has clearly observed that reasons must be recorded, except in cases where requirement is dispensed with expressly or by necessary implication. The judgment in the matter of S.N. Mukherjee v. Union of India (supra), would go contrary to the interest of the appellants.

30. In the matter of State Bank of India, Bhopal v. S.S. Koshal (supra), a two-Judge Bench of the Supreme Court had observed that if the Appellate Authority records that they had considered at length the facts of the case etc. then they would be entitled to dismiss the appeal. In the matter, it would be necessary to refer to paragraph 8 of the said judgment where the Supreme Court had observed that the High Court was right and justified in requiring the Appellate Authority to pass a speaking order even if it was an order of affirmance. The Supreme Court observed that they were satisfied that the appellate order was a speaking order.

31. In view of the judgment in the matter of S.N. Mukherjee v. Union of India (supra), we have no hesitation in holding that the appellate order sans reasons and amounts to abuse of the powers of the Appellate Authority.

32. We candidly asked Mr. Pandey that if we confirm the judgment passed by the learned single Judge by employing the language as employed by their Appellate Authority, would the department be satisfied? Shri Pandey submitted that a Court is required to supply the reasons but an Appellate Authority in the departmental proceedings is not required to supply the reasons. We are unable to understand the distinction between a Departmental Appellate Authority and an Appellate Authority on the judicial side which gives a judgment of affirmance.

33. It was then submitted that the respondent is not honest man and as present is a case of no confidence, this Court should interfere in the matter and allow the appeal.

34. Ordinarily, we could agree to the submissions if we were of the opinion that the enquiry was absolutely correct. The Departmental Authority including the

Inquiry Officer acted in a highhanded or hasty manner. The old saying in cases like this is still goes true that unless a dog is declared mad, it cannot be killed.

35. In the present case while failing in all theft efforts to get rid of the respondent, the appellants have come out with a new plea that because they have lost confidence in their employee, their appeal should be allowed. In our considered opinion, the learned single Judge was not unjustified in granting the writ petition filed by the respondent. The present appeal appears to be an act of vengeance on the part of Establishment. The action taken by the appellants cannot be approved. The order passed by the learned single Judge deserves to and is accordingly confirmed.

36. The appeal filed by the appellants is dismissed with costs quantified at Rs. 10,000/-(Rupees Ten Thousand). If the costs are not paid within thirty days from today, the appellants would not be entitled to proceed with the enquiry.