
(2002) 04 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 2500 of 1985

S. Prithvipal Singh Dharam Singh Hanspal

APPELLANT

Vs

United Commercial Bank

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Citation : (2002) 6 BomCR 785 : (2002) 3 BOMLR 383 : (2003) 2 LLJ 87

Hon'ble Judges : R.K. Batta, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.C. Marpakwar, for the Appellant; K.H. Deshpande and R.E. Moharir, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The petitioner was appointed as a stenographer on December 11, 1967 and was promoted as D-Grade Officer with effect from July 1, 1980. On July 20, 1981, he was, promoted as Branch Manager at Hindustan Lalpeth Branch in Chandrapur. On October 17, 1981 another Branch Manager was posted and the petitioner was asked to work under him. By a letter dated September 11, 1982, the, management proposed to hold enquiry against the petitioner. The statement of allegations, dated September 11, 1982, along with Annexures A to E was furnished to the petitioner. The petitioner filed reply, dated October 29, 1982. The enquiry into the charges was conducted on November 22, 1983 and November 23, 1983. The enquiry officer vide enquiry report dated January 30, 1984 found that all the charges have been proved. On April 4, 1984, the disciplinary authority came to the conclusion that majority of the charges levelled against the petitioner had been proved and a notice was issued to the petitioner proposing that his services be dismissed with immediate effect. The petitioner had taken up the responsibility of recovering bank dues from the borrowers and in view of the said submissions made by the petitioner, the orders of the disciplinary authority were deferred. Ultimately, on January 7, 1985, the services of the petitioner were terminated and he was dismissed from service. The

petitioner filed an appeal before the appropriate authority which was dismissed. Review application filed by the petitioner was also dismissed. The petitioner has, therefore, approached this Court in the exercise of writ jurisdiction seeking to quash orders, dated January 7, 1985, May 24, 1985 and July 21, 1985 as also for directions to the management to reinstate him with back-wages, continuity of service and other consequential reliefs.

2. We have heard the learned advocates appearing on behalf of the parties.

3. The main contention advanced by the learned advocate for the petitioner is that there has been non-compliance of Clause 6(5) of the Conduct, Discipline and Appeal Regulations, 1976, of Officer Employees (hereinafter referred to as the said Regulations). He has submitted that neither the list of documents nor the list of witnesses was furnished to the petitioner which is required to be furnished thereunder. Learned advocate for the petitioner also urged that the enquiry authority did not fix the matter for inspection nor granted opportunity to the petitioner to submit lists of documents and witnesses in terms of Clause 10(b) of the said Regulations. According to the learned advocate for the petitioner, this has resulted in prejudice to the petitioner thereby vitiating the entire enquiry, It is also urged by him that the enquiry conducted by the enquiry authority is only semblance of an enquiry and in fact no proper opportunity has been given to the petitioner inasmuch as the enquiry was rushed through on two days namely November 22, 1983 and November 23, 1983. It is also urged by the learned advocate for the petitioner that the misconduct with reference to documents has not been established; that no guide lines or circulars were produced in order to prove the charges against the petitioner and that what limit was exceeded has not been proved by producing any documentary evidence and as such the entire enquiry proceedings are required to be quashed since the petitioner did not have a fair opportunity to define himself in the said enquiry. Learned advocate for the petitioner placed reliance on Jagdish Prasad Saxena v. State of Madhya Bharat reported in AIR 1961 SC 1070 : 1963 I LLJ 325 and State Bank of India and Others Vs. T.J. Paul, in support of his submissions and we shall deal with this at the time when the submissions of the parties are dealt with on merits.

4. On the other hand, learned advocate for the respondent urged before us that all the relevant details relating to the documents as also the witnesses in relation to the charges had been enumerated in the statement of allegations as also the annexures appended thereto; the petitioner had substantively admitted the charges not only in his reply to the statement of allegations but also during the course of the enquiry and the plea which has been put up by the petitioner is that he was not aware of his powers and that since he was new to the job he was not aware of the procedure as a result of which certain irregularities had occurred. According to the learned advocate for the respondent, the petitioner not only acted with total lack of responsibility but in a very reckless manner and gave advances with great speed within a period of three months amounting to rupees 40 lakhs, most of which had become bad debt and had to be written off.

According to the learned advocate for the petitioner, the petitioner was sending information in the prescribed forms which relate to the advances not within the powers of the bank Manager for which sanction is required from the divisional office as also advances which are within the powers of the Manager and as such only a false pretext has been put up by taking plea that the petitioner did not know the exact powers of the post where the petitioner was working. According to the learned advocate for the respondent, in this context, no prejudice has been caused to the petitioner and that there is no reason whatsoever to interfere with the findings of the disciplinary authority, which have been upheld by the appellate authority, in the exercise of writ jurisdiction of this Court. Learned advocate for the respondent placed reliance on *K.L. Tripathi Vs. State Bank of India and Others*, *State Bank of Patiala and others Vs. S.K. Sharma*, and *Orissa Mining Corporation and another Vs. Ananda Chandra Prusty*, .

5. We have examined the record in the light of submissions made before us. The statement of allegations is dated September 11, 1982, framing the charges against the petitioner. Along with the statement of allegations, Annexures A to D were appended. There are various allegations against the petitioner including unauthorisedly making advances without any sanction beyond his powers and without sanction of the divisional office; granting of overdrafts to various parties beyond limit; granting of overdrafts in some cases on the date of opening of account itself; granting advances without obtaining credit reports on borrowers; granting transport advances to the persons who did not fall within the said category and so on. The details are given in Annexures A to D with reference to these parties in respect of whom the said allegations are made.

6. The petitioner had filed detailed reply to the charges. It is no doubt true that on the face of it the petitioner denied the allegations in toto. It is stated in this reply that since the proposals had been sent to the divisional office and no reply was received, it was presumed that the advances could be sanctioned. It is also stated therein that the petitioner had hardly time to learn and was not aware of powers vested in him. It is also stated therein that pending proposals, the parties had approached him to grant advances which were granted by him. Appended to this reply is detailed reply to the allegations with reference to the annexures. It is not necessary to give extensive details of the reply to the statement of allegations which runs into a number of pages and is at pages 37 to 54 of the record. Suffice to say that with reference to Annexure A, the petitioner has stated in respect of a number of transactions that the proposals were sent to the divisional office and since no information was received from the divisional office, it was presumed that the same were sanctioned and as such the petitioner sanctioned the said advances. The petitioner also states therein that he presumed that colliery branches can advance loan to petty contractors functioning in W.C.L. area. In one instance, he has stated that the party had assured to give balance sheet and also give truck in hypothecation, but the hypothecation was not obtained. In respect of the overdrafts given on the date of opening of the account, it is stated that the same were given for genuine

business. In respect of Annexure B also, it is stated in relation to some transactions that the proposals were sent to the divisional office and it was presumed that the loan can be given; that in one case previous manager had informed the undersigned verbally that he sought sanction over phone from divisional office to grant loan; that in another transaction, the petitioner felt that loan limit with hypothecation falls within his powers and that he felt that said advances were within the powers of the undersigned. Similar is the position in relation to Annexures C and D. In some cases the petitioner had granted advances in respect of proposals were sent and the proposals were ultimately rejected. In substance, the petitioner had admitted in his reply that he had granted advances beyond his powers and also in number of cases pending approval from the divisional office. The plea taken in the reply during the course of enquiry is that the petitioner was not aware about his powers; that he could know the implications of his inexperience at a later stage and that the petitioner was a victim of inadequate and lack of knowledge of advances. It is also stated that the petitioner was not knowing the discretionary powers of granting loan vested in him as Manager of the branch and that it was on account of lack of adequate knowledge and awareness of procedure of granting loans, the irregularities had occurred.

7. On the basis of this record, the enquiry officer found the charges proved. The disciplinary authority found that the majority of the charges levelled had been proved, but granted opportunity to the petitioner on the representation made by him that he takes the responsibility to recover all the advances made. But, it was found that the recovery was negligible during the period of almost one year granted to him and ultimately the disciplinary authority issued the dismissal order.

8. In this context, the submissions made by the learned advocate for the petitioner that neither the list of witnesses was furnished nor list of documents, nor the matter was fixed for inspection as required under Clause 10 of the said Regulations, has no merits whatsoever. The annexures did mention not only the parties but also the persons with reference to whom the charges were levelled. During the course of the enquiry neither the presenting officer nor the petitioner had produced any witness and both sides made submissions which were taken into account by the enquiry officer as also by the disciplinary authority. The Apex Court in *State Bank of Patiala and Ors. v. S.K. Sharma* (supra), has in detail considered various aspects connected with violation of facet of natural justice and has laid down that the violation of procedural rule or requirement governing the enquiry should be examined on the touchstone of prejudice and the test is that all things taken together whether the delinquent officer had or did not have a fair hearing. It was further pointed out therein that the principles cannot be put in a strait-jacket and their applicability depends upon the context and the facts and circumstance of each case. It is further pointed out that even in case of procedural provisions which are not of mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance and

in respect of procedural provisions which are of mandatory character it has to be ascertained whether the delinquent officer has waived the said requirement either expressly or by his conduct. Applying these principles to the case in hand, it cannot be said that any prejudice has been caused to the petitioner nor can it be said that the petitioner did not have fair hearing. The petitioner had in fact substantially admitted the charges and his plea was ignorance of powers vested in him and that he did not know his powers and duties.

9. Learned advocate for the petitioner has placed reliance on Jagdish Prasad Saxena v. State of Madhya Bharat (supra). In the said case, no enquiry had been held after the service of chargesheet. But, in the case under consideration, the enquiry has been held and as we have already stated that the petitioner not only in enquiry but also in his reply had substantially admitted the charges.

10. Reliance placed by the learned advocate for the petitioner on State Bank of India and Ors. v. T.J. Paul (supra), does not in any manner help the petitioner, but on the contrary, it goes against the petitioner. In this case, it was found that the negligence by bank employee coupled with likelihood of serious loss was sufficient to constitute gross misconduct and proof of serious loss is not necessary and the Bank Manager giving advances without obtaining adequate security is guilty of gross misconduct.

11. The case of the disciplinary authority was that the petitioner had given loan advances worth about rupees 40 lakhs with great speed within the period of three months after his appointment as manager. In the event, the petitioner was not completely aware of his powers and duties, it was absolutely necessary that the petitioner should have gone with very slow speed and should have first ascertained his powers and duties. But, on the contrary, the petitioner proceeded with great speed and without bothering or ascertaining about his powers of granting advances or overdrafts, indiscriminately granted advances and overdrafts and even in cases where the proposals had been sent to the divisional office. The petitioner did not obtain essential documents at the time of granting loans. In respect of granting of the said advances the bank had ultimately to file suit involving lot of expenditure on litigation on account of which a sum of Rs; 2,16,186 was recovered. The bank had to write off an amount of Rs. 22,32,343 and the recovery made by the petitioner was only to the tune of Rs. 1,71,983.50. These figures were placed before us by the bank on directions given by us in order to know the magnitude of the grant of advances by the petitioner and losses suffered by the bank.

12. In this set of facts, we do not find that any case whatsoever has been made out to interfere with the findings of the enquiry officer, disciplinary authority as also the appellate authority in the exercise of writ jurisdiction of this Court. The Apex Court in K.L. Tripathiv. State Bank of India and Ors. (supra), has pointed out therein that there was consideration of the facts and the decision was arrived at after consideration of the same and that it is manifest that in absence of any denial by the applicant that indeed admissions of the factual basis and nature of

the explanation offered by the applicant were considered by the authority to merit the imposition of penalty of dismissal and that such a conclusion could not, in the facts and circumstances, be considered to be unreasonable or one which no reasonable man could make. These observations apply with full force to the case under consideration.

13. In view of this, we do not find any merit in this petition and the petition is hereby rejected.