

(2003) 08 AHC CK 0068
In the Allahabad High Court
Case No : C.M.W.P. No. 10429 of 1994

Shree Nath Mishra

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 LLJ 851

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : K.N. Mishra, for the Appellant; Yashwant Varma, Sharad Varma and Ashoka Srivastava, for the Respondent

Judgement

R.B. Misra, J.—Heard Sri K.N. Mishra, learned counsel for the petitioner and Shri Yashwant Varma, learned counsel for the respondents.

2. In this petition the prayer, has been made to quash the order of removal dated August 8, 1990 (Annexure 2 to the writ petition) and order dated October 15, 1993/November 30, 1993 (Annexure 1 to the writ petition), whereby the appeal of the petitioner has been rejected. Further prayer has been made for commanding the respondents to reinstate the petitioner in service with retrospective effect along with full back wages.

3. The facts necessary for adjudication of the case are that the petitioner joined the services of the Bank as a Clerk in the year 1962. He has been promoted to Officer Grade II (Now J.M.G.S.I.) in the year 1970 and has been posted as Branch Manager, Mirza Murad Branch in the year 1980. He has been transferred from Mirza Murad Branch to D.L.W. Branch on May 24, 1984 and handed over the charge on May 30, 1984.

4. According to the petitioner vide order dated January 8/10, 1985, petitioner was suspended for alleged irregularities to have been committed by the petitioner while posted as Branch Manager, Mirza Murad Branch, Varanasi.

5. According to the petitioner the petitioner was served with a charge sheet on October 4, 1988 i.e. after a period of 3 years 10 months, by the disciplinary authority which was duly replied by the petitioner on October 14, 1988, however, no charge of any embezzlement or misappropriation of bank's money has been alleged against the petitioner, rather charges are very vague in nature that the petitioner failed to discharge his duties with honesty, devotion and diligence between 1980 to May 1984 while posted in Bank at Mirza Murad Branch. In brief, petitioner was charged for:

I(a) For granting various credit facilities to Shri C.B. Singh and his family members.

I(b) For granting loans to aforesaid persons, four carpet firms and one general store being located in the same compound and complex.

I(c) The petitioner has been charged for his failure to ensure the contribution of required margin money by the borrowers and for failure to obtain valuation report at the time of disbursement of loan.

II. For allowing to draw C.C. beyond sanctioned limit without proper ensuring that stock placed and hypothecated to the bank were sufficient to cover the outstandings.

III. For illegal granting of loan to one Rajmani Yadav Rs. 10,000/- under IRDP Scheme though he was not entitled for grant of loan.

IV. For granting agricultural loan for purchase of tractors to some borrowers without obtaining the stipulated margin money.

6. According to the petitioner all the charges were replied by the petitioner stating that Sri C.B. Singh, Sri A.B. Singh and Sri R.P. Singh, in whose matter the allegations I(a) and I(b) have been made, have inherited the property after death of their father and are engaged in individual business and no favour has been made to them, needless to say that their business is situated in joint complex. The credit of all the borrowers were duly verified before grant of loan. The petitioner also denied to have done any action apart from prevailing practice in the bank or granted any loan without ensuring the proper return of the same.

7. According to the petitioner being posted at Mirza Murad Branch i.e., in carpet business area, he had assessed the capacity of persons organisation who were already advanced loans, recommended their cases to authorities to enhance their cash credit limit vide letter dated April 5, 1984 (Annexure 8 to the writ petition) as also similar recommendations in favour of other business firms giving their position as per enclosure Annexure 9 to the writ petition and credit limit was finally enhanced after getting positive response from the higher authorities for enhancing the limit.

8. Even after being transferred the petitioner went to Mirza Murad Branch to cure the incomplete documents, all the loans were made secured, where parties

continued to pay the loan to the bank, dispute suits filed (sic) in District Varanasi, and petitioner all along participated as witness on the direction of the bank and all the such cases have been decreed in favour of the bank though petitioner went as witness in the Court during suspension and even after termination.

9. The matter was kept pending and finally enquiry started on January 14, 1989 i.e. after a period of five years from the suspension and it was concluded on January 30, 1990. Though enquiry was highly delayed, however, petitioner participated in the enquiry and Inquiry Officer gave the following findings:

Inquiry Office Disciplinary Authority Charge I(a) Proved Proved Charge I(b) Not proved Proved Charge I(c) AP Singh Not Proved Kamlesh Singh Proved

C.B. Singh Proved

Charge No. II Proved Proved Charge No. III Not Proved Not Proved Charge No. IV Not proved Proved

10. Out of 6 charges so levelled against the petitioner, 4 were not proved, one was partly proved to the extent that proper margin money was not ensured though there is no charge of embezzlement and one was proved that cash credit limit was enhanced beyond sanctioned limit without obtaining permission and without proper pledge/hypothecation in the bank. According to the petitioner he has been made victim of only technical circumstances and technical charges but there is no charge of any embezzlement or misappropriation of money against petitioner rather his records were all along very clean.

11. According to the petitioner the time limit for completion of disciplinary proceedings in the case where major punishment is awarded, as provided for non C.V.C. cases is 11 months, whereas it took 5 years and eight months in the matter of the petitioner.

12. According to the petitioner the Supreme Court State of Andhra Pradesh Vs. N. Radhakishan, that delay in enquiry has caused prejudice to the respondents and even if there would have been report against the petitioner, such enquiry was vitiated. However, in the present case, Inquiry Officer submitted report in favour of the petitioner and majority of charges were not proved, except one partly and one proved which are basically of technical nature and are not so serious that punishment of dismissal or removal from service is to be awarded.

13. According to the petitioner without any further proceeding into the matter, the appointing authority vide order dated August 8, 1990 imposed order of removal from service on the petitioner from the bank, though the said order has been passed without any opportunity of hearing or show cause notice to the petitioner. From the order dated August 8, 1990, it is apparent that appointing authority on his own without any opportunity of hearing disagreed with the finding of the Inquiry Officer and passed order of punishment showing that all the charges stand proved against the petitioner which is absolutely illegal and

against the settled principle of law since appointing authority cannot defer with the finding of Inquiry Officer unless a fresh opportunity of hearing is given to the petitioner and his finding to the effect the report of Inquiry Officer was against the record before the Inquiry Officer. Similar controversy has been decided by the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, where it has been clearly held by the Supreme Court that disciplinary authority must afford an opportunity of hearing before passing final order and giving the contrary finding other than given by the Inquiry Officer and while reversing the finding in favour of the employee, and any order passed without affording opportunity of being heard is against the principle of natural justice. The aforesaid Kunj Bihari Mishra's case has further been considered by the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, and the Supreme Court further in Yogi Nath's case held that when inquiring authority held the charges against the appellant, as not proved, and disciplinary authority disagreeing with the enquiry officer held that charges are proved, as such, order suffers from infirmities and punishment order imposed on appellant was set aside.

14. In Kunj Bihari Mishra's case (supra) deciding the case of SBI v. Arvind Kumar Shukla AIR 2001 SC 2398 : 2001-I-LLJ-1419 the Supreme Court held that disciplinary authority is bound to record its tentative reasons for such disagreement and is bound to give reasons to the delinquent employee that opportunity to represent before passing the final order.

15. The petitioner further places reliance on the judgment of the Rajasthan High Court in the case of Bhagwan Singh v. State of Rajasthan 2002 IV LLJ 1118 : 2000 (2) ESC 949, on the question of quantum of punishment.

16. According to the petitioner, the quantum of punishment is too harsh looking into the charges alleged against the petitioner and termination from service, seriously affecting the petitioner and his family members.

17. The appeal filed against the order of punishment dated January 8, 1990 was also dismissed by the appellate authority by order dated October 15, 1993/ November 30, 1993 without any opportunity of hearing. It is necessary to note that proposal to enhance the cash (sic) credit limit to Girijesh General Store by letter dated April 5, 1984 (Annexure No. 8 to the writ petition) of the petitioner along with other recommendations was accepted and enhanced by Regional Office vide order dated July 10, 1985, as such action of petitioner that he did not take care and exceeded the C.C. limit without proper sanction and without securing the property of the bank has become redundant in itself since recommendation of the petitioner has been accepted by the Regional Office and C.C. Limit was subsequently enhanced.

18. It is also noted that a F.I.R. lodged against the petitioner being Criminal Case No. R.C. 40-85 has been decided by the Hon'ble Court and petitioner has been acquitted and another F.I.R. lodged on similar circumstances where enquiry was concluded, and nothing was found against the petitioner and no adverse finding

during enquiry was revealed against the petitioner.

19. The petitioner was 53 years in 1994 when he filed the present writ petition and was to attain the age of 60 years in 2001, if he was allowed to continue in service. The petitioner was illegally kept under suspension since 1985 i.e. was victimised for more than 18 years, there it was in the interest of justice to quash the order of punishment including appellate order with direction to the respondents to release the salary including backwages with all the consequential benefits.

20. According to para 10 of the counter affidavit, the State Bank of India (Supervising Staff) Service Rules nowhere contemplates the submission of a "second show cause notice" before passing of an order of punishment. The relevant provisions of the aforesaid Rules are being quoted as below:

"Clause 50(2)(XXI)(a) - On the conclusion of the inquiry, the Inquiring Authority shall prepare a report which shall contain the following:

- (a) a gist of the articles of charge and the statement of the imputations of misconduct;
- (b) a gist of the defence of the employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the finding on each article of charge and the reason therefor.

Explanation: If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any article of charge different from the original article of charge, it may record its findings on each article of charge.

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted specifically and not by interference the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(b) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include:

- (7) the report of the inquiry prepared by it under (a) above;
- (II) the written statement of defence, if any, submitted by the employee referred to in Clause (xv);
- (III) the oral and documentary evidence produced in the course of the inquiry;
- (IV) written briefs referred to in Clause (xviii), if any; and
- (V) the orders, if any, made by the Disciplinary Authority and the Inquiry Authority in regard to the inquiry.

(3)(i) The Disciplinary Authority, if it is not itself the Inquiry Authority, may, for

reasons to be recorded by it in writing, remit the case to the Inquiring Authority - whether the Inquiring Authority is the same or different - for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold inquiry according to the provisions of Sub-rule (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry 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 Sub-rule (4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the major penalties specified in Clauses (e), (f), (g) and (h) of Rule 49 and if it is lower in rank to the Appointing Authority in respect of the category of employees to which the employee belongs, it shall submit to the Appointing Authority the records of the enquiry specified in Clause (xxi)(b) of Sub-rule (2), together with its recommendations regarding the penalty that may be imposed and the Appointing Authority shall make an order imposing such penalty as it considers in its opinion appropriate."

21. The two main arguments raised by the counsel for the petitioner were:

(a) It was incumbent upon the Disciplinary Authority to give an opportunity of hearing to the petitioner at the time when he did not concur with the findings returned by the Inquiry Officer. Having failed to provide such an opportunity to the petitioner, the order of removal deserves to be set aside, and

(b) The punishment imposed upon the petitioner was disproportionate to the charges levelled against him.

22. In support of his contentions reliance was placed by the petitioner on the following three decisions of the Supreme Court.

(I) Punjab National Bank v. Kunj Bihari Mishra (supra)

(II) Yogi Nath D. Bagde (supra) and

(III) SBI v. Arvind K. Shukla (supra).

23. According to the respondents, to establish this contention it was incumbent upon the petitioner to plead and prove what prejudice has been caused to him, and the petitioner has neither pleaded nor has he in the writ petition laid any foundation to establish as to what material prejudice has been caused to him. In order to succeed on this score it was incumbent upon the petitioner to establish before this Court what he could have said which might have impressed the Disciplinary Authority to concur with the findings of the Inquiry Officer; According

to the respondents Bank no interference is warranted and the matter need not be remanded to the Disciplinary Authority. According to the chart in respect of both charges No. I(a), I(c) and charge No. 2, both the Inquiry Officer as well as the Disciplinary Authority have concurred and recorded categorical findings that the said charges stood proved against the petitioner. The charges on which both the Inquiry Officer and the Disciplinary Authority concurred were sufficient for imposition of the penalty of removal upon the petitioner. The misconduct committed by the petitioner, who was a Branch Manager, were sufficient to maintain the charge of gross misconduct and, therefore, the order of removal on the basis of these charges which stood proved, as held by both the Inquiry Officer as well as the Disciplinary Authority, were sufficient for the imposition of penalty of removal upon the petitioner.

24. In support of the aforesaid contentions, the respondent bank relies upon the following decisions of the Supreme Court:

I. Zora Singh,

II. State of Orissa Vs. Bidyabhushan Mohapatra,

III. Pyare Lal Sharma Vs. Managing Director and Others,

In Zora Singh (supra) the Supreme Court has observed as below:

"The principle, that the decision of a Tribunal would be vitiated if some of the reasons relied on by it for its conclusions turn out to be extraneous or otherwise unsustainable, applies to cases in which the conclusion is arrived at on subjective satisfaction. For in such cases it would be difficult for superior Court to find out which of the reasons brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, if it is found that there was legal evidence before the Tribunal, even if some of them were irrelevant, a Superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in writ petition for certiorari the Superior Court does not sit in appeal, but exercise only supervisory jurisdiction and therefore does not enter into question of sufficiency of evidence."

25. In State of Orissa v. Bidyabhushan Mohapatra (supra) the Constitution Bench of the Supreme Court has observed that the Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice. The Supreme Court in Bidhyabhushan Mohapatra (supra) has also observed that if the order can be supported on one ground, for which punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in punishing the public servant.

26. In Pyare Lal Sharma (supra) the Supreme Court has held that the alleged act must constitute misconduct and penal under the law prevailing at the time of its

commission and the punishment cannot be inflicted if the act became penal subsequently. In *Pyare Lal Sharma (supra)* the Supreme Court following the judgments in *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, has held that if the order can be supported on one ground for which the punishment can lawfully be imposed it is not for the Courts to consider whether the ground alone would have weighed with the authority punishing the public servant.

27. In respect of the quantum of punishment the attention of this Court is invited to the contents of paragraph No. 14 of the counter-affidavit in which it has been averred that because of the negligence and lack of diligence committed by the petitioner the Bank was not only prejudiced but was also put to loss. It has been stated in the said paragraph that even though the suits filed by the Bank were decreed in its favour, no execution proceedings could be instituted as the advances made by the petitioner were without proper security and without any mortgage of properties from which the amount due to the Bank may have been recovered and dues of the Bank satisfied. The attention of the Court is also invited to Annexure CA-2 and Annexure CA-3 which are charts filed in evidence and in support of the averments made in paragraph 14 of the counter affidavit. The petitioner in his reply has not disputed these averments and facts brought on record.

28. Regard may also be had to the judgment of the Supreme Court rendered in the case of *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, in which the Supreme Court has clearly held that where it is established that a Bank Officer has made advances and allowed withdrawals without taking security or beyond his authority no further proof of loss is really necessary. The Supreme Court has further held that an Organisation like the Bank can function properly and effectively only if its Officer/s and Employees observe the prescribed norms of discipline and such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations.

29. According to the respondent-bank the punishment of removal imposed upon the petitioner was commensurate with the act of misconduct levelled against him and found proved. The punishment imposed upon the petitioner in any view of the matter cannot be said to be of such a nature that it shocks the conscience. In the case of *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, the Supreme Court has taken note of all earlier cases decided on the question of punishment and has held that the Administrator's decision can be interfered with only if that were illogical or suffered from procedural impropriety or was shocking to the conscience of the Court in the sense that it was "in defiance of logic or moral standards." The Supreme Court has observed that "to put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal there is no scope for interference."

30. I have heard learned counsel for the parties, I find that out of six charges, the Disciplinary Authority had differed from the Inquiry Officer only in respect of Charge No. I(b), and in respect of Charge No. 4 and the ratio of the decision of Kunj Bihari Mishra (supra) and Yogi Nath D. Bagde (supra) is squarely applicable so far the assertion of the petitioner that the opportunity was not provided to the petitioner by the Disciplinary Authority while differing with the findings of the Inquiry Officer.

31. However, it is also well settled that this Court is not to sit over the finding of the Disciplinary Authority. The absence of the petitioner in the compelling circumstances and out of necessity that should not be termed so grievous to award such a major punishment of dismissal of the petitioner from service and the punishment inflicted over the petitioner is disproportionate to the charges made against him. In *G. Ganayutham* the Supreme Court has observed that the matter of penalty imposed in a disciplinary case, unless the Court/Tribunal opines in its secondary role that the administrator, was, on the material before him, irrational according to *Wednesbury* (a) or *CCSU* (b) norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare case that the Court might, to shorten litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

(a) *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1948 (1) KB 223 : 1947 (2) All ER 680.

(b) *Council of Civil Service Unions v. Minister for Civil Service* 1985 AC 374 : 1984 (3) All ER 935.

In *U.P. S.R.T.C. and Others Vs. Har Narain Singh and Others*, in the scope of judicial review under Article 226 of the Constitution in the matter of dismissal of an employee from service pursuant to the departmental inquiry, quashing of such order of dismissal after reappreciating the evidence was held beyond the jurisdiction of High Court as it was not sitting in appeal over the findings of the disciplinary authority as held by the Supreme Court. In *State of Punjab and others Vs. Bakhshish Singh*, the Supreme Court in exercise of its power of judicial review in the matter of departmental inquiry and penalty has held that the Court is not entitled to determine that a particular act was a "gravest act of misconduct" warranting dismissal. It was also held that it is for the disciplinary authority to pass appropriate punishment. The Civil Court cannot substitute its own view to that of the disciplinary as well as the appellate authority on the nature of punishment to be imposed upon the delinquent officer, grave, ought not have interfered with the decree of trial Court.

32. In the present facts and circumstances it is necessary to relegate the matter to the Disciplinary Authority, who may issue a fresh show cause to the petitioner and after providing opportunity of hearing to the petitioner and after obtaining

the reply by the petitioner shall record its own finding and while doing so the Disciplinary Authority shall also look into the matter whether the punishment is commensurate to the allegations and seriousness of the charges against the petitioner. At this stage it is not necessary to assess the dis-proportionality of the punishment as the same may affect the merits and the findings to be arrived at by the Disciplinary Authority and in this point of view the decision of the Supreme Court in *Chairman and Managing Director, United Commercial Bank v. P. C. Kakkar* (supra) is not being taken into consideration. Therefore, it is not to indicate that the punishment awarded by the Disciplinary Authority is shockingly disproportionate or not, it is left to the Disciplinary Authority to record such finding in that respect.

33. In view of the above observations, the matter is relegated back to the Disciplinary Authority to decide the matter afresh within six months from the date of production of the certified copy of this order in consonance to the principle of natural justice and in accordance to the law. The petitioner shall keep in touch with the Disciplinary Authority and shall not take unnecessary adjournments and shall ensure all possible co-operation and even if written submission is filed by the petitioner before the Disciplinary Authority in response to the show cause notice that would be treated to be sufficient in respect of hearing and reply of the parties concerned.

34. In view of the above observations writ petition is disposed of.