(2014) 04 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1333 of 1994

Shankar Lal Pandya APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 4 CDR 1982

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Mahendra Singh, S.C. Goyal and Parikshit Singh, Advocate for the Appellant; Sachin Mehta on behalf of Sudhir Gupta, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by petitioner Shankar Lal Pandya assailing the charge-sheet dated 13/11/1987 (Ann.1), order of penalty dated 4/10/1990 (Ann.2) whereby punishment of imposing of reduction to the basic pay, impugned-order dated 29/2/1992 (Ann.3) whereby the appeal preferred against the aforesaid penalty order has been dismissed and the order dated 10/12/1993 (Ann.5) by which review petition for review of the appellate order dated 29/2/1992 was also rejected. Shri Mahendra Singh, learned counsel for the petitioner has argued that while petitioner was working on the post of Officer Grade-I (subsequently re-designated as Officer in JMGS-I), he was served with the memorandum dated 25/4/1985 calling for his explanation regarding some alleged irregularities. Petitioner submitted a detailed explanation on 26/6/1985. Charge-sheet was issued to him belatedly on 13/11/1987. Two charges were leveled against petitioner. First was relating to the accounts and posting by one Shri Shyam Mohan Mangal. Second charge was relating to sanction of term loan to one Shri Lakshman Das. It is contended that petitioner submitted reply to the charge-sheet denying all the charges on 7/12/1987. Enquiry officer submitted his report to the disciplinary authority and the disciplinary authority after considering the enquiry report, submitted a note containing his findings and recommendations to the appointing authority. The disciplinary authority vide order dated 4/10/1990 imposed penalty of reducing the basic pay to the minimum of pay scale of Rs. 2100/- per month and directed that petitioner will be eligible for next increment after one year. The order passed by the disciplinary authority is a non-speaking order without discussing the evidence in toto. It is contended that petitioner was for the first time supplied order of penalty dated 4/10/1990 along with the enquiry report as also the note prepared by the disciplinary authority and it was only therefrom petitioner came to learn that the disciplinary authority and the appointing authority disagreed with the findings recorded by the enquiring officer. Neither any notice of disagreement was served upon him nor any opportunity of hearing was provided to him. The departmental appeal as also the review petition have been mechanically rejected. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgments of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , S.B.I. and Others Vs. Arvind K. Shukla, , State Bank of India and Others Vs. K.P. Narayanan Kutty, and Lav Nigam vs. Chairman & MD ITI Ltd. & Anr., : (2006) 9 SCC 440. Learned counsel for the petitioner has also drawn the attention of the court towards the additional affidavit filed by the petitioner on 13/1/2014.

2. Shri Sachin Mehta, learned counsel for the respondents has opposed the writ petition and argued that charges against the petitioner were proved on the basis of evidence laid before the enquiring officer. It is submitted that during the period from 10/6/1982 to 9/2/1985 when petitioner was posted as Branch Manager at Prithviraj Marg, Branch of State Bank of India at Ajmer, one Shri Shyam Mohan Mangal dealing in manufacturing and installation of Superphone Intercom System and distribution of films, were enjoying credit facilities from Prithviraj Marg Branch of SBI, Ajmer in the name of five different partnership concerns, namely, Super Communication, Super Film, Santoshi Enterprises, Annapurna Enterprises and Annapurna Films and the total outstanding of the aforesaid firms were to the tune of Rs. 9,53,569.25 in their accounts. Petitioner by misusing his official position as Branch Manager purchased D.D. Bills from these firms. In the inspection report of Prithviraj Marg Branch, Ajmer made on 14/7/1984, it was pointed out that petitioner is continuously making purchase of D.D. Bills without any sanction of regular limit in favour of the said partnership firms. When out of 11 bills aggregating to Rs. 2,43,940.60 purchased by petitioner between January 1983 to January 1984 and bills aggregating to Rs. 1,41,265.60 were returned unpaid by Ansari Nagar, New Delhi Branch of SBI, a suspicion was created and Administrative Officer (Loans) at the Bank''s Regional Office, Jaipur was sent to Ajmer on 21/1/1985 to investigate the matter. It was found that the aforesaid firms used to negotiate bills showing dispatch of consignment of telephone cables and boxes of films through transport Company since 1982. The petitioner used to give credit by purchasing the bills illegally. This amounts to severe misconduct on the part of the petitioner. Petitioner was given full opportunity in the disciplinary proceedings to defend himself. Extension sought for by the petitioner to file reply was fully considered. His explanation was

not found satisfactory.

3. Learned counsel for the respondents argued that the allegations of the petitioner regarding non-supply of the enquiry report, passing order of penalty by the disciplinary authority without discussing the evidence and not providing him opportunity of hearing are absolutely baseless. It is contended that Shri J.L. Gupta Officer-SMGS-IV was appointed as Inquiring Authority to find out the truth into the charges leveled against the petitioner vide imputation of charges served upon him vide communication dated 13/11/1997. A detailed inquiry was conducted by the enquiry officer after giving notice to all concerned. Enquiry officer submitted its report to the disciplinary authority on 9/9/1988. Disciplinary authority after perusing the enquiry report and other records vide his note dated 28/9/1990 held that petitioner has committed serious irregularities and therefore deserves severe punishment. However, keeping in view his young age and past satisfactory record was inclined to take a lenient view and therefore recommended that petitioner be inflicted the punishment of reduction of basic pay in his time scale from Rs. 4,390/- to Rs. 2,100/- with effect from the date of receipt of the order in terms of Rule 49(e) of the State Bank of India (Supervising Staff) Service Rules (for short, the "Rules"). Disciplinary authority has submitted record of the enquiry officer with the recommendations regarding the proposed penalty to the appointing authority vide note dated 28/9/1990. Appointing authority after considering the entire record pertaining to the inquiry in its entirety, agreed with the findings recorded by the disciplinary authority and taking into account the gravity of the misconduct established against petitioner, decided to impose the penalty of bringing down the basic pay of the petitioner to the minimum of the time scale of JMGS-I in terms of Rule 49(e) read with Rule 50(3)(iii) of the Rules. The same was communicated to the petitioner vide communication dated 4/10/1990 accompanied by copy of the inquiry report and the note dated 28/9/1990 of the disciplinary authority. It is, therefore, prayed that the writ petition be dismissed.

4. I have given my anxious consideration to the rival submissions and perused the material on record.

5. The petitioner although has assailed the impugned orders on various grounds but learned counsel for the petitioner in the course of arguments confined challenge to those impugned orders on the ground of disagreement recorded by the disciplinary authority despite the specific plea set up by the petitioner in Ground D of the memo of writ petition and the additional affidavit. Learned counsel for the petitioner has sought to substantiate his argument from the Note of the disciplinary authority dated 4/10/1990 (Ann.2) that the disciplinary authority despite observing that though it concurred with the finding recorded by the enquiring authority in respect of Charge No. 1(a)(e) to (i) and a part of Charge No. 2 but it did not agree with the finding of the enquiry officer regarding Charge No. 1(b)(c) and (d) and a part of Charge No. 2 and then proceeded to give reasons to hold the charges proved. Though the disciplinary authority has

given reasons but there is no denial of the fact that the disciplinary authority did not give any notice of disagreement, which has been recorded by him with the finding of the enquiry officer. Now, in this case, the disciplinary authority is different than the appointing authority and the order of penalty, as per the rules applicable to the respondents, was to be ultimately awarded by the appointing authority, which is why the disciplinary authority has further referred the matter to the appointing authority. It is the appointing authority, who passed the order of penalty but in para 3 of the order dated 4/3/1992 (Ann.3), the disciplinary authority has also noted that two charges were leveled against the petitioner and enquiring officer held both the charges partly proved, the disciplinary authority held the 1st charge partly proved and 2nd charge was substantially proved and then has held that charges have been proved against petitioner and proceeded to award penalty.

6. The Supreme Court in Sh. Kunj Behari Misra supra, which was a case arising out of the bank services held in para 19, as under:-

"xxxxxxxxxx whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer".

7. In Arvind K. Shukla supra, which was a case arising out of State Bank of India (supervisory staff) Service Rules relying on its earlier judgment in Sh. Kunj Behari Misra supra, has upheld the same argument. The Supreme Court held that the disciplinary authority is bound to record tentative reasons and give to delinquent, so as to represent against it and then record its ultimate findings.

8. In K.P. Narayanan Kutty supra, again a case arising out of State Bank of India, it was held by the Supreme Court that punishing authority is not bound by enquiry report but in a case when the punishing authority treating as fully, proved the charges found by the enquiry officer to be partly proved, opportunity should be afforded to delinquent employee irrespective of whether or not some prejudice is shown to have been caused by denial of such opportunity. Principles of natural justice have to be read into the relevant service rule i.e. Rule 50(3)(ii) of the SBI (Supervising Staff) Service Rules. Same rules are applicable in the present case.

9. In Lav Nigam supra, it was held by the Supreme Court that when the disciplinary authority taking view different to the one taken by enquiry officer,

procedure to be followed by disciplinary authority in such a case giving opportunity of hearing and it is bound to give a notice setting out his tentative conclusions to the charged employee. It is only after hearing the said employee that the disciplinary authority can arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed. In view of above, the present writ petition deserves to succeed and it is accordingly allowed. The impugned charge-sheet dated 13/11/1987 (Ann.1), order of penalty dated 4/10/1990 (Ann.2), order dated 29/2/1992 (Ann.3) and the order dated 10/12/1993 (Ann.5) are quashed and set-aside. Petitioner is held entitled to all consequential benefits. Compliance of the judgment shall be made within a period of three months from the date copy of this order is produced before the respondents.