

(1986) 08 DEL CK 0001
In the Delhi High Court
Case No : Civil Writ petition 2740/84

S.C. Singhal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Citation : (1987) 61 CompCas 282 : (1987) 54 FLR 175 : (1987) 1 LLJ 371

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Judgement

1. On 10th March, 1977, the petitioner joined Oriental Bank of Commerce of (hereinafter referred to as "the Bank") as a confirmed officer and was posted as Assistant General Manager on the terms and conditions of service as laid down in the letter of appointment dated 20th December, 1976. Before he joined the bank the petitioner who claims to be holding Master's Degree in Commerce with professional qualifications of C.A.I.I.B., in Banking had served for two years as lecturer in commerce at Shri Ram College of Commerce, Delhi and for about 12 years in State Bank of India. The petitioner was promoted as a Deputy General Manager with effect from 11th September, 1978, and was working as such at the head office of the Bank at New Delhi. A department called the International Banking Division was brought into being on 1st January, 1979, because in October, 1978, the Reserve bank of India authorised the Bank to transact foreign exchange business for the first time in 1978. The overall supervision of this Division was with the Chairman and the Deputy General Manager. The petitioner was at that time exercising the powers of the General Manager.

2. Under the Banking Companies Acquisition & Transfer of Undertakings Act 1980, the banks set out in the Schedule including the Oriental Bank of Commerce Limited were nationalised and taken over by the Central Government. This Act came into force on 15th April, 1980, when the Oriental Bank of Commerce Limited was statutorily transferred and stood vested in the Bank constituted under the Nationalisation Act and named Oriental Bank of Commerce.

3. On 19th July, 1980, the petitioner was served with an order of suspension by the Custodian of the Bank. The reason for the suspension is mentioned in the communication which reads thus :

"It has been observed that you have not been exercising proper control over the functioning of the International Banking Division and other departments at the Head Office. This laxity, carelessness and various acts of omission and commission on your part have put the Bank to heavy losses. Pending further investigations, you are hereby suspended from the Bank's service with immediate effect."

On the same day three other employees namely Sarvshri H. B. Prabhu, Vasant Ayyar and Rakesh Saxena of the International Banking Division were also suspended. The petitioner replied to the communication dated 19th July, 1980, vide his letter dated 22nd July, 1980, addressed to the Custodian setting out in detail the fact that the allegations in the order of suspension were not correct and that he had nothing to do with the alleged losses. In reply to his letter the Joint General Manager informed the petitioner on 2nd August, 1980, that since the investigation is still going on, the case of the petitioner could not be considered on merits.

4. The Government of India asked the respondent Bank to refer the matter of the alleged losses and irregularity for proper investigation to the Central Bureau of Investigation and a written complaint was made to the Central Bureau of Investigation in this regard by letter dated 4th August, 1980, which was registered by the Central Bureau of Investigation as F.I.R. No. RC 4/80, dated 27th August, 1980. The C.B.I. then moved into action. The premises of the petitioner were searched. Investigation was carried out and ultimately on completion of the investigation the C.B.I. filed two charge-sheets in October, 1982, one was against Shri Rakesh Saxena and the other against Sarvshri Rakesh Saxena, Kishore Vasant, Mukunt Vasant, Ramaswamy Sankaran and S. Jagannathan. The C.B.I. found that there was no material against the petitioner and a communication in this regard was sent by the C.B.I. to the Bank and the Central Government. In these two charge-sheets excepting Rakesh Saxena, the C.B.I. did not find any material against any officers of the respondent Bank. Another communication dated 22nd January, 1983, was sent by the C.B.I. to the Bank that it had not found any material to recommend any departmental or other action against any other officer excepting Rakesh Saxena. One more communication in this regard was sent by the C.B.I. on 24th June, 1983, to the Deputy Secretary (Vigilance), Department of Banking, Government of India which reads thus :

"We have no material to offer which could call for any action against the officers of Oriental Bank of Commerce including the officers placed under suspension by the Bank on their own."

5. Since the C.B.I. did not recommend any prosecution the Bank consulted

Central Vigilance Commission for initiating disciplinary action against the petitioner. The Central Vigilance Commission, however, advised that in view of the clear-cut findings of C.B.I., departmental action could not be taken against the petitioner. However, if the Bank wanted to persist, a proper reference ought to be made to the Central Vigilance Commission in that regard. No formal reference was made to the Central Vigilance Commission and, Therefore, no charge-sheet was issued to the petitioner. The petitioner, Therefore, made representations to the Members of the Board and the Chairman for revoking the suspension order and also for promotions and seniority because by then persons junior to him had been promoted. Representations were also addressed to the Members of the Board and the Chairman however, instead of revoking the suspension order the petitioner received a communication dated 7th November, 1984, signed by the Chairman and Managing Director stating that the Bank had decided to terminate the services of the petitioner under regulation 20 of the Oriental Bank of Commerce (Officers) Regulations, 1982. Along with this communication, the petitioner was also sent a cheque for Rs. 14,400 for three months' emoluments in lieu of notice. The petitioner was further informed that it was decided that he would be paid full salary and allowances for the period of suspension. This order of termination dated 7th November, 1984, has been challenged by the petitioner in this writ petition under article 226 of the Constitution of India.

6. The order of termination was assailed by the learned counsel for the petitioner on two main grounds. Firstly, it was contended by the learned counsel for the petitioner that though the order was purported to have been issued under regulation 20 of the Oriental Bank of Commerce (Officers) Regulations, 1982, yet in reality it amounts to removal from service/dismissal under regulation 4 of the 1982 regulations. Learned counsel referred to a note dated 15th November, 1984, put up by the Chairman and Managing Director of the Bank before the Board on 17th November, 1984, to show what was the real reason for passing the impugned order. It was submitted that in this note, allegations doubting the integrity of the petitioner were made and because there was no material with the Bank to hold an enquiry it was decided to terminate the service of the petitioner under regulation 20. It was submitted that even assuming that the note indicated that the Bank had lost confidence in the petitioner, that itself cast a stigma and since admittedly no charge-sheet was issued to the petitioner nor was any enquiry conducted and nor was any Explanation called for from the petitioner, the order of termination was bad because it violated the basic principles of natural justice. In support of this contention learned counsel relied on the judgment of the Supreme Court in *Anoop Jaiswal v. Government of India*. 1984 1LLJ 337

7. Secondly, learned counsel for the petitioner contended that respondent No. 2 being a nationalised bank is an agency of the Government and thus regulation 20 of the Oriental Bank of Commerce (Officers) Regulations, 1982, which confers power to terminate the services of a confirmed officer without assigning any

reason by giving three months notice or pay in lieu thereof is arbitrary and against public policy and is, Therefore, violative of articles 14, 16, 39A and 41 of the Constitution of India. Learned counsel relied on *West Bengal State Electricity Board v. Desh Bandhu Ghosh*, 1985 1 LLJ 373, *Workman of Hindustan Steel Limited v. Hindustan Steel Limited*, 1985 1 LLJ 267, *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*, 1986 2 LLJ 171, and the judgment of this Court in Civil Writ No. 797 of 1985 decided on 4th March, 1986, (*Amarjit Singh v. Punjab National Bank*, 1986) 69 FJR 425, in support of this contention.

8. Learned counsel for the respondents very fairly conceded that in view of the judgments of the Supreme Court in *Workman of Hindustan Steel Ltd's case* (Supra), *West Bengal State Electricity Board's case* (supra), *Central Inland Water Transport Corporation's case*, (Supra) and the judgment of this Court in *Amarjit Singh's case*, (Supra), it will be difficult to sustain the validity and legality of Regulation 20 of the Oriental Bank of Commerce (Officers) Regulations, 1982. Learned counsel also did not dispute that the order of termination was passed because of loss of confidence in the petitioner and has been held by the Division Bench of this Court in *Amarjit Singh's case*, (Supra), termination on the ground of loss of confidence attaches a stigma. However, learned counsel submitted that since the petitioner was holding a position of trust and confidence and the Bank had bona fide come to the conclusion that it was no longer possible to repose confidence in him and it was within the permissible area of management action against an employee for justified loss of confidence which would not attract the principles of audi alteram partem. In support of this contention, learned counsel relied on *L. Michael v. Johnson Pumps Ltd*, *Vaish Degree College v. Lakshmi Narayan* (1975 1 LLJ 262976 2 LLJ 163, *All India Corporation v. V. A. Rebello* 1972 2 LLJ 501, *Ruby General Insurance Company Ltd. v. P. P. Chopra* 1970 1 LLJ 63 and *Assam Oil Company Ltd. v. Its Workmen* 1960 1 LLJ 587. It was further submitted that even if the order of termination is held to be bad the petitioner should be compensated by money and not reinstated in service because there was no personal animus and there were objective considerations which led the Bank to pass the order. It was submitted that reinstatement should be ordered only in cases where the ground of loss of confidence is found to be based on mala fide reasons by way of victimisation.

9. In my opinion the petitioner must succeed on both the grounds.

10. Since it is not disputed by the learned counsel for the respondents that the services of the petitioner were terminated for loss of confidence, as held by the Supreme Court in *Chandulal v. The Management of Pan American World Airways* 1985 2 LLJ 181, expression of loss of confidence attracts a stigma and when the order of termination is grounded upon conduct attaching stigma, disciplinary proceedings are necessary as a condition precedent to infliction of termination as a measure of punishment. This Court in *Amarjit Singh's case* (Supra), also held that when an order of termination has its genesis in the loss of confidence, it, of necessity carries a stigma and an order which in terms used that expression, is

ex facie stigmatic and that is how a third person reading the order would react to it irrespective of what may or may not have led to it. It is well-settled that in determining a challenge to the validity of an order which purports to be an order of termination simplicities the language of the order is not determinative and the court has the power to go behind the order and examine the circumstances antecedent to it or subsequent to the impugned order. The impugned order read along with the note dated 15th November, 1984 of the Chairman/Managing Director of the Bank, can hardly leave any doubt that the order is condemnatory of the petitioner. In fact, it is the case of the respondents that the loss of confidence was due to the irregularities and ineffective control of the petitioner and others over the affairs and performance of International Banking Division and because he failed to observe or ensure observance of procedure and systems and this culminated in providing a fertile ground and climate for fraud to be perpetrated resulting in a huge loss of Rs. 3.98 crores to the Bank. The note also referred to the investigation by the CBI and the refusal of the CBI to part with the investigation report and the advice given to the Bank to proceed in the manner in the manner deemed appropriate. Thus, this order which cast a stigma cannot be sustained because undisputedly no enquiry was ever held or any Explanation called for from the petitioner to departmental proceedings held against the petitioner and the same is clearly against the rules of natural justice.

11. This Court in Amarjit Singh's case (Supra), had rejected the argument that the right of an employer to terminate the services of an employee for "loss of confidence" in accordance with the terms of service or in terms of the standing order, if any, or rules and regulations applicable to the service, if any, is immune from challenge if the employer has acted in a bona fide manner, if there is no specific charge of misconduct and there are no allegations of unfair labour practice or victimisation. All the cases referred to by the respondents were also considered by the Division Bench in that case. I was a party to that judgment and I see no reason to deviate from that view.

12. Now coming to the next point, Regulation 20 of the Oriental Bank of Commerce (Officers) Regulations, 1982, reads thus :

"Subject to Sub-regulation (3) of regulation 16 the Bank may terminate the services of any officer by giving him three months" notice in writing or by paying him three months emoluments in lieu thereof."

Regulation 20 gives power to the Bank to terminate the services of an officer without giving any reason by giving him three months" notice in writing or by paying him three months" emoluments in lieu thereof.

13. Similar provisions were considered to be unconstitutional by the Supreme Court in Workmen of Hindustan Steel Limited's Case (Supra), West Bengal State Electricity Board's case (Supra), the provision was held to be totally Corporation's case (Supra). In Workmen of Hindustan Steel Limited's case (Supra), the standing order giving similar power was held to be violative of basic

requirements of natural justice. In West Bengal State Electricity Board's case (Supra), the provision was held to be totally arbitrary, capable of vicious discrimination and a naked hire and fire rule which was clearly violative of article 14 of the Constitution of India. In Central Inland Water Transport Corporation's case (Supra), the Supreme Court struck down rule 9 : (1) of the Central Inland Water Transport Corporation Limited (Service, Discipline and Appeal) Rules, 1979, as being unconscionable, unfair, unreasonable and opposed to public policy. The Supreme Court also held that such a rule is void u/s 23 of the Contract Act.

14. Though the Division Bench of this Court in Amarjit Singh's case (Supra), found it unnecessary to annul Regulation 20 because the impugned order in that case was held to be bad on other grounds, while considering this very Regulation 20, it held that "if Regulation 20 is claimed to be foundation to terminate the service of an officer" "for any reason" or "without assigning any reason" then it would have to be struck down because it would then suffer from the vice of arbitrariness on the ground that it confers an unregulated and uncanalised power to terminate the services of an officer including a permanent officer who may have rendered years of service without assigning any reason whatsoever and without complying with any of the procedural safeguards. The regulation would, Therefore, be ultra vires article 14, as indeed be incompatible with the concept of right to a post should that concept be applicable to service in the public sector in the same way in which the concept is applicable to service under the State generally." I, Therefore, have no hesitation in holding that Regulation 20 is struck by the vice of arbitrariness and is ultra vires article 14 of the Constitution.

15. Now coming to the question of relief. The Supreme Court in Chandulal's case (Supra), has held that once an order of termination is set aside, declaration has to follow that the workman continues to be in the employment and, Therefore, is entitled to be reinstated in service with full back wages. However, in that case on facts, the employee was considered not entitled to reinstatement but was entitled to be adequately compensated. In Amarjit Singh's case (Supra), this Court has held that ordinarily a stigmatic order of termination in service under the State must be demolished and the aggrieved officer restored to the status to which he was entitled as if the order had not been made. It was further held that, in such cases, reinstatement follows as a matter of course, however, the Court has ample power under article 226 of the Constitution of India to moderate the relief in a fit case where the consequential reinstatement may not be appropriate. In fact, learned counsel for the respondents emphasised and heavily relied on the judgment of this Court in Amarjit Singh's case (Supra) and submitted that like in the case, even in the present case, only an option be given to the Bank and no order of automatic reinstatement be made.

16. In my opinion, the facts of the present case are clearly distinguishable from the facts in Amarjit Singh's case (Supra). In the case of Amarjit Singh (Supra),

what appears to have weighed with the Court was that the petitioner was being tried in a criminal court on grave allegations of conspiracy and fraud in relation to the conduct of the business of the Bank by the petitioner and, Therefore, reinstatement of the petitioner may cause embarrassment to the Bank. In the present case, the petitioner has been exonerated by the C.B.I. and no criminal charge has been found against the petitioner. The Bank had also not thought it fit to make a reference to the Central Vigilance Commission and has not instituted any departmental proceedings against the petitioner. The petitioner has served the Bank for several years prior to the order of termination and has almost 15 years service more before he retires on superannuation. I do not see any reason why the ordinary rule of reinstatement should be deviated from in the present case.

17. In the result, the petition is allowed. The Rule is made absolute. The petitioner will be entitled to reinstatement in service with full back wages and all other consequential benefits. The petitioner will also be entitled to costs quantified at Rs. 3,000.