
(1993) 02 AHC CK 0033

In the Allahabad High Court

Case No : C.M.W.P. No. 262 of 1992 & Civil Miscellaneous Writ Petition No. 2162 of 1992

Shri Ram

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 22-02-1993

Acts Referred:

Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976 — Regulation 5(2)

Citation : (1994) 2 LLJ 116 : (1993) 2 UPLBEC 1392

Hon'ble Judges : B.M. Lal, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : Raj Vijal and Murlidhar, for the Appellant; Vijal Bohadur Singh and Pradeep Kumar, for the Respondent

Final Decision : Allowed

Judgement

A.B. Srivastava, J.—This writ petition is directed against an order dated November 14, 1990 (Annexure-1) passed by respondent No. 4, the disciplinary authority, dismissing the petitioner from service, and order dated September 30, 1991 (Annexure 2) passed by the appellate authority, the respondent No. 2 confirming the same in appeal.

2. The petitioner, who was holding the post of Junior Management Officer, Scale I, in the Nichi Bagh Branch, of the Bank of Baroda at Varanasi (hereinafter referred to as the Bank) on the date of his dismissal, was, on February 28, 1986 while posted as Manager, Rafi Ganj Branch, District Faizabad of the Bank, suspended by an order of the Deputy General Manager, U.P. Zone of the Bank at Lucknow. A charge-sheet along with the statement of allegations and memo dated May 5, 1987, Annexures 6/6-A and 6-B to the petition, were subsequently served on the petitioner by the Deputy General Manager. The 8 Items of charges based on 39 allegations inter alia being that he failed to take steps to ensure and protect the interest of the Bank, did not perform his duties with devotion,

misused his positions, acquired assets disproportionate to his known sources of income, displayed lack of integrity, and acted in a manner so as to cause wrongful gain to selected borrowers, with corresponding loss to the Government and the Bank. The petitioner submitted his statement of defence in response to the memorandum, whereupon, the Deputy General Manager dropped 19 of the allegations and in respect of the rest of the allegations appointed Senior Manager, Zonal Office, as Enquiry Officer under Regulation 5(2) of the Bank of Baroda Officer Employees" (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the Regulations). The petitioner's suspension was subsequently set aside by the Deputy General Manager on March 7, 1988 and he was posted to Varanasi. The petitioner submitted a detailed reply in the enquiry, on conclusion whereof, the Enquiry Officer submitted his enquiry report dated August 24, 1990 (Annexure-10) which, for the first time, was served on the petitioner along with the dismissal order. The dismissal order, it is alleged, is bad and unsustainable in law on account of the fact that the disciplinary authority initiating the proceedings and appointing the Enquiry Officer was the Deputy General Manager, while the one who passed the termination order was Assistant General Manager. Although for an officer in the grade of the petitioner, both, Deputy General Manager and the Assistant General Manager, have been indicated as the disciplinary authority, the Deputy General Manager being an authority superior in rank to Assistant General Manager, in respect of proceedings initiated by the Deputy General Manager, the Assistant General Manager, could not pass the dismissal order, which, consequently is without jurisdiction. The order of punishment is also bad on account of breach of principles of natural justice due to non-supply of the report of the enquiry officer, which right is available to the petitioner even after the amendment of Article 311 of the Constitution by the 42nd Amendment. The petitioner challenged the dismissal order by filing a writ petition in this Court, wherein due to lack of legal advice he did not take these pleas. The petition was dismissed vide judgment dated December 11, 1990 of this Court (Annexure "2") on the ground of alternative remedy of departmental appeal. The petitioner thereafter preferred an appeal before the General Manager who rejected the same by order dated September 10, 1991. Besides the above mentioned two grounds, the impugned order of punishment is also illegal and unsustainable for the reason that the findings against the petitioner were based on unsustainable materials and were of technical and trivial nature, there was no allegation that any loss was caused to the Bank. The amounts involved in the disbursement of the loan were not very heavy, the disciplinary authority chose to differ from the findings of the Enquiry Officer on absolutely untenable grounds, and without affording any opportunity of hearing to the petitioner in that regard, or before imposing the penalty. Accordingly, the impugned order of punishment as well as the appellate order is unsustainable and liable to be quashed and the petitioner entitled to be reinstated to his post.

3. The petition has been contested by the respondents who have pleaded in their counter affidavit that the enquiry into the charges against the petitioner was

conducted absolutely in accordance with rules and principles of natural justice and fair play. The enquiry report was then submitted to the competent disciplinary authority who on a consideration thereof passed the impugned order against the petitioner and communicated the same as required under Regulation 9 along with a copy of the report of enquiry. The petitioner thereafter availed the appellate remedy u/s 17 and the appeal was dismissed after full consideration and application of mind. No breach of principles of natural justice was involved as the rule specifically stated about delivering copy of the enquiry report along with the final order, which was done. It was not necessary for the disciplinary authority to give any further opportunity of hearing to the petitioner nor was he entitled to any opportunity to show cause against the punishment before it was awarded. In accordance with the circular dated July 20, 1983 issued by the Central Office of the Bank, for the purposes of the petitioner's case the disciplinary authority is Deputy General Manager or Assistant General Manager. At the time the disciplinary action was initiated against the petitioner the Zonal Head of Lucknow was Deputy General Manager but when the final orders were passed the Zonal Head was the Assistant General Manager. Both, having been authorised and declared as competent to act as disciplinary authority for the officers of the grade of the petitioner, in the regulations there is no lack of jurisdiction in passing the impugned order. The punishment awarded, it is alleged, is fully commensurate with the gravity of the charges of misconduct; established against the petitioner.

4. We heard Shri Muralidhar, the learned Counsel for the petitioner, and Shri Vijai Bahadur Singh, the learned Counsel appearing; on behalf of the respondents.

5. Taking up the first point canvassed on behalf of the petitioner that the impugned order of dismissal is without jurisdiction, factually there is no dispute between the parties that the disciplinary proceedings for major penalty under Regulation 5 of the Regulations was instituted by the Deputy General Manager who was the Zonal Head of the Lucknow Zone at the relevant time. While instituting proceedings an Enquiry Officer was appointed by the Deputy General Manager and necessary papers were forwarded to him. The Enquiry Officer submitted his enquiry report holding some of the charges as proved and some others not proved, to the Assistant General Manager who at that time was the Zonal head of the concerned Zone. It is the Assistant General Manager who on a consideration of the enquiry report and the materials on record, differing with the conclusions of the Enquiry Officer held the other charges, particularly the one relating to possessing assets disproportionate to his known sources of income, also established against the petitioner, and passed the impugned order of dismissal.

6. According to the Schedule to the 1976 Regulations, as amended by the Board of the Bank by resolution dated July 20, 1983, the disciplinary authority in respect of the Officers of the category to which the petitioner belonged, is, any Deputy General Manager or any Assistant General Manager. Clearly therefore, an

officer of the rank either of the Deputy General Manager or the Assistant General Manager was fully competent to initiate disciplinary proceedings or to impose any of the major penalties to the petitioner. Shri Murlidhar, the learned Senior Advocate, appearing on behalf of the petitioner, has, however, tried to place emphasis on the word "the" to indicate that it is only an authority of the category initiating the proceedings which could pass an order of the dismissal and not an authority of the other category, even though he himself could have initiated the proceedings and passed the dismissal order. In our opinion, it is not possible to construe relevant regulation and the schedule, in the manner urged by the petitioner. What is required by Regulation 5(3) is that the disciplinary authority or any authority higher than it, may impose any of the penalties specified in Regulation 4. According to the Regulation 3(g), disciplinary authority means the authority specified in the schedule. There is nothing in the Regulation to warrant the contention that in case a proceeding is initiated by the Deputy General Manager, the final order also must necessarily be passed by a Deputy General Manager and not an Assistant General Manager, even though he is disciplinary authority qua the petitioner within the meaning of Regulations 3(g) and 5(3). In this context it is not at all relevant that status-wise or salary-wise the Deputy General Manager is higher to the Assistant General Manager. The concept relating to dismissal of a member of Civil Services of the Union or State as envisaged under Article 311(1) of the Constitution laying down that a member of such services shall not be dismissed by any authority subordinate to that by which he was appointed, is not applicable to the petitioner who is an employee of a Bank and whose service conditions are governed by the relevant regulations of the Bank. This view also finds support from the principles laid down by the Supreme Court in *State Bank of India v. Vijai Kumar and Others* 1991 II LU 122 . The impugned order thus is not open to challenge on this ground.

7. The next point canvassed on behalf of the petitioner relating to the effect of non-supply of the report of the Enquiry Officer before passing of the impugned order, stands concluded in view of the law laid down in *Union of India and Ors. v. Mohd. Ramzan Khan* 1991 I LU 29 .. Why ployee before passing the order of punishment, the order would be rendered illegal, the Supreme Court in *Ramzan Khan's* case has given it a prospective effect saying that it will not affect the order passed prior to the date of judgment, November 20, 1990. In the instant case, the impugned order being dated November 14, 1990, the order of dismissal could not be rendered illegal due to non-supply of the enquiry report.

8. The next contention of the petitioner to the effect that there has been a breach of principle of natural justice and consequent denial of a fair and reasonable opportunity of defence, however, in our opinion, is not without substance.; The contention being that the disciplinary authority while choosing to differ with the report of the enquiry officer exonerating the petitioner of some of the charges and deciding to impose the penalty of dismissal as a result of the charges; held proved, without affording an opportunity of hearing, committed breach of principles of natural justice which require that opportunity of hearing

should be given.

9. It is undisputed that the enquiry officer found various charges relating to financial irregularities proved against the petitioner, but found the charge relating to possession of disproportionate assets not proved. On receipt of the said report and on a consideration of the materials on the enquiry file, the disciplinary authority found the said charge also to be proved. It is also undisputed that in arriving at his conclusion regarding this charge, the disciplinary authority neither gave any indication about his attitude, nor any notice or opportunity of hearing to petitioner in this regard. The conclusion of the disciplinary authority in this regard thus was arrived at behind the back of the petitioner and consequently in our opinion constituted a breach of principles of natural justice. The principles laid down by the Supreme Court in *Narayan Mishra v. State of Orissa* 1969 SLR 657 as well as by a Division Bench of this Court in *(R.P. Srivastava v. State Bank of India)* 1990 (8) L.C.D. 497, in this regard are fully applicable to this case, and the findings arrived at by the Disciplinary Authority behind the back of the petitioner, and the impugned order of dismissal and the resultant order of dismissal is vitiated and liable to be set aside.

10. In view of the above, therefore, the writ petition is allowed. The order of dismissal dated November 14, 1990 and the appellate authority dated September 30, 1991 confirming the same, are hereby quashed. However, it will be open to the opposite parties to proceed in the matter according to law after giving proper opportunity to the petitioner to explain the charges not proved according to enquiry officer but sought to be taken into consideration by the Disciplinary Authority. There will be no order as to costs.