

(2010) 11 OHC CK 0072

In the Orissa High Court

Case No : Writ Petition (C) No. 7314 of 2006

Shankar Kambhar

APPELLANT

Vs

Enquiry Officer, Andhra Bank and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2010) 11 OHC CK 0072

Hon'ble Judges : S.K. Mishra, J.;Pradip Mohanty, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—The Petitioner assails the findings recorded by the Enquiry Officer, Andhra Bank in a Departmental Proceeding, which has been confirmed by the Appellate and the Revisional Authorities and he has been awarded the punishment of compulsory retirement.

2. The Petitioner pleaded that he was working as a Cashier-cum-Clerk in Andhra Bank, Branch at Bhawanipatna, District- Kalahandi for the period 12.08.1998 to 25.01.2002. During that period, one Bipin Bijoy Sunadhar was acting as the Branch Manager. During his incumbency as Cashier-cum-Clerk, there was no allegation against him from any quarters regarding any irregularity or act of any misappropriation of any amount remitted by the customers. He performed his duties sincerely and honestly. Thereafter, he was promoted to the post of Assistant Manager (JMGS-1 cadre) and was posted at Warangal in Andhra Pradesh as Assistant Manager.

While working as the Assistant Manager at Warangal he was suspended on 03.02.2003. Four months thereafter, he was served with a statement of allegations to the effect that he committed certain serious irregularities while he was working as Cashier-cum-Clerk in Clerical cadre at Bhawanipatna Branch in Orissa. It is alleged that he has misappropriated a sum of Rs. 47,000 remitted by Savings Bank Account holders, i.e. Opp. Parties 7 to 11 for crediting to their

accounts. It is also alleged that he has unauthorisedly debited CBP head and credited the amount to the tune of Rs. 30,000 to his personal "SOP" account. It was alleged that he has failed to discharge his duties with diligence, devotion, honesty and integrity. He has failed to protect the interest of the Bank, thereby contravening Regulation 3(1) of Andhra Bank Officer Employees" (Conduct) Regulations, which constitute misconduct as per Regulation 24 of the said Regulations read together with Clause 5(J) of Memorandum of Settlement dated 10.04.2002, which constitute gross misconduct.

3. The Petitioner pleads that the Enquiry Officer has not conducted the enquiry in accordance with the principles of natural justice, as fair and reasonable opportunity to defend the case of the Petitioner has been denied to him.

4. He specifically pleaded that regular hearing of the enquiry was fixed on 28.08.2003 at 10.30 A.M. in the premises of Industrial Relations Department, Head Office at Hyderabad. The Petitioner sought for adjournment of the enquiry proceedings on health ground and also for having not chosen his Authorised Defence Representative to conduct his case on the above date. Accordingly, the enquiry proceeding was adjourned to 19.09.2003. On the date of posting, since no Management witnesses turned up, the proceeding was postponed. The Enquiry Officer did not give him any specific date of hearing of the enquiry proceedings and instead he told the Petitioner that intimation regarding the next date of hearing would be communicated to him, but no communication regarding date of hearing of the enquiry proceedings was received by the Petitioner in the meanwhile.

It is further pleaded that in the meanwhile the Petitioner left the headquarters for his native place at Patnagarh on receiving telephonic message regarding hospitalization of his ailing mother. He sent a telegram to the Enquiry Officer seeking adjournment of the hearing, but it was completely ignored by the Enquiry Officer and he conducted enquiry of the proceeding in absence of the Petitioner against the principles of natural justice. Statements of the witnesses were recorded during his absence in contravention of the rule "Audi Alteram Partem". The proceeding was adjourned to 10.10.2003 for further hearing. On 10.10.2003, the Petitioner was present but the Management witnesses were not present. So the enquiry proceeding was adjourned to 23.10.2003. On the said date, the proceeding was abruptly closed without hearing the Petitioner. Then the Enquiry Officer submitted his enquiry report.

5. The Disciplinary Authority, Opp. Party No. 3, agreed with the findings of the Enquiry Officer and therefore dismissed the Petitioner from service treating the period of suspension as such. He preferred an appeal to General Manager (Personnel) and Appellate Authority (Opp. Party No. 4), which was also dismissed. He preferred a revision before the Executive Director and Reviewing authority, Andhra Bank, Head Office, Hyderabad (Opp. Party No. 5), who modified the penalty from dismissal to that of compulsory retirement. Thereafter, the Petitioner filed the writ application challenging the orders of the Disciplinary

Authority, Appellate Authority and Revisional Authority. The Petitioner has also relied upon the manual instructions issued by the Bank and submits that all his actions were in accordance with the instructions of the Bank and therefore, he is not guilty of the charges leveled against him. On such pleading, the Petitioner has prayed to set aside the order of compulsory retirement and for reinstatement.

6. Opp. Parties 1 to 6 have filed their counter affidavit, inter alia, alleging that the Petitioner has not approached the Court with clean hands and has suppressed the facts, inasmuch as, he has not annexed his reply to the charge-sheet, second show cause notice, appeal memorandum and review petition in order to keep this Court in dark and to mislead the facts. The Opp. Parties further plead that the Petitioner has committed certain serious irregularities which was proved in the enquiry and the punishment was rightly imposed on him, which is fair and reasonable. The allegations came into light after he was promoted to the post of Assistant Manager and basing on such allegations charges were framed and communicated to him.

The Opp. Parties further plead that the Petitioner has misappropriated a sum of Rs. 47,000 from various savings bank account holders and apart from that, the Petitioner has unauthorisedly debited a sum of Rs. 30,000 and credited to his personal SOD (Secured Overdraft) Account by debiting from the CBP (Clean Bills Purchased) head. Basing on the above allegations, specific charges were framed and communicated to the Petitioner. The Opp. Parties further plead that the Petitioner has simply denied all the charges on 09.06.2003, but the same has been fully established in course of enquiry and also in his defence submissions on 27.01.2004, his appeal petition dated 02.04.2004, his application dated 16.04.2005, requesting review of the punishment of dismissal and his mercy prayer petition submitted on 01.06.2006, wherein he has partially admitted his responsibility. The Opp. Parties further plead that the ground of violation of principle of natural justice has not been raised by the employee either in his memorandum of appeal or at the time of personal hearing before the Appellate Authority. Such pleas cannot be taken up at a later stage. Regarding the assertion that the Petitioner has performed his duties as per the instruction of the Bank and has not violated any of the standing instruction, the Opp. Parties claim that such plea has not been raised in his counter filed before the Enquiry Officer nor any such plea has been taken in the appeal petition or his petition for review of punishment. This point has been raised for the first time in the writ application. The Opp. Parties further plead that the proceedings were conducted following the principles of natural justice. Sufficient time was given to him at each stage. Preliminary hearing of the case was held on 08.08.2003, wherein the Petitioner has denied the charges leveled against him. The Petitioner was given time till 18.08.2003 to nominate his defence representative and to inspect the original documents submitted by the presenting officer.

7. Regular hearing was scheduled on 28.08.2003, but it was adjourned to 19.09.2003 as per the request of the Petitioner and the same was further

changed to 25.09.2003. Again the Petitioner did not attend the regular hearing on 25.09.2003 though he has received the notice and the examination in chief of Management witnesses were completed ex parte. At 5.30 P.M. on that date a telegram was received stating that his mother was hospitalized and he requested for postponement of the same for one week. As such, the cross-examination of the Management witnesses was kept pending and the next regular hearing was fixed on 10.10.2003. The same was informed to the Petitioner indicating that in case there is no reply to him, it would be presumed that there would not be any cross-examination from his side. Again on the request of the Petitioner, the enquiry was adjourned to 23.10.2003, but in spite of such intimation, there was no reply from the Petitioner although he attended the proceeding on 10.10.2003 and requested the Enquiry Officer to give him seven days" time to nominate his defence representative for cross-examination of the Management witnesses. It was further requested to postpone the regular hearing to 23.10.2003. Though the Petitioner"s request was not reasonable, hearing was again adjourned to 23.10.2003. The Petitioner attended the proceeding on 23.10.2003 and submitted that he could not get his defence representation and stated that there was no cross-examination and submitted his defence representative. Thus, the enquiry was concluded on the same day. The Opp. Parties, therefore, plead that ample opportunity was given to the Petitioner as per his requirement and there is no inconsistency or infirmity in the finding recorded by the Enquiry Officer, which has been confirmed by the Appellate as well as the Revisional Authority. On such pleadings, the Opp. Parties pray to dismiss the writ application.

8. The Petitioner has filed a rejoinder, wherein he has mostly raised the plea that the prevalent practice adopted by the Bank was followed and that he is not guilty of misappropriation of funds as alleged under the aforesaid two charges;

9. On such pleas, therefore, two distinct questions arise for determination in this writ application; firstly, whether there has been any violation of the principles of natural justice in this case? and Secondly, whether the Court should enter into the appreciation of evidence in this case to come to a conclusion whether the Petitioner has been rightly found guilty of the charges alleged?

10. From the records it is borne out that on 03.02.2003, the Petitioner was placed under suspension. On 03.06.2003, charge- sheet was issued for contravention of Regulation 3(1) and 24 of the. Andhra Bank Officer Employees" (Conduct) Regulations, 1981. On 09.06.2003, the Petitioner has submitted his show cause reply denying all allegations against him and on 10.07.2003, the Enquiry Officer was appointed by the Deputy General Manager (Personnel) and Disciplinary Authority, Andhra Bank, Head Office, Hyderabad to enquire into the allegations. On 08.08.2003 preliminary hearing was held at Bhawanipatna Branch. The Presenting Officer submitted list of copies of relevant documents with copies to the Petitioner. The Petitioner was advised to engage the defence representative. The case was adjourned to 28.08.2003 at Hyderabad for regular hearing. On request of the Petitioner, the enquiry was postponed to

19.09.2003 and was further changed to 25.09.2003, but on 25.09.2003 the Petitioner did not attend the enquiry. The Management witnesses were examined in chief. On the same day at 5.30 P.M. on receipt of the telegram from the Petitioner, the Enquiry Officer postponed the cross-examination of all the witnesses and posted the enquiry and requested to grant seven days" time to name his delinquent representative. Hence, the case was adjourned to 23.10.2003. On 23.10.2003 he informed the Enquiry Officer that he could not arrange defence representative and cannot cross-examine the witnesses and presented his defence in writing. Thereafter, he was examined and the enquiry was closed on 02.01.2004 and the enquiry report was submitted. On 07.01.2004, the Disciplinary Authority issued notice to show cause within fifteen days from the date of receipt of the notice enclosing copies of the Enquiry Report. The Petitioner submitted his second show cause on 27.01.2004. On 26.02.2004 after due consideration, the Disciplinary Authority held that the charges proved are grave and serious in nature and clearly bordering on integrity of the Petitioner, passed the order of dismissal of the Petitioner from service. He was given a chance to prefer an appeal with the General Manager (Personnel) within forty-five days. The Petitioner filed his appeal on 02.04.2004, which was dismissed on 16.04.2004. On 18.08.2005, the Revisional Authority considered the mercy application of the Petitioner and reduced the punishment and directed the Executive Director and Reviewing Authority to modify the dismissal to that of compulsory retirement from Bank service.

11. From the above fact, it is clear that the Petitioner was given enough opportunity for participating in the domestic enquiry by appointing a defence representative or by cross-examining the witnesses himself. However, after several adjournments on various grounds, he has not participated in the enquiry. Therefore, it cannot be said that there has been a violation of the principles of natural justice. The principles of natural justice means that the employee should be given a reasonable and adequate opportunity of showing cause and cross-examining the witnesses tendered on behalf of the Management.

He should also be given a chance of adding evidence in his defence by examining himself and other witnesses. However, the Petitioner has not availed the opportunity given to him. Therefore, it cannot be said that there has been a violation of principles of natural justice in this case. There is also no procedural irregularity in this case.

12. The next question that comes for consideration is, whether the High Court in exercise of the writ jurisdiction under Article 226 of the Constitution, should enter into the question of facts and appreciate evidence to find out whether there has been a mistake in appreciation of evidence by the Enquiry Officer. In *State of Orissa V. Muralidhar Jena*, reported in AIR 1963 S.C. 404, a Constitution Bench of the Supreme Court held that it would not ordinarily be open to the High Court to appreciate the evidence led in the domestic enquiry. The Supreme Court further held that 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.

Similarly, in *State of U.P. and Another Vs. Man Mohan Nath Sinha and Another*, the Supreme Court held that the legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a Court of appeal and reach its own conclusion.

In *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another*, the Supreme Court held that interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. The Supreme Court however further held that it cannot be overlooked that the departmental authority is the judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a Writ Petition filed under Article 226 of the Constitution.

13. This being a settled position of law as far as appreciation or reappraisal of evidence is concerned in a domestic enquiry, *Padmabati Pradhan v. Commissioner of Police* this Court is not inclined to enter into this aspect, especially when such fact has not been raised either at the time of the domestic enquiry before the Appellate or the revisional authority. Thus, finding no merit in the writ application, we dismiss the same, but keeping in view the peculiarity of the facts, without any cost.

Pradip Mohanty, J.

14. I agree.