
(2013) 07 AHC CK 0027
In the Allahabad High Court
Case No : W.P. No. 7782 of 2003

S.P. Gupta

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 2 ALJ 537

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri. Upendra Nath Mishra, learned counsel for the petitioner and Sri. Virendra Misra, learned counsel for the Punjab National Bank. The petitioner while working on the post of Branch Manager, Firozabad was subjected to a disciplinary proceedings and finally the said disciplinary proceedings culminated in the order of removal, against which the appeal was filed by the petitioner and the appellate authority has affirmed the order of removal. Subsequently, the instant writ petition was filed in the year 2003.

2. Learned Counsel for the petitioner submits that the petitioner was initially appointed as Clerk-cum-Cashier in Punjab National Bank. On account of excellent performance, he was promoted to the next higher grade, i.e. Middle Management Grade Scale-II and was given posting as Branch Manager in district Firozabad. In internal inspection, the Suhag Nagar Branch of Firozabad, where the petitioner was posted as Branch Manager was categorized as "A" and good. On a false complaint, which was withdrawn by the complainant, the petitioner was subjected to disciplinary proceeding and ultimately major penalty of removal was inflicted, which apart from being in breach of principles of natural justice and statutory provisions is too harsh and excessive.

3. As regard the order of removal, it has been contended by the learned counsel for the petitioner that the enquiry officer had not proceeded in accordance with

the provisions of Regulation 10(18) of Punjab National Bank Officer Employee" (Discipline and Appeal) Regulations 1977. The Regulation 10(18), on reproduction reads as under:

10(18) -The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the officer employee, or permit them to file written briefs of their respective cases within 15 days of the date of completion of the production of evidence, if they so desire.

4. He also submits that during the course of enquiry, two cheques were returned by the drawee bank on presentation, as is evident from page 241 of the writ petition, and these two cheques have been brought on record by the bank along with its written briefs, which was violative of Regulation 10(18) of the Regulations, 1977. No opportunity was given to the petitioner to submit his defence against this extraneous materials, which has been taken in to consideration in violation of Regulation 10(18) of the Regulation 1977 i.e. after closure of evidence. On the strength of the decisions rendered in following cases, learned Counsel for the petitioner contended that the law is well settled to the effect that if any document is utilized against the delinquent employee, he must be furnished a copy of the same to put his version of defence and in not doing so, it would vitiate the entire disciplinary proceedings:

1. Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, .
2. State of Andhra Pradesh Vs. S.M. Nizamuddin Ali Khan,
3. Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways),
4. State Bank of India and others Vs. D.C. Aggarwal and another, ,
5. S.C. Girotra v. UCO Bank, reported in 1995 (Suppl) 3 SCC 212 para 3/49
6. Govt. of Andhra Pradesh v. A.V. Raidu, reported in 2007 (10) SCC 339 paras 6, 9
7. M.V. Bijlani Vs. Union of India (UOI) and Others,
8. Union of India v. Gyan Chand Chhatar, reported in 2009 (12) SCC 78 para 35
5. In addition to above cases, learned counsel has also relied upon a decision rendered in the case of State of Assam and Another Vs. Mahendra Kumar Das and Others, wherein in para 24, the Hon"ble Apex Court has held as under:

A perusal of the report of the Enquiry Officer, in the proceedings before us, shows that there is absolutely no reference to any data or material, if any, collected by him when he consulted the Deputy Superintendent of Police, Anti Corruption Branch on July 14 and 15, 1958. But, we have to state that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in

the enquiry proceedings. There may also be cases where a very clever and astute enquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusion recorded by him against the delinquent officer concerned., If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the enquiry officer, without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated.

6. Learned Counsel for the petitioner next contended that no show-cause notice was issued prior to the passing of the removal order by the competent authority, which is against the settled norms and standard set out in catena of judgments. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such enquiry. To strengthen the above arguments, reliance has been placed on *Indu Bhushan Dwivedi Vs. State of Jharkhand and Another*, and *Punjab National Bank and Others Vs. K.K. Verma*, .

7. A counter-affidavit has been filed, wherein the aforesaid facts have not been disputed but it has been submitted that with regard to second show-cause notice as well as furnishing of inquiry report, Regulations are silent, though a copy of the enquiry report was furnished. It has also been mentioned that the petitioner participated in the enquiry proceedings and availed full opportunity of putting his defence. The charges against the petitioner were grave in nature for which the major penalty has rightly been inflicted.

8. Learned counsel for the petitioner submits that after the law laid down by the Hon"ble Apex Court in the case of *Union of India and others Vs. Mohd. Ramzan Khan*, which was followed in the case of *E.C.I.L. v. B. Karunakar*, reported in (1993)4 SCC 727: (AIR 1994 SC 1074) and many subsequent judgments till date whereby it has been held that it is incumbent upon the authorities to issue show cause notice prior to the passing of the order of removal/dismissal to which Sri. Virendra Mishra, learned counsel for the Punjab National Bank has relied on the case of *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, , a copy of the same has been furnished to us for perusal.

9. A perusal of the judgment and order reflects that the Apex Court in this judgment has only considered the validity of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. However, as there was no provision for issuing second show cause notice on furnishing the copy of the enquiry report and, as such, the said question has not been raised before the Apex Court for adjudication and it has not accordingly been adjudicated by the Apex Court in the aforesaid case.

10. Sri. Upendra Nath Mishra, learned counsel for the petitioner submits that the case of Kunj Bihari (1998 All LJ 2009) (supra) has been considered by the Apex Court in the case of Punjab National Bank and Others Vs. K.K. Verma, , wherein the Hon''ble Supreme Court has held as:

Thus, the right to represent against the findings in the enquiry report to prove one''s innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, airy denial thereof will make the final order vulnerable.

11. From the materials on record, it is quite clear that the Inquiry officer has taken into consideration the extraneous material and evidence on record by accepting additional documentary evidence from the Bank which was furnished along with their brief and the said documents were also relied by the Enquiry Officer for proving the charge No. 4, though copies of the said additional evidence furnished by the Bank were neither made available to the petitioner nor any opportunity of hearing was given to the petitioner to submit his defence to the aforesaid additional evidence. It is settled principle that if any material is sought to be used in an enquiry, the copies of material must be supplied to the party against whom such an enquiry is held. The Disciplinary Authority as well as Appellate Authority did not consider this aspect of the matter and expressed their concurrence to the finding of the Enquiry Officer, without applying their independent and free mind.

12. We also find force in the submissions advanced by the learned Counsel for the petitioner to the effect that the past unblemished service career of 23 long years put in by the petitioner was also not taken into consideration by the Disciplinary Authority and the Appellate Authority and the major punishment of removal from service was inflicted upon the petitioner. As regards the issuance of second show cause notice, before inflicting the penalty, it is established from the record that no such notice was ever issued to the delinquent employee and the disciplinary proceedings were concluded in undue haste making the disciplinary proceedings as not sustainable in the eyes of law on account of breach of principles of natural justice.

13. In State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623; State of U.P. Vs. Shatrughan Lal and Another, and State of Uttaranchal and Others Vs. Kharak Singh, , the Apex Court has emphasized that a proper opportunity must be afforded to a delinquent employee at the stage of the enquiry, after the charge sheet is supplied to the delinquent as well as at the second stage when punishment is about to be imposed on him. Even if, there are no statutory rules which regulate holding of disciplinary inquiry against a delinquent employee, the employer is duty bound to act in consonance with the rules of natural justice as laid down in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . Thus, the

assertion of the Bank that there is no violation of any statutory provision or principles of natural justice while conducting the disciplinary proceeding is wholly misconceived and is rejected. The Appellate Authority while considering the appeal of the petitioner failed to appreciate the fact that the Enquiry Officer at the back of the petitioner had proved certain charges without affording any opportunity to controvert the same. Therefore, the order of Appellate Authority is bad in law and cannot be sustained.

14. Accordingly, the order of removal dated 23-8-2002 passed by the Zonal Manager and the appellate order dated 15-7-2003 passed by the General Manager of Bank are hereby quashed with all consequential benefits and reinstatement, except the arrears of salary from the date of removal to the date of reinstatement for which petitioner will make representation to the bank authorities and the competent authority of the bank shall pass appropriate order in accordance with law. As we are setting aside the order of removal on technical grounds, therefore liberty is granted to the employer to proceed afresh, if they so desire. Let it be done within one month, as the matter is lingering for the last one decade. The writ petition stand allowed in above terms.