

(2019) 03 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 300 Of 2017

Sonamuthu Vellammal

APPELLANT

Vs

Chief General Manager & Others

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Citation : (2019) 03 CAL CK 0035

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Gopala Binu Kumar, Anjili Nag

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The order dated 19th January, 2017 passed by the Regional Manager and Appointing Authority in a disciplinary proceeding removing the petitioner from service and the order dated 17th April, 2017 passed by the appellate authority affirming the order of the disciplinary authority are impugned in the instant writ petition.

The petitioner has prayed for a writ in the nature of mandamus setting aside the order of the disciplinary authority as well as the order of the appellate authority and reinstatement in service along with all consequential benefits.

The brief facts of the case are as follows:-

The petitioner was appointed as a sweeper under the respondent bank on part time basis on 09th September, 1992. After working continuously for several years she was appointed on regular basis and later on promoted to the post of peon.

During her posting at Port Blair branch of the respondent bank on 16th October, 2015 after the petitioner returned home from her duty some of the officials of

the bank went to her house allegedly for a search and got a bag containing rupees one lakh in cash.

On 17th October, 2015 the petitioner was put under suspension.

The petitioner came to learn that a complaint was lodged against her by Ravi Raju, the cashier of the bank alleging that she has stolen one packet of rupees one thousand denomination currency note containing hundred pieces amounting to rupees one lakh. The said Ravi Raju with the help of CCTV footage found some abnormal behaviour of the petitioner and suspected that she stole the money. With the permission of the Assistant General Manager the said Ravi Raju along with a few other officers of the bank including the Manager Branch Operations visited the house of the petitioner and recovered the entire sum.

By a letter dated 16th October, 2015 the petitioner informed the Assistant Manager of the bank that absent mindedly she took rupees one lakh from R. Raju. She admitted that she committed the mistake in a conscious state of mind.

Vide a letter dated 19th March, 2016 the petitioner was instructed to explain with sufficient evidence on the charge of stealing the aforesaid sum within three days.

Vide a memo dated 31st May, 2016 a charge sheet was issued against the petitioner indicating that she has been found prima facie liable for committing acts of misconduct under clause 5(j) of the Memorandum of Settlement dated 10th April, 2002 on Disciplinary Action and Procedure for Workmen Staff. She was advised to submit her reply within seven days.

Vide a memo dated 12th July, 2016 the petitioner was informed that a departmental inquiry into the charges framed against her will be held. The name and designation of the Inquiry Officer was mentioned in the said letter. The petitioner was further informed that if she wanted to engage a defense counsel the particulars were to be forwarded to the Inquiry Officer sufficiently early to verify the credentials of the representative, if necessary. It was also mentioned that the petitioner may place her case either personally or through a representative of the bank or any other registered union of bank employees. The Inquiry Officer vide a letter dated 20th July, 2016 requested the petitioner to inform the name of the defense counsel within 27th July, 2016.

The petitioner through a letter dated 05th August, 2016 posted on 09th August, 2016 informed the bank the details of her defense counsel Shri A.K.Paul, Sr. Private Secretary (retd) . The bank replied by a letter dated 19th August, 2016 intimating the petitioner that in a departmental inquiry a charged employee is not allowed to engage an outsider as defense counsel/representative.

By a letter dated 23rd August, 2016 the petitioner was informed that a preliminary hearing of the inquiry will be held on 29th August, 2016 and she was requested to attend the hearing with her defense counsel. It was informed that in case of absence the proceeding will be held exparte.

The petitioner vide her letter dated 25th August, 2016 informed the Inquiry Officer that she was a group 'D' employee with education till class eight in Tamil medium having no knowledge of English. She did not have any knowledge to defend herself in departmental inquiry and she was not a member of any trade union. She was unable to get the assistance of any defense counsel as per the norms of the bank and requested the bank to permit her to engage defense counsel from outside who is a retired Government servant of A & N Administration.

On the date of the preliminary inquiry the petitioner attended the said inquiry and submitted that she will appoint one Shri. Sudip Dutta, Senior Assistant posted at SBI Kolkata main branch to act as her defense counsel who will be present in Port Blair on 31st August, 2016. On her request the Inquiry Officer fixed the preliminary hearing on 31st August, 2016 to give an opportunity to the petitioner to avail the services of her defense counsel. It was also mentioned that in case the proposed defense counsel does not turn up for attending the inquiry the petitioner will have to defend herself.

On 31st August, 2016 the petitioner attended the preliminary hearing and informed the Inquiry Officer that vide her letter dated 30th August, 2016 she has informed that her defense counsel will be unable to visit the Island and she intended to appoint one Shri Goutam Banerjee of Kolkata as her defense counsel. She further informed that Shri Banerjee was not feeling well and he will not be able to attend the preliminary hearing today i.e. 31st August, 2016 and prayed for providing her another chance to appear in the preliminary hearing along with her defense counsel.

The Inquiry Officer did not accede to the prayer of the petitioner and concluded the preliminary inquiry on 31st August, 2016. On that day itself the Inquiry Officer handed over the list of prosecution documents and witnesses along with the certified copies of the prosecution documents which the petitioner acknowledged. On a query from the Inquiry Officer the petitioner stated that she proposed to submit a list of defense witnesses and defense documents and requested permission to visit Port Blair on any working day prior to 05th September, 2016 to peruse the relevant files and records. The Inquiry Officer intimated the petitioner that regular hearing was fixed on 05th September, 2016 and accorded her permission to visit Port Blair branch along with her defense counsel and to submit a copy of the list of the defense documents and list of witnesses, if any.

The regular hearing was conducted on 05th September, 2016 when the petitioner attended the same but without any defense counsel. Though the petitioner remained present at the time of final hearing, she refused to sign the minutes of the proceeding and refused to cooperate with the inquiry. The Inquiry Officer had no other alternative but to hold and conclude the inquiry.

By a letter dated 19th September, 2016 the petitioner acknowledged receipt of

the proceedings of the regular inquiry and contended that on 05th September, 2016 though she submitted her hazira but the Inquiry officer refused to accept the same. She admitted that she refused to sign the documents on 05th September, 2016 as the same were written in English, a language which she did not understand. She prayed for recalling the proceedings held on 29th August, 2016, 31st August, 2016 and 05th September, 2016. The Inquiry Officer vide a letter dated 01st October, 2016 refused to recall the proceedings of the preliminary inquiry and the regular inquiry.

The Presenting Officer filed his prosecution brief holding that the charges leveled against the petitioner were proved conclusively.

The Inquiry Officer vide his letter dated 07th October, 2016 requested the petitioner to submit her defense brief latest by 17th October, 2016 which the petitioner did on 13th October, 2016. The report of the Inquiry Officer was forwarded to the petitioner by the Regional Manager of the bank on 09th December, 2016. The petitioner was afforded an opportunity to give her reply to the proven charges within three days.

The petitioner filed her reply on 02nd January, 2017.

A second show cause notice was issued to the petitioner by the Regional Manager & Appointing Authority on 07th January, 2017 informing her that the disciplinary authority cum the appointing authority proposed to impose the penalty of "removal from service". The petitioner was requested to appear for personal hearing on 16th January, 2017 or to submit a written statement in her defense. The petitioner submitted her written defense on 13th January, 2017 and was personally present on 16th January, 2017.

On 19th January, 2017 the penalty order was issued removing the petitioner from service. The petitioner preferred a statutory appeal which was also dismissed by an order dated 17th April, 2017.

The petitioner challenges the order of penalty primarily on the ground that the proceeding was not conducted in a free and fair manner. The same was conducted with a closed mind without giving an opportunity of proper defense to the petitioner. There are procedural irregularities. Principle of natural justice has been grossly violated. The disciplinary proceeding was conducted in hot haste. The Disciplinary Authority ought to have recorded that the petitioner pleaded guilty. As per the banking regulation the alleged offence of the petitioner can under no stretch of imagination be termed as a gross misconduct and accordingly the punishment of removal from service is bad in law.

He submits that as per clause 1 of the Memorandum of Settlement containing the procedure for conducting the disciplinary action a person against whom the disciplinary action is proposed or likely to be taken shall in the first instance be informed of the particulars of the charge sheet and shall have a proper opportunity to give her explanation. He submits that the documents relied upon

by the respondent were never supplied to the petitioner and as such the impugned proceeding is liable to be set aside.

The learned advocate allege violation of the provisions contained in clause 3 (a) and 4 of the Memorandum of Settlement. He submits that the alleged misconduct of the petitioner at best may fall under clause 7(g) whereby the petitioner attempted to collect or collected money within the premises of the bank without the previous permission of the management which qualifies under minor misconduct and accordingly the punishment of removal from service is bad in law.

He submits that as there was no recovery memo indicating that the alleged sum of rupees one lakh was recovered from the residence of the petitioner, accordingly there is no proof on record that the money was at all recovered from her residence.

He submits that the cause of action, if any, arose on 16th October, 2015 but the bank decided to initiate disciplinary proceeding after lapse of considerable period of time on March, 2016 thereby violating the provision of clause 11 of the Memorandum of Settlement.

He also allege violation of clause 16 of the Memorandum of Settlement whereby any notice, order, charge sheet, communication or intimation which is meant for the individual employee shall be in a language understood by the employee concerned. All the communications in the instant case are in English, a language which the petitioner did not understand at all, hence the entire disciplinary proceeding is liable to be set aside.

The petitioner submits that the punishment imposed upon the petitioner is highly disproportionate and not commensurate with the alleged offence. The penalty order was passed *ex parte* and the same is liable to be set aside. The appellate order was passed mechanically and the same is also liable to be quashed.

The learned advocate relies upon the judgment delivered in the case of A.K. Kraipak & Others vs. The Union of India & others reported in (1969) 2 SCC 262 (paragraphs 13, 17 to 20) on the point that in case of violation of natural justice the writ court can exercise the power of judicial review.

He further relies upon the decision delivered in the case of State of U.P. & others vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772 (paragraphs 21, 22, 24, 26, 27, 28, 31, 34, 37 and 40) wherein the court held that "it is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee. When a departmental inquiry is conducted against the Government servant it cannot be treated as a casual exercise. The inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object

of rule of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in a position of punishment including dismissal/removal from services."

The learned advocate appearing on behalf of the respondents submits that the writ petition was not maintainable as the petitioner is a workman as per provisions of the Industrial Disputes Act 1947. She ought to avail the remedy available under the said Act for redressal of her grievances. The writ petition is liable to be dismissed on the ground of existence of alternative remedy.

She further submits that the entire departmental proceeding starting from the issuance of the letter requesting the petitioner to explain her conduct, issuance of the charge sheet containing all the documents relied upon by the bank, affording several opportunities to the petitioner to get the assistance of defense counsel, conducting the preliminary inquiry and thereafter the regular hearing to affording further opportunity of hearing by issuing second show cause notice prior to passing the order of penalty all steps have been conducted strictly in accordance with the banking regulation. Principles of natural justice have been duly taken care of at each and every stage. Several opportunities were given to the petitioner to defend herself through her defense counsel. The petitioner admitted her guilt by writing letters dated 16-10-2015 (page 14- Annx. R-1 of A/O), 05-01-2016 (page 18- Annx. R-4 of A/O), 16-03-2016 (page 19-Annx. R-4 of A/O) and 15-04-2016 (page 20- Annx. R-5 of A/O). She intentionally and deliberately tried to delay the proceedings. The scope of judicial review is very limited. In the facts and circumstances of the case the writ petition is liable to be dismissed.

The learned advocate appearing on behalf of the respondent bank relies upon the following decisions in support of her case.

(i) Chairman and Managing Director, United Commercial Bank and others vs. P.C. Kakkar reported in (2003) 4 SCC 364 on the scope of judicial review.

(ii) State Bank of India vs. Workmen of State Bank of India and another reported in (1991) 1 SCC 13 on the point of availability of alternative remedy.

(iii) Uttaranchal Forest Development Corpn. and another vs. Jabar Singh and others reported in (2007) 2 SCC 112 on the issue of availability of alternative remedy.

(iv) UCO Bank, Chandigarh vs. Hardev Singh reported in 2006 (11) Scale 88 on the point of misplaced sympathy.

(v) Secretary and Treasurer, State Bank of India vs. K. M. Mukherjee reported in 1977 Cal. H.C.N. 154 on the point of principles of natural justice.

Heard detailed submissions made on behalf of both the parties.

From the records of the instant case it appears that though the writ petition was filed in the year 2017 and was heard by different benches on several dates no

submission was ever made by the respondents challenging the maintainability of the writ petition before this Court. Raising this issue at such a delayed stage may give rise to a further round of litigation before the Labour Court. This may cause great hardship and prejudice to the petitioner who has already been removed from service way back in October 2015. Moreover availability of alternative remedy is not an absolute bar in preferring a writ petition as laid down by the Hon'ble Supreme Court in a series of matters. Taking into consideration the balance of convenience and inconvenience I am inclined to entertain the writ petition and dispose of the same on merits.

It is settled law that the scope of judicial review by the writ court in matters pertaining to disciplinary proceedings is extremely limited. It is only restricted to ensure that there were no procedural lapses and the principles of natural justice were complied with.

The petitioner was prima facie charged for committing acts of "gross misconduct" under clause 5(j) of the Memorandum of Settlement dated 10th April, 2002 on Disciplinary Action and Procedure for workman staff.

Clause 5(j) of the Memorandum of Settlement reads as follows:- "doing any act prejudicial to the interest of the bank, of gross negligence or negligence involving or likely to involve the bank in serious loss"

The petitioner was found guilty of gross misconduct and punished under clause 6 of the said Memorandum of Settlement.

To arrive at a conclusion whether there were procedural lapses in the instant case I gave a detailed hearing in the matter. I have perused the correspondences made between the parties as well as the recordings of the proceedings of the preliminary hearing as well as the regular hearing wherefrom it appears that the petitioner was actually given several opportunities to defend herself and to place her case. The petitioner herself disclosed names of at least three defense counsels whom she proposed for defending her. Her first request was turned down as the same was not in accordance with the banking regulation. The next two defense counsels never turned up even though opportunity was given to them.

It is noticed that though the learned counsel for the petitioner repeatedly harped on the point that the proceedings were conducted in a language not known to her but she herself made all her correspondences in English. On one hand she states that she was not aware of the English language but on the other she made all her representations in English. The said stand of the petitioner is not acceptable in law.

From the proceedings recorded at the time of regular hearing held on 05th September, 2016 it appears that the petitioner participated therein but left the proceedings midway. She even refused to put her signature in the record of the proceedings. She was given the opportunity to take help of person who knew her

mother tongue which she flatly refused. In fact, it appears that she was simply adamant and was highly non-cooperative in the proceeding.

Though the learned advocate appearing for the petitioner submits that the petitioner has never given any letter admitting her guilt but he has not been able to place a single letter written by the petitioner denying her guilt. In fact the petitioner in her letters dated 05th August, 2016 (page 68- Annx. P-8 of WP) and 25th August, 2016 (page 71- Annx. P-11 of WP) did not deny the allegations leveled against her. The inquiry started thereafter.

The learned advocate for the petitioner further points out that the alleged offence of theft is a criminal offence but the bank did not lodge any complaint before the police. He submits that the letter of the Assistant General Manager dated 4th November, 2015 written to the Officer-in-charge, Aberdeen Police Station at Port Blair requesting lodging of FIR against the petitioner which is annexed as annexure R-3 at page 17 of the affidavit-in-opposition is not an authentic copy. The same does not bear the seal of the police station. The petitioner is not aware of any proceeding initiated against her by the police in response to the complaint lodged by the bank. The fact that no police complaint was lodged against the petitioner goes to show that no such incident occurred at all. The petitioner being a group 'D' employee without any proper education has been made a scapegoat to cover up the misdeeds of the other employees of the bank.

The aforesaid submission of the learned advocate of the petitioner does not hold good in view of the fact that the bank admitted that the money which was stolen was recovered from the residence of the petitioner on the self same day. Had the money not been recovered the bank would have definitely taken appropriate steps to recover the same. The fact that the bank did not initiate any further steps for recovery of the stolen sum indicates that the money which was recovered from the residence of the petitioner was indeed the money that was stolen from the bank. The bank dealt with the matter in-house.

The petitioner relies upon the provisions of Central Civil Services (Classification, Control and Appeal) Rules 1965 and submits that handing over copies of the documents relied upon by the Disciplinary Authority is a precondition in all disciplinary proceedings and the same was violated in the instant case. The learned Advocate appearing on behalf of the bank submits that the CCS (CCA) Rules 1965 were not applicable in the instant case as the bank followed the provisions as laid down in its own Memorandum of Settlement. Irrespective of the rule followed the principles of natural justice, equity and fair play demands that the copies of the documents relied upon by the Disciplinary Authority should be made available to an employee so as to allow him reasonable opportunity to defend himself in respect of the charges leveled against him. From the documents annexed to the writ petition it is evident that the relevant documents were supplied to the petitioner for her to deal with the same. There does not appear to be any violation of the aforesaid settled principle.

Bank is a place where the general public deposits their hard earned money with the firm belief that the same will remain in safe custody. Every employee of the bank irrespective of their rank and position is required and expected to act with utmost integrity and honesty. Dishonesty even to the slightest extent will ruin the entire banking system. The bank employees are bound to act with extreme caution and carefulness while dealing with public money. Slightest departure in the level of honesty should not be tolerated and no kind of indulgence is to be shown to a dishonest employee.

The Inquiry Officer examined all the witnesses and recorded their statements. All the witnesses deposed against the petitioner. There does not appear to be any slip in conforming to the principle of natural justice. No procedural lapses were noticed in the entire proceeding. The principles relied upon by the petitioner in the judgments of A.K. Kraipak (Supra) and Saroj Kumar Sinha (Supra) have been diligently followed.

A Constitution bench of the Hon'ble Supreme Court in Hardev Singh (supra) observed that when small amounts deposited in the bank by the customers land up in the pocket of employee the charge is serious. One expects the highest standards of honesty and integrity.

The Hon'ble Supreme Court in the case of K. M. Mukherjee (supra) relied upon an earlier decision of the Supreme Court wherein it was held that "rules of natural justice can be considered to have been violated only if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party against whom the material has been used". It is not the case of the petitioner that information was collected behind her back and the same was used against her. The case made out by the petitioner is that the documents relied upon by the bank were not intimated and supplied to her.

From the recordings of the proceedings annexed to the writ petition, it is evident that the petitioner was given the opportunity to verify the documents which were relied by the bank. She had also been given the permission to visit Port Blair for verification of the said documents. In fact the Inquiry Authority vide his letter dated 31st August, 2016 intimated the Assistant General Manager of the bank that the charge sheeted employee will visit the bank at Port Blair on any working day prior to 05th September, 2016 for verification of prosecution documents and to prepare a list of defense documents, if any. The Assistant General Manager has been requested to provide necessary assistance to the petitioner and if required to deliver the copies of those documents duly certified in a sealed cover directly to the petitioner. In case the petitioner for any reason whatsoever fails to avail the opportunity given to her for verification and collection of certified copies of the relevant documents, the same cannot be treated as violation of natural justice.

The disciplinary authority being the judge of facts upon perusal of the documents and upon appreciation of facts and evidence passed the punishment order and I

do not find any reason to interfere with the same.

The case of the petitioner is devoid of merit and is accordingly dismissed.

However there will be no order as to costs.