
(1992) 02 CAL CK 0013
In the Calcutta High Court
Case No : C.O. No. 8870 (W) of 1989

Sri Amiya Kumar Mukherjee	Vs	APPELLANT
United Bank of India and Others		RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1992) 2 CALLT 368 : 96 CWN 878

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Ashok Ganguly and Swapan Kumar Dutta, for the Appellant; Dilip Kumar Sett, for Respondent Nos. 1 and 2 and A. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, J.—This is an application challenging the dismissal of the writ petitioner from service. The order of dismissal dated 31st March, 1988 is annexed at page-137 of the writ petition.

2. Mr. Ganguly, appearing for the writ petitioner has taken three principal points. First he submitted that the substance of the allegation regarding the writ petitioner permitting withdrawal from accounts in excess of his discretionary limits has not been established and the decision has in fact been reached without considering the relevant materials in that regard. He said that the relevant material in that regard is reproduced in his answer to the supplementary affidavit of the writ petition. For substantiating his argument he pointed out page 10 of the annexures to this answer and he also relied upon the portions of the Annexures to the writ petition specially at pages 125 and 132.

3. The second point of Mr. Ganguly was that in so far as the documents are concerned which were relied upon by the Bank, a list thereof would appear at page 133 of the Annexures to the writ petition. His case is that his client did not get inspection of items Nos. 19 to 23 and as such his client was denied an

opportunity of fair hearing at the enquiry proceeding.

4. Thirdly, and to my mind this is the most important argument of Mr. Ganguly, he said that in the wake of the decision of the Supreme Court in the case of Md. Ramzan Khan, the law of disciplinary proceedings has undergone a significant and substantial change. It often happens that the Inquiring Officer is not the officer empowered by the law or the rules to impose punishment himself. The inquiry report prepared by the inquiry officer is forwarded to the authority who has the right to impose punishment. On the basis of such inquiry report punishment is imposed either with or without recommendation as to punishment or as to any particular punishment made by the Inquiry Officer.

5. It was Mr. Ganguly's contention on the basis of the said authority that today the law requires a permission to be given to the officer, against whom action is proposed, to make a representation on the basis of the report of the Enquiring Officer.

6. I think it is appropriate that I should deal with this third point before dealing with other points of relatively minor importance.

7. With the greatest respect to the learned Judges of the Supreme Court deciding the case of Mr. Ramzan Khan, I am of the firm but respectful opinion that the same lays down a law which was long necessary and which fills a long existing gap in the enunciation of the rules of natural justice. Wherever the Enquiring Officer has no right to impose the punishment, all proceedings before him and all recommendations by him are no more than in the nature of advisory material. It is the mind of the disciplinary authority itself, or the mind of the punishing authority itself, that, under the law, has the sole right or jurisdiction to inflict punishment which affects the right of the citizen. Under these circumstances, I most respectfully follow, and have the pleasure of following, the dictum of the Supreme Court in paragraph-13 of the aforesaid judgment whereby the Court said that the report of the enquiring officer is a relevant material upon which the disciplinary authority forms its mind. On the general principles of the rules of natural justice, it would be a simple logical step, after this above conclusion is reached, to hold that the formation of opinion by the disciplinary authority without making available the enquiry report to the concerned officer, and without hearing him in that regard, is a clear breach of the rules of natural justice. In case the same is permitted, not only would the authority be deciding without any representation on the part of the officer but he would also be deciding without making available to the officer the most important document against him, namely, the finding or report of the enquiry officer. A representation thereupon, therefore, is a must prior to action taken by the disciplinary authority on the basis of the report in his own cloistered office room. I quote below that portion of the 13th paragraph which is the root of this principle.

"With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions

made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

"The concept of natural justice has existed for many centuries and it has crystallised into two rules : that no man should be judge in his own cause : and that no man should suffer without first being given a fair hearing. . . .They (the courts) have been developing and extending the principles of natural justice so as to building up a kind of code of fair administrative procedure to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

8. In our case, it is an admitted position that the copy of the enquiry report was enclosed along with the order for dismissal and as such no question arose as to the writ petitioner being permitted to make a representation thereon.

9. Though the above law is no doubt, again with respect, logical, consistent and in keeping with the spirit of the second rule of natural justice, yet it is also equally true that the same effects a change in law. The decision is reported in 1990 and the judgment was given on the 20th of November, 1990. If the judgment is applicable to all punishments imposed without giving an opportunity of representation on the basis of a supplied copy of the enquiry officer's report, a spate of litigation would inevitably follow. Of course, if the law is that, litigation would naturally follow. But the law, even in this regard, has been, again with respect, most wisely laid down in the same said decision itself. I quote paragraphs 17 and 18 of the said decision :

"17. There have been several decisions in different High Courts which, following the Forty-Second Amendment have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

18. We make it clear that Wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

10. In my opinion, the last sentence of the 17th paragraph and the last word of the 18th paragraph make it clear that such punishments as were imposed prior to 20th November, 1990 would not be open to challenge on this new declaration of the law that the rules of natural justice call for a representation to be allowed to the officer on the basis of the enquiry report in every case where the disciplinary authority is different from the enquiry authority.

11. I am unable to agree with Mr. Sett's contention that paragraphs 13, 17 and 18 are to be read only in the context of Article 311. In my opinion a matter of this fundamental importance and put in such broad, clear and general terms by the Supreme Court of India cannot be limited only by implication. Thus in case of all punishments imposed contrary thereto subsequent to 20th November, 1990, a challenge will be open in all cases where the enquiry report is not properly furnished and a representation thereon is not called for at the appropriate time before imposition of punishment. In our case, however, the punishment being dated 31st March, 1988 the general law as newly declared by the Supreme Court is not made applicable by reason of the pronouncement contained in the very same judgment as stated above.

12. Regarding Mr. Ganguly's first point about the limits of discretionary power being pronounced upon by the Enquiry Officer without taking into account relevant material, I note from the portions of the materials relied upon by him and referred to in the beginning of this judgment that enquiry officer did not find that there was a straightcut cash certificate as security as contended by Mr. Ganguly. The portion of the report relevant in that regard is set out hereinbelow :

"During the proceedings Sri Mukherjee stated that in some cases he reported the irregularities to higher authorities through hard account statements but he failed to produce any copy of the statements as exhibits. The question of political pressure during Assam agitation is not hold good because the entire Assam was disturbed politically then. Moreover there are other U.B.I. Branches also at Jorhat where Tarajan branch is located. So, such political pressure must also was there. It is a fact that staff strength was very poor at that time in comparison to pressure of work. If tactfully the excess drawings were avoided then the pressure would have been much less. So in my opinion instead of lessening the pressure of work Sri Mukherjee tried to increase the same by irregular way. In course of his deposition, Sri Mukherjee stated that if excess drawings were not allowed to Smt. Moni Debi Phukan then she would have withdrawn her good deposits which would have a repercussion on other depositors (Q & A 51). It is also not

acceptable because this is not the proper way to increase the business of a branch. In his deposition Sri Mukherjee stated that he allowed excess drawings but covered the same by additional security (Q & A 27). But till then the fault of allowing excess drawings beyond sanctioned limit remains there. Again in another case (S. P. Engineers & Traders) he took an additional security of Rs. 22,300/- (UBI) to DG 26) which were created out of excess drawings in M-12 placed an earnest money to the Assam Agricultural University, Jorhat to secure the job order and kept as security after being released by the authority. So his plea for taking additional security is not tenable as because it was his afterthought to conceal the real fact of excess drawings. Besides then it appears that the pledge of security of Rs. 70,000/- (DE 29A, B, C) was created out of excess drawings in the a/c. of Ranjit Kr. Bera (M-13) which were shown afterward as security pledged, is not acceptable.

While sanctioning the limit of Rs. 35,000/- to Smt. Moni Debi Phukan (E-14) Sri Mukherjee has acted far beyond his discretionary power, at that time his power was only Rs. 5,000/-. This is a clear violation of H.O. Directives. An additional security of Rs. 49,300/- by way of cash Certificate (Q & A 33) was credited from the same O/D a/c. (ME 14) to conceal the misconduct."

13. It is quite clear from the answer to the supplementary affidavit that the increased limit of Rs. 50,000/- would not apply even to medium branches like the Tarajan Branch where the writ petitioner was working, unless a cash certificate or some other such security was there with the Bank. This Court in its writ jurisdiction does not sit in appeal over the findings of the Enquiry Officer but conducts only a procedural check and a jurisdictional supervision. The finding of the enquiry officer that cash certificate was credited from the overdraft account to conceal the writ petitioner's misconduct is therefore a finding of fact upon which I entertain no supervisory or appellate jurisdiction. If that finding of fact remains, the question of any non-consideration of other materials does not arise as the increased discretionary limit of Rs. 50,000/- would not apply in the case of cash certificate security which is credited from an overdraft account for concealing a misconduct. The relevant portion of the increased discretionary limit is reproduced from page 10 of the aforesaid answer of the writ petitioner given his affidavit affirmed on 11th February, 1992.

"ADVANCE Limit (for each individual account)

1. Again Fixed Deposits & Cash Certificates & other deposits with the branch in the name of borrower/third party with margin not less than 25% Rs. 50,000/-"

14. Regarding non-giving of inspection, Mr. Ganguly has placed the annexures to the writ petition at pages 127, 128 and 129, wherefrom it would appear that prior to the conduct of enquiry inspection of the five documents, i.e., items 19 to 23 of the disclosure list was not given. It is also an undeniable fact that the writ petitioner ultimately obtained inspection of the same during the progress of enquiry. This is the net effect of the contents of paragraphs 21 and 13 of the

affidavit-in-opposition and the affidavit-in-reply respectively. In the later paragraph, the writ petitioners specifically stated that he was given opportunity to inspect those documents during enquiry.

15. Mr. Ganguly further argued on the basis of the case of *Mutter v. Eastern & Midlands Railway*, reported in (1888) 38 Chancery Division Page 92 that the right to inspect includes the right to take copies. From the aforesaid decision, first decided by Justice Chitty and then by the strong Court of Appeal consisting of Lords Justices Lindley, Cotton and Bowen, it would be evident that the right to inspect includes the right to take copies of the documents inspected, as otherwise the right to inspection becomes largely valueless. If a person can see and if a person is not expected to have a phenomenal photographic memory, then the right to inspect logically connotes a right to take copies.

16. So far so good. But the writ petition does not proceed on the basis that the writ petitioner's right to take copies was resisted. The writ petition proceeds on the basis that prepared copies of those five documents were not furnished to the writ petitioner. It is on record that the writ petitioner got inspection of all the documents and that the hearing of the enquiry was adjourned for a day for that purpose. There are no materials on record to show that the writ petitioner made any reasonable attempts for copying the documents in case he found the copies to be necessary for the conduct of his defence or that such attempts were cut short or resisted by the respondents. The above decision of the Chancery Division is not an authority for the proposition that a right for inspection entails also a right to furnish copies as opposed to the right for taking copies on one's own.

17. In the facts and circumstances of the case, the writ petition is dismissed. The rule is discharged.

There will be no order as to costs.