(1990) 12 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 307 of 1990

Shri D.I.M. Sarpal APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 20-12-1990

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1990) 92 BOMLR 676

Hon'ble Judges : Sujata Manohar, J;E.S. Da Silva, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—In this writ petition the disciplinary proceedings, which were instituted against the petitioner by the Canara Bank (respondent No. 1) have been challenged. The petitioner is an erstwhile employee of Lakshmi Commercial Bank Ltd. Under a Scheme of Amalgamation sanctioned by the Reserve Bank of India in exercise of powers conferred on it under Sub-section (1) of Section 45 of the Banking Regulation Act, the Lakshmi Commercial Bank Ltd. has been amalgamated with the Canara Bank. The Notification in that connection is dated 23rd August 1985. Under Clause (2) of the notification all rights, powers, claims etc. as well as properties of the transferor bank, that is to say, Lakshmi Commercial Bank Ltd. have been transferred to the Canara Bank. It also provides that as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank.

2. Pursuant to this Scheme of Amalgamation, the officers of the Lakshmi Commercial Bank Ltd. were absorbed by the Canara Bank with continuity of service, except for 76 officers, who were not so absorbed. A conference was held as between the representatives of the management of the Canara Bank and the Canara Bank Officers'' Association on October 3, 1985 to determine the terms and conditions of service of the employees who were absorbed by the Canara

Bank. The minutes of the meeting of October 3, 1985, inter alia, provide in Clause VI that from the date of amalgamation, all the officer employees of the erstwhile Lakshmi Commercial Bank Ltd. shall be governed by the terms and conditions of service as applicable to the officer employees in the Canara Bank and as provided in (1) Canara Bank Officer Employees'' (Conduct) Regulations, 1976 and (2) Canara Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976. Clause VII of these minutes, which deals with disciplinary matters, provides that disciplinary proceedings against any officer employee of the erstwhile Lakshmi Commercial Bank Ltd. for misconducts committed, if any, before the date of amalgamation, shall be in accordance with the provisions contained in the Canara Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976.

3. Some of the officers, who were not so absorbed, as stated earlier, filed writ petitions, which were decided by the Supreme Court. The decision is in the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, . It covers, inter alia, the employee officers of the Lakshmi Commercial Bank, who were not absorbed by the Canara Bank. It was contended before the Supreme Court on behalf of the excluded employees that no opportunity of being heard was afforded to such excluded employees before a decision was taken to exclude them under the Scheme. Hence the authorities had not meted fairly. The employees, who were excluded, also denied that they were responsible for fictitious, improper or non-business-like advances of loans to private parties; this being the ground on which they were sought to be excluded by the Canara Bank. The Supreme Court upheld the contention that they ought to have been heard before they were so excluded. The Supreme Court, therefore, held that the order of exclusion under the scheme was in violation of the principles of natural justice. Accordingly the writ petitions were allowed. The Supreme Court directed that the transferee Bank should take over the excluded employees on the same terms and conditions of employment as the absorbed employees. They would be entitled to the benefit of continuity of service for all purposes including their salary and perquisites. The Supreme Court left it open to the transferee banks to take such action as they considered proper against these employees in accordance with law. The order was made applicable by the Supreme Court to all excluded employees although all such employees had not come to Court.

4. In view of this order the petitioner, who was an excluded employee has been absorbed by the Canara Bank. The letter of appointment states that in view of the judgment of the Supreme Court he is being absorbed. The petitioner has given a declaration dated October 15, 1987 at the time of his absorption to the effect that consequent upon his reinstatement his service conditions shall be in accordance with the minutes of the Joint Conference dated October 3, 1985 between the representatives of the management of Canara Bank and the representatives of the Canara Bank officers'' Association. The petitioner is, therefore, bound by the terms and conditions as set out in the minutes of October 3, 1985.

5. In this context we have to examine the contention raised on behalf of the petitioner that his alleged misconduct during his tenure with Lakshmi Commercial Bank Ltd. cannot now be the subject-matter of a disciplinary proceeding instituted by the Canara Bank. This contention of the petitioner does not have any substance. The minutes of October 3, 1985 clearly contemplate disciplinary proceedings against any erstwhile officer employee of the Lakshmi Commercial Bank Ltd. who has been absorbed by the Canara Bank. The Scheme of Amalgamation also invests the Canara Bank with all rights and duties of Lakshmi Commercial Bank Ltd. The Canara Bank is, therefore, entitled to take disciplinary proceedings against the petitioner although his conduct relates to a period prior to amalgamation. In fact, the order of the Supreme Court pursuant to which the petitioner has been absorbed also quite clearly indicates that it is open to the Canara Bank to take proceedings against the petitioner in accordance with law. These observations have to be seen in the context of the case which was before the Supreme Court. The transferee banks had refused to absorb certain employees who they claimed, were guilty of misconduct. The Supreme Court, however, directed their absorption on the ground that before deciding the question of misconduct or otherwise, a hearing had not been given to the employees. The Supreme Court, however, permitted the transferee banks to the action against these employees in accordance with law. Thus the Canara Bank had a right to take disciplinary proceedings in respect of such employees for their conduct prior to their absorption. The absorption is also with continuity of service. The transferee bank is, therefore, entitled to take disciplinary proceedings against these employees for their conduct prior to absorption.

6. It is also contended on behalf of the petitioner that the petitioner cannot be proceeded against under the Canara Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976. The misconduct relates to his employment with Lakshmi Commercial Bank Ltd. The petitioner, however, is bound by the minutes of October 3, 1985, which requires such an enquiry to be conducted in accordance with the Canara Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976. We have asked Mr. Desai, learned advocate for the petitioner, as to whether there is any material difference between the similar rules of Lakshmi Commercial Bank Ltd. and these rules. He has fairly stated that there is no substantial difference.

7. It is also contended by the petitioner that he has been denied representation by a lawyer in the disciplinary proceedings. Under Rule 6(7) of the Canara Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976, "the Officer-employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case, so permits". In the present case, the Presenting Officer is not a legal practitioner nor does he have any legal training. The only ground on which the petitioner asked for permission to be represented by a lawyer in his application before the Disciplinary Authority,

was that the charges against him were delayed. The request of the petitioner has been turned down by the Disciplinary Authority.

8. It is now well settled that in a disciplinary proceeding the employee does not have a right as such to be represented by a lawyer unless the Presenting Officer is also a lawyer or a person possessing legal or special training in that connection. The presenting officer in the present case does not have such a qualification or training. The decisions in C.L. Subramaniam Vs. Collector of Customs, Cochin, and Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, do not help the petitioner in the circumstances of present case.

9. There are also no complicated questions of law which may necessitate such assistance. We have seen the charges against the petitioner. They deal with his conduct while he was working as the manager of Lakshmi Commercial Bank Ltd. at the Defence Colony, Lajpatnagar, New Delhi Branch between October 6, 1980 and August 23, 1985. The charges relate to various irregularities in connection with loans advanced by him as such manager to private parties. The period is immediately proceeding the date of amalgamation. There is no delay. We also do not find that there are any complicated questions of law involved in these charges.

10. The petitioner has also contended that the institution of enquiry against him is mala fide. We do not find any substance in this allegation also. In their affidavit the 1st respondents have pointed out that out of 76 officers who were initially excluded and have been subsequently reinstated, enquiries have been completed against 24 officers and punishment is imposed on them. Presently enquires are pending against a further 39 officers including the petitioner. Looking to the context in which these officers were initially excluded and have been subsequently reinstated, and looking to the fact that the Canara Bank has taken action against a number of such officers, we cannot accept the petitioner''s contention that the action of the 1st respondent in instituting a disciplinary proceeding against him is mala fide.

11. In the premises, in our view, no grounds have been made out before us for intervention under Article 226 of the Constitution to stop the disciplinary proceeding against the petitioner at the threshold.

12. Petition is dismissed with costs.

