
(1989) 10 AHC CK 0042
In the Allahabad High Court
Case No : Writ Petition No. 2905 of 1981

R.P.Srivastava

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 26-10-1989

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Citation : (1989) 10 AHC CK 0042

Hon'ble Judges : U.C.Srivastava, J and S.H.A.Raza, J

Final Decision : Allowed

Judgement

1. The Writ Petition is directed against the order dated 6581 contained in Annexure No. 5 dismissing the petitioner from the service of State Bank of India. The petitioner entered into service of said Bank in Pratapgarh branch in the year 1957 as Teller. It appears that because of appreciation of his work, he was promoted as officer Grade II on the post of Head Cashier in the State Bank of India with effect from 20168 and ultimately was promoted as Officer Grade I with effect from 1675 according to State Bank of India (Officers Assistant Rules) and was thereafter confirmed as officer Grade I vide order dated 2071976 with effect from 1676. According to the petitioner this order was passed by the Local Board of the Bank and was communicated to him by the Branch Manager. Thereafter he was transferred from State Bank of India, Collectorganj, Kanpur branch to P. Road, Kanpur branch and was posted there as Accountant. Thereafter he was transferred to Bhognipur branch as Accountant where the petitioner also officiated as Branch Manager for few days The petitioner in routine manner had sanctioned limit of discounting documentary bills of M/s. Om Prakash Brij Kishore and Bhola Nath Rajendra Kumar at Bhognipur branch and due to heavy fluctuation in prices, a few documentary bills discounted by the above firm remained unpaid because of the inaction of the consignees. The petitioner's annual increment due on 1679 was with held by a resolution of the Local Board vide order dated 261279 and the General Manager withdrew the powers of the post of Accountant with effect from 271179 and also instructed him to hand over

charge of cash and currency cheques. Thereafter the said General Manager served a charge sheet upon the petitioner on 9180. Reply to the same was given by the petitioner on 4280. One K. C. Dubey was appointed as Inquiry Officer to enquire into the matter against the petitioner. Six charges were framed against the petitioner. The inquiry Officer held that four charges were proved against him but two charges were not proved. In substance, charge against the petitioner was that because of his acts the bank suffered the loss. According to the petitioner if efforts would have been made, this loss could have been avoided, but the same was not done. The employer did not examine any witness and thereafter it appears that the General Manager differed from the finding arrived at by the Inquiry Officer and held the petitioner guilty of the six charges and passed the dismissal order.

2. The dismissal order has been challenged on variety of grounds. It has been contended that the appointing authority of the petitioner was the Central Local Board and not the General Manager and as such the General Manager had no jurisdiction to pass the dismissal order.

3. According to the opposite parties, it has been stated that the General Manager having been made appointing authority in the year 1977, he had full jurisdiction to pass the dismissal order. In this connection the petitioner has placed reliance on rule 50(3) (iii) of the State Bank of India Supervising Staff service Rules in which the disciplinary authority of officers Grade I and Grade II has been shown as Local Board. These regulations came into effect on 2477 and according to the petitioner he having been appointed by the Local Board, the General Manager had no jurisdiction to pass the dismissal order. Regulation 60 provides that any officer shall not be terminated by an authority lower in the rank with the appointing authority of the officer concerned.

4. According to the petitioner, he not having been appointed in terms of Regulation 55(2) and having been appointed under the State Bank of India Service Rules and promoted on 1776 under the said Rules, the new rules having come into effect subsequently, the revised rules could not have been applied in the case of the petitioner. Consequently the State Bank Supervising Staff Rules which have been applied were not applicable. The Chief General Manager was empowered to appoint the officer of Grade I vide regulation of Central Local Board with effect from 1775 while the petitioner was appointed in Grade I on 1676 prior to conferment of powers on the General Manager. Thus prior to Coming into force the regulation of 1977, the General Manager could not be said to be his appointing authority and the authority was the Local Board which had dismissed its appeal by a nonspeaking order which has also been challenged by the petitioner.

5. Thus the question is whether the petitioner has been dismissed by the appointing authority or by an authority lower than the appointing authority and whether amended rule will be made applicable to the case of the petitioner or not. Under the Supervising Staff Service Rules, 1955, the appointing authority of

officer Grade I and Grade II has been shown as the Chief General Manager. The contention of the petitioner that he was dismissed by a lower authority cannot be rejected.

6. It was next contended, that the petitioners services have been terminated in violation of principles of natural justice inasmuch as he was not given full and reasonable opportunity to defend his Case and the General Manager who dismissed him was biased against him. In this connection he made reference to the withholding of his increment by the General Manager and nonconsideration of his service record and the punishment which has been awarded to him. In *Krishna Kumar v. Divisional Assistant Electrical Engineer* (AIR 1979 SC 1912) it was held :

?Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment.

In *Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg and another* (AIR 1977 SC 747) the dispute arose because of the change in the appointing authority in view of States Reorganisation Act, 1956 by which the State merged in the new State. It was observed ;

?The expression ?competent authority? occurring in Section 116(2) cannot be considered in isolation apart from the rest of the provisions of the Act. It has to be read in conjunction with, construed and understood as having the same meaning as the expression ?appropriate authority? contemplated by subsection(1) of that section which in turn according to Article 311(1) of the Constitution means the appointing authority or an authority equivalent to or coordinate in rank with the appointing authority.?

In that case the respondents were appointed as superintendent of erstwhile State of Mysore and his equivalent authority was the General Manager of Mysore Road Transport Corporation. It was held that the respondents were undeniably appointed by the Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of the State. As such the respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department.?

7. In *Krishna Murari Lal Sengal v. State of Punjab* (AIR 1977 SC 1233) the dispute arose after the merger of State in new State of Punjab. The petitioner was the Assistant in Patiala and East Punjab States Union Secretariat. He was transferred to Punjab consequent to the reorganisation of States under Patiala and East Punjab States Union Civil Service (Punishment and Appeal) Rules. Under the Pepsu Rules the Rajpramukh alone was the appointing authority. The appellant, therefore, cannot be removed from service by any authority subordinate to the Governor in Punjab. The coordinate authority in Punjab is the State Government. The Governor of Punjab alone, therefore, was competent to

pass the order of dismissal of the appellant. It was held that the Financial Commissioner is an authority subordinate to the Governor. He was, therefore, not competent to pass the order of dismissal. The same was violative of Article 311(1) of the Constitution and is, therefore, invalid and is liable to be struck down. In that case the court relied on the case of Mysore State Road Transport Corporation *supra*).

8. The appointing authority of the petitioner being the Local Board when he was appointed, the plea raised by the petitioner is not without force and the dismissal order dated 6581 having been passed by a subordinate authority deserves to be quashed.

9. The other plea raised by the petitioner is that he was not given adequate opportunity to defend his case. The charge against the petitioner was that during the period from 21977 to November, 1978 he failed to discharge his duties with integrity and devotion on account of which the bank suffered a great loss. There is no finding against the petitioner that he also embezzled some amount or he has been monetarily benefited by it. When the disciplinary authority disagreed with the report of the Inquiry Officer, then he should have given an opportunity of hearing to the petitioner before awarding punishment. Rule 50 subRule (3) of State Bank of India (supervising staff) Service Rules provide as under :

?(3) (i) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case of the Inquiring Authority whether the Inquiry Authority is the same or different for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of subrule (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of Charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(iii) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Rule 49 should be imposed on the employee it shall, notwithstanding anything contained in subrule (4), make an order imposing such penalty.?

In this connection reference may be made to subrule (4) (ii) of Rule 50 which provides thus :

?(ii) Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in subrule (2).

(iii) The record of proceedings in such cases shall include :

- (a) a copy of the statement of imputations of lapses furnished to the employee ;
- (b) the defence statement, if any, of the employee and

(c) the order of the Disciplinary Authority together with the reasons therefore.

(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under subrules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.?

The rules extracted above indicate that the disciplinary authority may remit the case to the Inquiring Authority for fresh enquiry and report. It is also open for it that in case it disagrees with the report of the inquiring authority, it may record its own reasons and finding if evidence is sufficient for the purpose.

10. In the instant case, the disciplinary authority disagreed with the finding recorded by the Inquiring Officer on two charges and recorded its own findings. The charges were that the petitioner wilfully and knowingly permitted the said firm to negotiate documents even though Hundis were highly inflated. The other charge which was not proved was that instead of recovering the amount of Rs. 42299,50, he delivered railway receipt to the firm on trust receipt dated 281178. The disciplinary authority after making reference to the figure which indicates that there was no proportion whatsoever between the quantity of unpaid amount and the Hundis.

11. On behalf of the petitioner it has been pointed out that there was no evidence on record regarding wilful permission of negotiation of inflated bills and yet a finding was recorded. Similarly in respect of charge No. 4 the finding was that the petitioner delivered railway receipt without recovering the unpaid bill from the firm. The finding of the Inquiry Officer in respect of charge No. 4 and 5 was that there was only one letter of the firm dated 171178 on which railway receipt was delivered to the firm, it was held that the petitioner delivered railway receipt without recovering the amount of the unpaid bill with interest from the firm and the same was conclusively proved. So far as charge No. 5 is concerned, it was only in respect of nonobservance of bank instructions and the charge of misconduct was not proved. As the finding of reversal was recorded by the disciplinary authority, obviously the petitioner having been exonerated on two charges by the Inquiring Authority, it was incumbent upon the disciplinary authority to give an opportunity of hearing to the petitioner. Although there is no such provision in the rules, but in case the disciplinary authority disagreed with the findings of the Inquiry Officer, the principles of natural justice required that opportunity of hearing should be given to him. In this connection reliance was placed on the decision of *Narain Misra v. State of Orissa* (1969 SLR 658) which was a case in respect of a forester who earlier was an employee of the Indian State but later on became an employee of State of Orissa after the merger of the said State. In the said case there is no reference to any rule one way or the other. In that case in the departmental enquiry on several charges, the delinquent official was acquitted. The punishing authority differed from the finding of Inquiring Authority and held the official guilty of the charges from which he was acquitted. No notice or opportunity was given to the delinquent official by the punishing authority. The order of removal was set aside holding the

same to be violative of principles of natural justice and fair play.

12. The very same principle will apply in the instant case in which also similar rules have been framed and under the banks rules, reference to which has been made earlier, a person cannot be removed from service by a person other than the appointing authority. The petitioner's appointing authority being the Local Board, he was removed by a lower authority. Merely because subsequently by the amendment in the rules, appointing authority has been changed, this change will not affect the persons whose appointing authority was superior authority and new rules nowhere provide that the new appointing authority will be deemed to be the appointing authority of those who have been earlier appointed by the superior authority. As such the removal order dated 6581 is manifestly illegal and cannot be sustained.

13. In view of above, the writ petition is allowed. The order of dismissal dated 651981 contained in Annexure 5 to the writ petition is quashed. However, it will be open for the opposite parties to proceed with the matter in accordance with law. There will be no order as to costs.