(1996) 07 CAL CK 0049

In the Calcutta High Court

Case No : F.M.A. No. 194 of 1994

Sri K.C. Roy APPELLANT

Vs

Bank of Baroda RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Bank of Baroda Officers Employees (Conduct) Regulations, 1976 — Regulation 24, 4, 5, 7
Constitution of India, 1950 — Article 14, 21, 226

Citation : (1997) 2 ILR (Cal) 178

Hon'ble Judges : Satyabrata Sinha, J;Satya Narayan Chakraborty, J

Bench : Division Bench

Advocate : Samarendra Pal and Sites Sinha, for the Appellant; Jatin Ghosh, Saumyo Ghosh and M.M. Guha, for the Respondent

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated September 20, 1985 passed by U.C. Banerjee, J. in C.R. No. 3185 (W)/83 whereby and whereunder the said learned Judge dismissed the writ application filed by the writ Petitioner questioning the order of dismissal dated March 16, 1982 as contained in Annexure ''N'' to the writ application.

2. The fact of the matter lies in a very narrow compass.

The Petitioner joined the service of the Respondent No. 1, Bank, on April 3, 1961. According to him, he was an efficient officer and he took charge as Agent, Howrah Branch, a ''B'' category branch, on March 12, 1971. There appears to be a dispute as to whether the said Howrah Branch is a ''B'' category Branch or not.

The Petitioner''s contention is that during his tenure, the total deposit of Rs. 71 lakhs was raised to Rs. 125 lakhs in the year 1971 and then to Rs. 175 lakhs in 1972. He was awarded a gold medal. He was promoted as Assistant Regional Manager on September 17/18, 1972 and transferred to Jaipur. He was again promoted as Development Manager (SSI & SB) in June 1974 and transferred to Eastern Zone.

The Petitioner wanted to come to Calcutta. In November 1974 he was asked to give certain comments regarding accounts of Howrah Branch during his tenure of agentship which he did sometime in December, 1974.

The Petitioner submitted his letter of resignation on July 23, 1976, inter alia, on the ground that he was not allowed to keep his house as his daughter was studying. The said resignation was not accepted and the Petitioner was informed that CBI investigation had been started against him. On or about August 28, 1978 the Petitioner received certain charges which are as follows:

(a) that he did not take all possible steps to ensure and protect the interests of the Bank, which amounts to misconduct in terms of sub-regulation 3(1) read with Regulation 24 of the Bank of Baroda Officers Employees'' (Conduct) Regulations, 1976.

(b) that he did not discharge his duties with utmost interrity, honesty, devotion and/or diligence, which amounts to misconduct in terms of sub-regulation 3(1) read with Regulation 24 of the Bank of Baroda Officer Employees'' (Conduct) Regulations, 1976.

(c) that he did not maintain discipline in all transactions and negotiations which amounts to misconduct in terms of sub-regulation 3(2) read with Regulation 24 of the Bank of Baroda Officer Employees'' (Conduct) Regulations, 1976.

(d) that he did not, in the performance of his official duties and/or in the exercise of the powers conferred on him, act in his best judgment, which amounts to misconduct in terms of sub-regulation 3(3) read with Regulation 24 of the Bank of Baroda Officer Employees'' (Conduct) Regulation, 1976.

(e) that he did not take all possible steps to ensure the devotion to duty of all persons for the time being under his control and authority, which amounts to misconduct in terms of sub-regulation 3(4) read with Regulation 24 of the Bank of Baroda Officer Employees'' (Conduct) Regulations, 1976.

The said charges were related to India Machinery Company Ltd. The Petitioner sent a letter on September 4, 1978 asking for a copy of the CBI report and three months'' time to answer the charges. The Petitioner received a copy of the written brief and he was asked to submit written statement by February 15, 1979. On February 14, 1979 he asked for further time and submitted a written brief on February 27, 1979. On September 17, 1979, however, the Petitioner informed the Bank that he was willing to rejoin his service but did not receive any reply whereafter he demanded justice through his Advocate by notice dated February 27, 1980. He was asked to join by letter dated March 6, 1980 and he joined on March 14, 1980. He was placed under suspension on April 18, 1980. On January 12, 1981 he was asked to give his educational and professional qualifications for promotion. According to the Petitioner, he did not sit for the interview as he had already attained the said grade. By reason of the impugned order dated March 16, 1982 as contained in annexure ''N'' to the writ application, the service of the Petitioner was terminated.

3. Mr. Pal, learned Counsel appearing on behalf of the writ Petitioner/Appeilant has raised a number of contentions in support of this appeal. The learned Counsel submits that keeping in view the fact that the internal working of the Bank is different than that the working of the private sector organisation, the Petitioner cannot be held to be guilty of the charges. According to the learned Counsel so far as the banking transactions are concerned two audits took place during his tenure but despite the same, the alleged irregularity of the Petitioner was not noticed for a period of more than four years. The learned Counsel submits that in any event as the Petitioner after his alleged action or in action was promoted twice, the Respondents must be deemed to have waived their right to proceed against him departmentally and in support of the aforementioned submission reliance has been placed on the case of The State of Punjab Vs. Dewan Chuni Lal, and the decision of this Court in the case of Collector of Customs v. Rebati Mohan Chatterjee 1976 C.H.N. 792. The learned Counsel pointed out that the stand taken by the Respondents in the affidavit-in-opposition is not correct, in as much as, no CBI investigation was pending "on the date on which the Petitioner had resigned from service. The learned Counsel in this connection has drawn our attention to the statement made in para. 13 at page 9 of the writ application as welt as his reply as contained in annexure ''F'' to the writ application to the Memorandum and Aticle of charges served on him, from a perusal whereof it appears tha the Petitioner had all along been taking a stand that he had resigned from the service.

4. Mr. Ghosh, learned Sr. Counsel appearing on behalf of the Respondents submitted that the. charges against the Petitioner are very serious. The learned Counsel submitted that particularly in relation to charge No. 4 in respect of act of commission and omission on the part of the Petitioner, the Respondent Bank has suffered huge monetary loss. According to the learned Counsel from a perusal of the enquiry report it would appear that the charges against the Petitioner were fully proved and thus no illegality can be said to have been committed by the disciplinary authority in passing the impugned order dated March 15, 1982 as contained in Annexure ''N'' to the writ petition in exercise of his power under sub-regulation 5(2) read with Regulations 4 and 5 of the Bank of Baroda Officers Employees'' (Discipline & Appeal) Regulation, 1976.

5. The learned Counsel contended that submission of resignation would not entity the Petitioner from refusing to perticipate in the enquiry of misconduct committed by him and as he did not take part in the disciplinary proceeding, the order passed by the learned trial Judge should not be interfered with. Reference in this connection has been made to the case reported in U.P. State Electricity Board and Another Vs. Labour Court (I), U.P. Kanpur and Another, and Union of India Vs. Ajoy Kumar Patnaik, Before the learned Trial Judge also similar arguments were advanced. The learned Judge has come to the conclusion that the Petitioner was not entitled to invoke the principles of natural justice,

inasmuch as, despite knowledge about the charges levelled against him he never cared to attend the proceeding.

6. The instant case depicts a sorry state of affairs. Admittedly the charges against the Petitioner related to a period when he was posted as Agent in Howrah Branch of the Respondent bank. Although articles of charges served upon him by reason of Memorandum dated May 29, 1978 contains 11 items, the sum and substance thereof appeared to be that the Petitioner while acting as Agent over stepped his power of granting credit facilities in favour of one M/s. India Machinery Co. Ltd. by giving a cash credit (Pledge) limit of Rs. 90,000/- at a rate of interest of 11 per cent; although the current rate was 111/2 per cent and that too against the pledge of weighing machine said to be worth Rs. 1,80,500.00 but the value whereof was assessed to be at Rs. 15,000/- only and thus, he did not verify the value of the marketable price of the pledged security. There does not appear to be any charge that except the loss of interest of 1/2 per cent, such grant of loan by him was a motivated one or he made any wrongful gain thereby.

7. It is also the case of the Petitioner that in fact the Bank itself has later on granted Rs. 29,00,000.00 to the said company as against the credit limit of Rs. 1,50,000.00 sanctioned by the Petitioner as the ex-agent of the Howrah Branch. It also stands admitted that a criminal case was instituted against the Petitioner which was investigated by the Central Bureau of Investigation but no fruitful result came out thereby. The Petitioner in the meanwhile owing to his performance had been awarded a gold medal as during his tenure the Branch became a profit-making organisation although it had been suffering loss since the opening of the Branch in 1954 and he was promoted as Assistant Regional Manager by an order dated September 17/18, 1972 and was transferred to Jaipur by an order dated March 12, 1973. He also crossed the efficiency bar in the said promoted grade and later on was again promoted to the rank of D.C.O. designated as Development Manager (Assessor I & S.B.) in June, 1974. After a long period, viz., November 13, 1974 he was asked to give comments as regards certain transactions which he duly furnished in December, 1974 whereafter he was transferred to Baroda. Admittedly in the year 1976 certain disputes and difference arose between the Bank and the Petitioner as a result whereof he submitted his resignation on July 23, 1976. However, his resignation was not accepted as the C.B.I, started investigation. No charge sheet was issued against the Petitioner at that time. However, it appears that the Petitioner had been labouring under a misconception that in view of submission of his resignation, he does not have to report for duty and admittedly took up an assignment with some other concern. Apart from a letter dated August 13, 1976 as contained in Annexure ''A'' to the affidavit-in-opposition, nothing has been shown that the Petitioner had been asked to report for duty. Only on May 29, 1978 the aforementioned Memorandum of charges were served on him. From the Petitioner''s letter dated September 4, 1978 it appears thai although the same was addressed to him at Rourkella, he received the said charges upon having been redirected from Rourkella and Calcutta to Jaipur where he had been staying

in connection with an assignment for a temporary period. He submitted two addresses being a temporary address of Jaipur and a permanent address at Calcutta. By reason of the said letter it was stated that he expected to go to Calcutta by the end of the said month and he sought for 2/3 months'' time to send a suitable reply as all the papers in connection with the said matters were lying in Calcutta. In the mean while he sought for a report submitted by the C.B.I. Department so as to get himself apprised of the same.

8. There is nothing to show that the said letter was replied to or the time sought for by him was granted or refused. On December 15, 1978 one Sri Ramesh Chandra of Central Vigilence Department was appointed as an enquiry officer and one K.C. Kanongo, D.S.P.,-C.B.I., Calcutta was appointed as the presenting officer on behalf of the Bank on December 14, 1978. 4

9. The enquiry officer sent a telegram to the Appellant at his Rourkella address and also sent a copy thereof to him. A copy was also sent to the Assistant General Manager, Bank of Baroda, Bombay wherein a request was made to see that he be directed to attend preliminary hearing. In terms of the Bank of Baroad Officers'' Employee (Discipline and Appeal) Regulation, 1976 there does not appear to be any provisions for preliminary hearing. However, it may be noticed that the Petitioner had submitted a written statement which had been sent by the Presenting Officer by the Respondent Bank in terms of the letter dated January 2, 1979 to the Enquiry Officer.

10. The Appellant, however, by an undated fetter which is contained in Annexure ''F'' to the affidavit-in-opposition addressed to the General Manager of Bank of Baroda, Bombay (who was the disciplinary authority) stated that question of his appearing before him for the enquiry did not arise inter alia, in view of his letter of resignation and his letters dated May 5, 1977 and August 24, 1978. He categorically stated that he had submitted his entire explanation to the C.B.I, enquiry officer but the result of such enquiry was not communicated to him. He affirmed that all decisions relating to running transaction had been taken by him judiciously and the Bank''s interest had all along been protected which would be vouched from the working result of the Branch by becoming a profit earning organisation. Despite the fact the Petitioner has given his permanent address and temporary address which was at Calcutta and Jaipur respectively and despite the fact that the Petitioner in his letter dated September 4, 1978 as contained in Annexure ''C to the affidavit-in-opposition categorically stated that the said letters had been received by him at Jaipur after having been redirected from Rourkella and Calcutta, the enquiry officer sent a telegram dated December 27, 1978 at his Rourkella address fixing January 8, 1979 as date for preliminary hearing at Delhi,

11. There is, however, no denial of the fact that the Petitioner received the said telegram as no such point has been raised in the writ application. He did not attend the said purported hearing on January 8, 1979. By an undated letter as contained in Annexure ''G'' to the affidavit-in-opposition which was addressed to

Rourkella the enquiry officer fixed January 29/30, 1979 for examination of witnesses on behalf of the disciplinary authority, and January 31, for submission of his defence statement. A copy of the said letter was forwarded to the Deputy General Manager, Bank of Baroda, Bombay for delivery thereof to the Appellant under proper receipt. Admittedly the Petitioner did not take part in the enquiry proceedings. Our attention has been drawn to the order sheet dated January 8, 1979, from a perusal whereof it appears that nowhere it has been recorded that the Petitioner received the said notice of hearing nor there is anything to show that the said letter was delivered to him by the Bank''s Bombay Office.

12. In a departmental enquiry, sending of a notice is not enough as no mode of service by sending such a notice exists under the regulation and thus it must be held that all such notices must be actually served. From the order sheet dated January 29, 1979 itself it appears that the notice had, however, received back unserved but despite the same, the enquiry proceeded exparte and the enquiry officer examined several witnesses and also received the written brief of submission submitted before him by the Presenting Officer. He submitted a report on February 16, 1979. Thereafter, the Petitioner allegedly had submitted a written brief on February 27, 1979 which is denied and disputed by the Respondents. The Petitioner appears to have a second thought about his rejoining the services of the Bank and he informed the Bank of his willingness to rejoin its services by a letter dated September 17, 1979 whereafter he joined his services on March 6, 1980 after service of a notice demanding justice. He joined on March 14, 1980. He was placed under suspension by an order dated April 9, 1980 which was served on him on April 18, 1980 but despite the same he was asked to give his educational and professional qualification certificates for the purpose of considering his case for promotion to which the Petitioner in terms of his letter dated January 19, 1981 informed that he had already obtained the said grade. Thereafter the impugned lettter of dismissal dated March 15, 1982 was served on the Appellant on March 16, 1982.

13. The narration of events as noticed hereinbefore, although ex facie appear to be violative of the principles of natural justice but unfortunately the Petitioner was not properly advised in the matter and all the aforementioned facts which had been brought to our notice by Mr. Pal, had not been raised specifically in the writ application. In Paras 53 and 54 of the writ application the Petitioner merely stated:

53. The Petitioner states that as the Petitioner did not get a chance to establish his case or adduce evidence or cross the witnesses at the hearing of the order passed by the Enquiry Officer without giving any reasonable opportunity to the Petitioner to avail of the same is bad at law and violative of the principles of nature justice.

54. The Petitioner states that a close look of the whole proceeding and the manner in which things sought to have been done clearly indicate malice and mala fide motive.

14. The Respondent-Bank, however, in its affidavit-in-opposition inter alia, stated that Petitioner received the aforementioned telegram dated December 27, 1978. It was further stated that the Petitioner received the other letters also. Such statements have been made in sub-paras, (i), (vi), (vii) and (ix) of para. 8 of the Affidavit-in-opposition.

15. The Appellant in his affidavit-in-reply did not appear to have traversed the said allegations relating to receipt of telegram and the notice and order dated January 8, 1979 despite his statements made in paras. 53 and 54 in the writ petition. It appears to us that the Petitioner was advised that he should contest the writ application only on the grounds urged before the learned trial Judge although ex facie it appears that there has been a violation of the principles of natural justice as in view of the order sheet of the enquiry office itself. As indicated hereinbefore, although there is nothing to show that such notices had been served on him, the rules of pleadings stand in the way of the Appellant.

16. In a situation of this nature, the Petitioner could raised a question of violation of principles of natural justice and prejudice caused to him thereby ; however, he was not advised properly. Furthermore, it was the duty of the enquiry officer to inform the delinquent officer that he was entitled to take assistance of a coworker of his choice. In a case of this nature where the enquiry officer is a high ranking officer of the Central Vigilance Commission and the Presenting Officer is the Deputy Superintendent of C.B.I., even the Petitioner could have claimed the assistance of a lawyer. But he was either acting under a misconception or was ill-advised.

17. It is, however, beyond our comprehension as to why the Bank did not act with promptitude in serving the order of dismissal immediately upon receipt of the enquiry report. It is also surprising that by an order dated April 9, 1980 the Petitioner was placed under suspension on the ground a disciplinary proceeding is contemplated and a criminal proceeding is pending against him, although the enquiry against the Petitioner had already been completed. It surpasses our imagination as to how the Appellant could be placed under suspension on a contemplated departmental proceeding or pendency of a criminal prosecution in such a situation. By reason of the said order the Petitioner was also prohibited from leaving the head quarters, namely, Baroda and he was held to be entitled to the subsistence allowance in terms of Regulation 14 of the Discipline and Appeal Regulation. The conduct of the disciplinary authority, the enquiry officer and the presenting officer ieave much to be desired. But at the same time the Petitioner must also thank himself for his misconception that it was not necessary for him to attend the enquiry as he had already submitted his resignation particularly in view of the fact that he himself volunteered to join the services of the Bank.

18. As the enquiry officer had adopted one procedure, he was bound thereby as it is well known he who takes the procedural side also must perish with it.

19. It has also been argued before us that the total loss suffered by the Bank on

account of loss of interest, if any, would be only Rs. 1,800.00 although the enquiry officer in his report has arrived at a higher figure.

20. The learned trial Judge in his impugned judgment refused to follow the decision of the Supreme Court of India in the case of State of Punjab v. Diwan Chunilal (Supra) and a decision of this Court in Collector of Customs v. Rebati Mohan Chatterjee (Supra) on the ground that the fact of this case do not reveal any knowledge on the part of the bank authorities.

In Diwan Chunilal''s (Supra) case the Supreme Court held:

In our view reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and, inefficiency contained in the confidential report of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour.

In Reboti Mohan Chatterjee''s (Supra) case this Court held:

In our view, this contention of Mr. Chatterjee is sound and should be upheld. After all, the allegation against the Respondent was of graft and corruption since he was being charged with having acquired assets disproportionate to his known source of income. If the Customs Authorities were really serious in pressing the charge, it is, in our view unthinkable how during the pendency of this appeal they could have promoted the Respondent. This action of promotion should, in our view be held, to amount to a condonation of any allegation against the Respondent. After all this Court is exercising its equitable jurisdiction in granting discretionary relief. The Appellants in our view cannot be allowed to approbate and reprobate at the same time.

21. Keeping in view the fact that it has not been disputed before us that the internal workings of the Bank includes audit and extra-ordinary audit which take place at least twice in a year but despite the same, the enquiry was initiated after a period of about 4 1/2 years and the charge sheet was submitted after a period of more than 7 years and the order of dismissal was also communicated to the Appellant only in Mairch, 1982 despite the fact that the disciplinary proceeding as against the Petitioner had been concluded in March, 1979 ; as also in view the fact that the Petitioner had been twice promoted and had also been awarded a gold medal and allowed to cross efficiency bar. We are of the opinion that the entire matter should be considered afresh by the Disciplinary Authority.

22. Mr. Pal also submitted that the punishment awarded is shockingly disproportionate.

23. In Union of India and Anr. v. B.C. Chaturvedi 1995 (6) S.C.C. 750, the Apex Court has clearly held that in a case of disproportionate punishment, the High

Court has jurisdiction to interfere although it cannot act as a Court of appeal. There cannot be any doubt whatsoever that normally the employer is the best authority to determine as to what punishment should be imposed on a delinquent employee. But sentence imposed on a delinquent officer cannot be disproportionate which shocks the judicial consciences. Doctrine of proportionality is emerging as one of the facts in the matter of judicial review of administrative action. See Tata Cellular v. Union of India 1994 (2) S.C.C. 651 and Arun Kumar Biswas v. Union of India and Ors. C.L.T. 1994 (2) H.C. 173. The Supreme Court recently has also interfered in the question of sentence. See S.K. Giri v. Home Secretary, Ministry of Home Affairs and Ors. 1995 W.B.L.R. 380 S.C. Reference in this connection may also be made to Swapan Roy v. Indian Airlines Ltd. and Ors. 1996 (1) C.H.N. 147.

24. In B.C. Chaturvedi''s case (5) Ramaswamy, J. speaking for himself and Jeevan Reddy, JJ. upon taking into consideration earlier decisions held:

A review of the above legal position would establish that the disciplinary authority and on appeal the Appellant authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the discipplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

25. Hansaria J. concurring with the said view, observed:

What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case which thinking was extended to cases attracting Article 21 in Maneka Gandhi v. Union of India the punishment/penalty awarded has to be reasonable ; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram v. State of H.P. also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court''s view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty.

26. We have also taken into consideration the fact that the disciplinary authority would be in a position to consider the entire records as despite the opportunities having been given, the records of the disciplinary proceedings have not been produced by the Respondent Bank before us.

27. Having considered the entirety of the matter we are of the opinion that the entire matter as against the Petitioner may be considered afresh by the disciplinary authority including the question of punishment. We must make it clear that normally we would not have passed this order but for peculiar facts and.circumstances of this case and in view of the fact that the disciplinary authority has a wide discretion in terms of Regulation 7 aforementioned.

28. This order, however, may not mean that the impugned order is being set aside as if will be for the Disciplinary Authority to pass appropriate order as he thinks fit and proper in the facts and circumstances of the case as expeditiously as possible. The Disciplinary Authority shall also, in the facts and circumstances of the case give an opportunity of hearing to the Petitioner.

29. The appeal and the writ application, therefore, are disposed of with the aforementioned directions and observations but in the facts and circumstances of this case there will be no order as to costs.

Satya Narayan Chakraborty J.

30. I agree.

