
(2010) 04 AHC CK 0298
In the Allahabad High Court
Case No : Writ Petition No. 2249 (S/S) of 2010

S.M. Khalid

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 5 AWC 5312

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anil Kumar Srivastava, for the Appellant; Lalit Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Anil Kumar Srivastava, learned Counsel for the Petitioner and Sri Lalit Shukla, learned Counsel for the Respondents.

2. Present writ petition has come up before this Court on C.M. Application No. 43533 of 2010 moved by the Petitioner for interim relief.

3. Further, when the matter was taken up, learned Counsel for the Petitioner submits that present writ petition may be heard and disposed of finally in view of the peculiar facts and circumstances of the case as the opposite parties are proceeding to take final decision. Sri Lalit Shukla, learned Counsel for the Respondents does not dispute the above prayer.

4. In view of the above facts with the consent of the learned Counsel for the parties present writ petition is heard finally and disposed of today.

5. The factual matrix of the present case are that the Petitioner was initially appointed on the post of Clerk in Bank of India, Aishbagh branch, Lucknow (hereinafter referred to as "Bank") by opposite party No. 2 on 24.9.1975, confirmed on 24.3.1976. Further, the Petitioner while working and discharging his duties received a telegram that his sister who was residing at Muscat had

suffered serious illness so in order to go to Muscat to look after her, he applied for leave w.e.f. 9.11.1982 for a period of two months to the Manager of the Bank and had left for Muscat on 24.11.1982.

6. Later on, the Petitioner returned back to India in the year 1985 and submitted his joining before opposite party No. 3 on 31.1.1985 but was not allowed to join his duty in spite of the repeated requests and reminders made by him. Having no other appropriate remedy for redressal of his grievance, he approached this Court by filing Writ Petition No. 2824 (S/S) of 1991, Syed Mohd. Khalid v. Bank of India and Ors. and the same was allowed vide order dated 12.6.2009 with the following directions:

For the aforesaid reasons, the writ petition is allowed. The order dated 6.3.1991 as contained in Annexure 2 to the writ petition and the notice, letter/ order dated 18.7.1983 and the letter dated 19.7.1975 as contained in Annexures A-1, A-2 and A-3 respectively to the counter-affidavit filed by the opposite parties are hereby quashed. The Petitioner shall be forthwith reinstated in service. However, the opposite parties shall pass a fresh order regarding payment of back wages after hearing the Petitioner. It will be open to the opposite parties to proceed afresh against the Petitioner in accordance with law. In case the opposite parties take a decision to initiate disciplinary proceedings against the Petitioner, the said proceedings shall be initiated within a month from today and subject to the cooperation of the Petitioner, the same shall be completed within a further period of six months.

7. Further, the Petitioner having not satisfied with the order dated 12.6.2009 passed in Writ Petition No. 2824 (S/S) of 1991, filed a Special Appeal (Special Appeal No. 450 of 2009. S.M. Khalid v. Bank of India and Ors.) the same was dismissed on 20.7.2009 with the following directions:

Mr. Anil Kumar Srivastava, appearing for the Appellant, prays for withdrawal of this appeal with liberty to the Appellant to take recourse to any other remedy in respect of fresh cause of action.

Accordingly, the appeal is dismissed as withdrawn with liberty aforesaid.

8. Thereafter, Assistant General Manager, Lucknow Zonal Office and Disciplinary Authority had issued a charge-sheet dated 26.6.2009 to the Petitioner, according to him the charges which were levelled by the charge-sheet dated 26.6.2009 are vague in nature and relates to the incident which took place in the year 1982, so at a belated stage the same cannot be levelled on him as the action on the part of concerned Respondent in issuing the charge-sheet is contrary to law.

9. In view of the above said fact; the Petitioner again approached the authority concerned and when no heed was paid in the matter in question, he filed Writ Petition No. 4513 (S/S) of 2009, S.M. Khalid v. Bank of India and Ors. and vide order dated 7.12.2009 the same is disposed of with the following directions:

Having heard counsel for the parties, it is clear that Petitioner has to be

proceeded in accordance with the rules prevailing at the time when the misconduct was committed by the Petitioner, may be that due to prolonged litigation and considerable time has lapsed, but that does not mean that the bipartite settlement dated 10.4.2002 can be applied retrospectively. Since the Petitioner is participating in the proceedings therefore, opposite parties are directed to correct their charge-sheet and proceedings accordingly and proceed in accordance with law after hearing the Petitioner. Further, opposite parties are directed to determine the current salary of the Petitioner in accordance with the rules.

With the above observations and directions, the writ petition is disposed of finally.

10. Thereafter on 3.3.2010 another charge-sheet as contained in Annexure-5 to the writ petition was issued by the Assistant General Manager, Lucknow Zonal Office and Disciplinary Authority to the Petitioner. It is submitted on behalf of the Petitioner that charge-sheet dated 3.3.2010 was not in accordance to the direction as given by this Court however the Petitioner submitted his reply thereafter and enquiry officer concluded the enquiry proceedings.

11. On 25.3.2010, a show cause notice was issued to the Petitioner to submit the statement of defence by 15.4.2010. After receiving the same, Petitioner submitted an application requesting therein that some further time may be granted to him in order to submit the statement of defence, the same was not considered by the authority concerned as per the submission made on behalf of the Petitioner but he was informed that the enquiry proceedings have been concluded and the enquiry report is submitted by the enquiry officer to the disciplinary authority for further action.

12. Accordingly, in view of the above said factual background, the present writ petition has been filed by the Petitioner with the following prayers:

(i) Issue appropriate, writ, order, or direction in the nature of certiorari to quash the entire proceedings.

(ii) Issue appropriate writ, order or direction in the nature of mandamus commanding the Respondents to adhere to old earlier misconduct of unauthorized absence and correct the charge-sheet, as per bipartite settlement applicable to the Petitioner as reproduced in the body of the petition, as per judgment of this Hon"ble Court.

(iii) Issue appropriate writ, order or directions commanding the Respondents to pay back wages and current salary, as being paid to similarly placed employees, to the Petitioner.

13. Sri Anil Kumar Srivastava, learned Counsel for the Petitioner while pressing the writ petition on behalf of the Petitioner submits that the charges which were levelled against the Petitioner by the charge-sheet dated 3.3.2010 relates to the period 1982 so at this belated stage and on the basis of the same no inquiry can be done.

14. He further submits that even otherwise the charge-sheet dated 3.3.2010 was not in accordance with the directions given by this Court by order dated 7.12.2009 passed in Writ Petition 4513 (S/S) of 2009.

15. The second limb of the arguments advanced by the learned Counsel for the Petitioner are that the documents which were demanded by the Petitioner in order to submit his reply to the charges levelled on him by charge-sheet dated 3.3.2010, were not supplied to the Petitioner and in this regard he inter alia relied on the submission as made in paras 15 and 16 to the writ petition which are reproduced as under:

15. That the Respondents have neither given a copy of the original documents nor allowed inspection of the same. The documents given are as follows:

(i) Leave application dated 19.11.1982

(ii) Leave application dated 16.1.1982

(iii) Leave application dated 4.2.1983

(iv) Branch letter dated 12.4.1983

(v) Counter affidavit of bank in W.P. No. 2824 (S/S) /1991.

16. That the Respondents have obtained certified copies of the above documents from this Hon''ble Court which were filed by the Petitioner in W.P. No. 2824 (S/S) of 1991 and claiming them to be the original record and entire disciplinary proceedings are being conducted on the basis of these paper only.

16. Sri Srivastava on the basis of said fact, submitted that as the said documents were not supplied to the Petitioner so he was not afforded adequate proper opportunity to defend his case during the course of the enquiry proceedings as such the entire enquiry proceedings conducted by the enquiry officer are arbitrary in nature, being violative of principles of natural justice and the same are liable to be quashed. In support of his arguments, he relied on the judgment of the Apex Court passed in case of Siemens Ltd. v. State of Maharashtra and Ors., (2006) 12 SCC 33.

17. Sri Lalit Shukla, learned Counsel for the Respondents on the other hand submits that after passing of the judgment dated 7.12.2009 by this Court in Writ Petition No. 4513 (S/S) of 2009, a fresh charge-sheet was issued to the Petitioner alongwith the relevant documents, list of documents was mentioned in the charge-sheet itself on the basis of which the charges were levelled on the Petitioner so it is incorrect and wrong on the part of the Petitioner to submit that the relevant material and documents were not supplied to him.

18. He further submits that in the present case after receiving of the charge-sheet the Petitioner submitted a reply and thereafter inquiry proceedings were conducted against him and as a matter of fact on record during the course of inquiry proceedings Petitioner had not demanded any documents in respect to

which the alleged grievance has been made in writ petition. After concluding of the enquiry proceedings as per procedure provided under rules which governs the field in respect to holding of disciplinary proceedings and awarding punishment to a bank employee, Petitioner was asked to submit statement of defence by 15.4.2010 but with oblique motive and purpose and in order to linger on the matter, the Petitioner has not submitted the same as a result of which the disciplinary authority is not able to take any further action, on the matter petition filed by the Petitioner lacks merit and is liable to be dismissed.

19. I have heard the learned Counsel for the parties and gone through the record.

20. In the present case, the controversy which has to be adjudicated and decided, can be streamlined and summarized as to whether the charge-sheet dated 3.3.2010 issued to the Petitioner was in accordance with the direction given by this Court or not by order dated 7.12.2009 in Writ Petition No. 4513 (S/S) of 2009.

21. From the perusal of the said order dated 7.12.2009 it is clear that the opposite parties are directed to correct the charge-sheet and proceed accordingly. Further in pursuance to the said direction a fresh/ corrected charge-sheet dated 3.3.2010 alongwith list of documents and witnesses which are to be taken into consideration in order to prove the charges was issued by the Assistant Manager/ disciplinary authority on 3.3.2010 and after receiving the same, the Petitioner had submitted a reply and on the basis of the same inquiry proceedings were conducted by the inquiry officer and thereafter the Petitioner was asked to submit the statement of defence by 15.4.2010 but he failed to do so with the reason best known to him as a result of which the inquiry proceedings were concluded and the enquiry officer submitted his report to the disciplinary authority for further action. Moreover, from the perusal of the pleadings on record as pleaded by the Petitioner, the said argument which is raised by the Petitioner is not correct as the said plea was not taken by him earlier. Accordingly, now the Petitioner cannot be allowed to take a "U" turn and raise the said grievance at this stage on a new plea which was otherwise not taken by him earlier. So the arguments as advanced on behalf of the Petitioner in this regard are rejected.

22. So far as the assertion made by the learned Counsel for the Petitioner that the action on the part of the Respondents thereby proceeding to conduct the disciplinary proceedings in respect to the charges which relates to the incident of 1982 at the belated stage is totally incorrect in view of the law as laid down by Hon'ble Supreme Court in the case of The State of Madhya Pradesh Vs. Bani Singh and another, State of Andhra Pradesh Vs. N. Radhakishan, and P.V. Mahadevan v. Managing Director, Tamil Nadu Housing Board, 2005 (6) SCC 636: 2005 (6) AWC 5491 (SC), as such the said arguments made on behalf of learned Counsel for the Petitioner has got no force and is accordingly rejected.

23. The next arguments of the learned Counsel for the Petitioner is that the

relevant documents and material as mentioned in paras 15 and 16 of the writ petition were not supplied as such he has not been afforded any reasonable opportunity to defend his case during the enquiry proceedings, is incorrect and wrong as alongwith the charge-sheet dated 3.3.2010 list of documents and the list of witnesses were provided to him which are taken into account to prove the charges which were levelled against him. Further in paras 15 and 16 a bald allegation has been made by the Petitioner in respect to the documents which were not supplied to him. However it was not mentioned that whether the said documents were ever demanded by the Petitioner or not in order to prove the said contention. Further, from the perusal of the documents which were mentioned in para 15 of the writ petition and the documents which were supplied to the Petitioner alongwith charge-sheet as mentioned and find place in the list of documents which were given to the Petitioner alongwith charge-sheet dated 3.3.2010 the said alleged contention made by the learned Counsel for the Petitioner that the documents as mentioned in para 15 of the writ petition and were given to the Petitioner is totally incorrect and wrong. So the argument as advanced on behalf of the Petitioner that relevant documents were not supplied to him as such he was not afforded reasonable opportunity to defend his case during the course of inquiry proceedings is wholly incorrect and cannot be sustained.

24. As per settled proposition of law reasonable opportunity means:

(a) an opportunity to deny guilt and establish innocence ; which as Government servant can only do if he is told what the charges leveled against him are and the allegations on which such charges are based,

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence what he can effectively do if he was supplied the copies of the documents relied upon and the depositions of witnesses, and finally.

(c) an opportunity to make his representation as to why no punishment should be inflicted on him which he can only do if the competent authority, after the enquiry is over tentatively proposes to inflict one of the scheduled punishments and communicates his tentative decision alongwith a copy of the inquiry report to the Government servant.

25. In view of the said fact and taking into consideration, the meaning of reasonable opportunity as stated hereinabove the arguments as advanced by the learned Counsel for the Petitioner that he has not been afforded adequate opportunity to defend his case during enquiry proceedings has got no force, accordingly rejected.

26. Further, the prayer made by the learned Counsel for the Petitioner that the disciplinary proceedings initiated against the Petitioner in the matter in question shall be quashed, cannot be granted in view of the law as laid down by the Apex Court in the case of Union of India (UOI) and Others Vs. Upendra Singh, Hon''ble

Supreme Court in paras 6 and 15 observed as under:

6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the same may be.

15. For the above reasons, the appeal is allowed, the order of the Tribunal is set aside, the disciplinary inquiry against the Respondent shall proceed unhindered and expeditiously. It is in the interest of everyone concerned that the truth or otherwise of the charges is determined at the earliest." (see *District Forest Officer v. R. Rajamanickam and Anr.*, 2000 SCC 1100)

27. Needless to mention herein in the case of *Union of India and others Vs. A.N. Saxena*, the Apex Court has held that the Court or Tribunal should not stay the disciplinary proceedings against an employee and further directed that the same should be proceeded with as early as possible and with utmost zeal. In view of the said facts the truth or otherwise of the charges levelled against the Petitioner is a matter for the disciplinary authority to go into and to say whether they are correct or not. In a disciplinary proceeding conducted by the enquiry officer and indeed even after the conclusion of disciplinary proceeding if the matter comes to the Court they have no jurisdiction to look into the truth of the charges and the findings recorded on the basis of the material evidence etc. by the enquiry officer in its inquiry report should be considered by the disciplinary authority only as the disciplinary authority is the competent authority to go into the matter after giving an adequate opportunity of hearing to the employee before passing the order on the basis of inquiry report submitted by the enquiry officer. After the decision is taken by the disciplinary authority/ competent authority against the employee on the basis of report submitted by the enquiry officer in accordance with rules/ regulation, the same cannot be challenged by an employee who is aggrieved by the punishment order taken by the disciplinary authority, the Court has scrutinized the same within the guideline and parameter as laid down by Hon'ble Apex Court in the case of *H. B. Gandhi v. Gopi Nath and Sons* as under:

Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes

of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

28. Accordingly, the relief as claimed by the Petitioner for quashing of the disciplinary proceedings cannot be granted. So far as relief claimed by the Petitioner for directing tree Respondent to pay back wages and current salary which has been paid to the similarly placed employees is concerned, the Petitioner is at liberty to make fresh representation raising his grievance to the concerned authority who shall consider and dispose of the representation expeditiously in accordance with law.

29. For the foregoing reasons, the present writ petition lacks merit and is dismissed.

No order as to costs.