(1998) 12 CAL CK 0008

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 450 (W) of 1989

Sri Prabuddha Roy APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:
Constitution of India, 1950 — Article 32

Citation : (1999) 1 CALLT 472 : (1999) 82 FLR 887

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Mr. Swapan Dutta, Mr. Anjan Deb Sarkar and Mr. Masud Karim, for the Appellant;Mr. Malay Kumar Basu, Senior Advocate, Mr. Sailendra Kumar Rakshit and Mr. Udayan Sen, for the Respondent

Judgement

K.J. Sengupta, J.—This petitioner herein has the impugned order of removal dated 5th December, 1988 and the order of the Appellate Authority dated 17th December, 1988 confirming the order of removal and also the report of the Enquiry Officer which is the basis of passing Impugned two aforesaid orders. The fact of the writ petition emerges in sum and substance as follows:--

2. The writ petitioner was serving as a Manager of the erstwhile Hindustan Commercial Bank Limited and he lastly served so in the said capacity till 28th November, 1985. On 28th November, 1985 the writ petitioner was posted at the Netajl Subhas Road Branch of''the erstwhile Hindustan Commercial Bank Limited (in short H.C.B. Ltd.) as ''A'' Class Branch Manager. The characteristic of describing ''A'' Class Branch Manager is that the Officer and/or Branch Manager is given a special status by executing a general power of attorney doing all things necessary on behalf of the Bank. By an order dated 28th November, 1985 being annexure ''A* hereto the petitioner was suspended. It is stated that Immediately after issuing the said suspension order by a letter dated 21st December, 1985 being annexure ''B'' to the said petition the petitioner was asked to give explanation within 30 days from the date of the said letter as to his dealings and

further conduct in his service as a Branch Manager. According to the writ petitioner the said letter dated 21st December 1985 Is a charge sheet and the same Is follow up action of the said suspension order. On receipt of the said letter being annexure ''B'' the writ petitioner replied to the same and explained his conduct and/or dealings as sought for by the said annexure ''B''. On 2nd April. 1986 on receipt of the said explanation, the writ petitioner states, that he was reinstated in the services but not in the post of the Branch Manager. Fourthermore, by another letter dated 11th August, 1986 the functional allowance of the writ petitioner was denied and he was placed as an ordinary Officer and the deed of ''A'' Class Power of Attorney was cancelled and power granted there by the Bank in his favour was also withdrawn by a letter dated 18th December, 1986. According to the writ petitioner, although reinstatement was made but the same was not done to his previous post existing before the suspension order was Issued, and further the other benefit and or privilege was also withdrawn. Thus the petitioner''s status from the Branch Manager was downgraded to an ordinary officer. Therefore, there was punishment in substance. In pursuance of the said letter asking for explanation dated 21st December, 1985 (according to the petitioner which is a charge sheet), the petitioner accepted such position and continued to function. There after owing to acquisition of the business, assets and properties of the said H.C.B. Ltd. by the present Respondent No. 1, the petitioner''s services was not recognised nor accepted Initially by the respondent No. 1. Accordingly along with many employees the writ petitioner participated in a proceeding under Article 32 of the Constitution of India before the Supreme Court of india initiated against the respondent No. 1. By the judgment and order dated 18 September 1987 rendered by the apex court the employment of the petitioner stood transferred and/or was accepted by the respondent No. 1. Immediately thereafter the petitioner had been served with the suspension order by a letter dated 11 th November, 1987 being annexure ''H'' followed by a charge sheet dated 7th December, 1987. Three sets of charges were levelled against the petitioner with statement of imputations enclosed to the said charge sheet. The petitioner replied to the said charges. The respondent No. 1 considering the charges being serious in nature and upon denial of such charges appointed the respondent No. 7 as an Enquiry Officer for holding a domestic enquiry and for submission of the report. Thereafter, the Enquiry Officer submitted report and found that the charges numbers I and II could not be proved and the writ petitioner was not guilty of committing misconduct as mentioned in article 1 and II but he found the writ petitioner is guilty so far the charges of misconduct as mentioned in article III Is concerned. The disciplinary authority, viz., respondent No. 5, however, did not agree to the reports submitted by the Enquiry Officer with regard to charge numbers I and II and he came to his own finding and held the petitioner guilty of charges I and II and he accepted the report of act finding of the Enquiry Officer so far charges of Article III Is concerned. After holding the writ petitioner guilty of committing misconduct in respect of all the three charges the disciplinary authority being respondent No. 5 herein imposed punishment upon the writ petitioner of removal from services by the impugned order. The writ petitioner preferred appeal against the aforesaid impugned order of removal to the appellate authority being respondent No. 3. The appellate authority further rejected the appeal and he also came to his own finding and confirmed the impugned order of removal by Us order being Annexure ''W''.

2. Mr. Swapan Dutta, learned lawyer, appearing for the petitioner, submits that out of the three sets of charges of misconduct, two of them have been found in favour of the petitioner being not guilty by the Enquiry Officer and one of the charges, viz., third charge has been found to have been proved and the petitioner was found to be guilty by the Enquiry Officer. He submits that the charge No. 3 Is the Identical charge of misconduct levelled against the petitioner previously before the present respondent No. 1 took over the management, control of the erstwhile Hindustan Commercial Bank. He submits that the said previous bank had already punished the petitioner by reducing his rank. In pursuance of the previous charge the petitioner was suspended and ultimately reinstated but he was not given back his post of Branch Manager and also the privilege qua Branch Manager was also taken away by withdrawing special power of attorney which Is normally executed and granted in favour of Branch Manager. So, according to Mr. Dutta, since the self same charge has already been ended with the punishment of the petitioner at subsequent stage on the same ground the petitioner cannot be proceeded with nor can be held guilty as the same amounts to double Jeopardy.

3. The disciplinary/punishing authority have disagreed the findings of the Enquiry Officer of the petitioner not being guilty as regards the charge Nos. 1 & 2 are illegal and based on no evidence. He further submits that no opportunity was given before the disciplinary authority had disagreed with the findings of the Enquiry Officer affording the petitioner to make a pepresentations and thus the same violates the principle of natural Justice.

4. He further submits that the Enquiry. Officer''s finding the petitioner guilty as against the charge No. 3 Is concerned Is also denial of opportunity of being heard as the petitioner was not allowed to produce the documents at the time of enquiry on the plea, same are irrelevant He argues the relevancy or irrelevancy of any document cannot be decided by the Enquiry Officer and it is the absolute privilege of the delinquent. Thus he has been deprived of the reasonable opportunity of being heard.

5. Lastly, Mr. Dutta submits that- order of the appellate authority confirming the order of impugned punishment is based on total non application of mind. The appellate authority has not independently decided and/or adjudicated the matter. Moreover, nothing has been considered as regards the quantum of punishment, the same Is absolutely disproportionate to the charge.

6. Mr. Malay Kumar Bose, senior advocate, appearing for the Bank, submits that so far the charge No. 3 Is concerned which has been decided by the Enquiry

Officer that the petitioner is guilty of misconduct, the same was adjudicated previously. The letter Issued by the previous Hindustan Commercial Bank asking for explanation was not a charge sheet nor it was a show cause and it was Issued to explain his position. He was placed under suspension. In the order revoking suspension it has been mistakenly mentioned as reinstatement. By the previous order the petitioner was only transferred from the post of the Branch Manager and no punishment was awarded. Actually, the previous management merely transferred the petitioner from the post of Branch Manager to some other official position as his dealing as a Branch Manager was not satisfactory. Therefore, the previous incident of putting the petitioner under suspension Is not a disciplinary measure nor the said previous charge of misconduct has been decided by holding any enquiry. Therefore, the previous charge of misconduct would remain for adjudication and/or decision. In terms of the judgment and order of the Hon''ble Supreme Court of india with regard to the merger the present respondent No. 1 has been given leave to proceed against the employees who have been taken over as to their misconduct. So, this enquiry proceedings has been held in respect of the charge No. 3 also. it will appear from the conduct of the petitioner also that the charge No. 3 was never a subject matter of any previous disciplinary proceedings as the same will appear from his reply to the present charges sheet. In his reply to the charge sheet, nowhere he has whispered that the charge No. 3 has already been decided and/or adjudicated nor the same has been made a ground in the appeal before the disciplinary/ appellate authority. He submits this is the new case made out for the first time in the writ petition. So, the report of the Enquiry Officer holding the petitioner guilty of misconduct followed by acceptance thereof by the disciplinary /appellate authority cannot be interfered with by the writ court. This misconduct has been proved on the basis of evidence. This court being conscious of the limitation of power, will not interfere with the fact findings of the disciplinary authority as the same does not suffer from any perversity.

7. Mr. Bose further submits that disciplinary authority has every right under the law to disagree with the findings and which has been lawfully done by the disciplinary authority so far the charge Nos. 1 and 2 are concerned. In support of his submissions, he relies on the following decisions:--

(i) K.I. Shephard and Others Vs. Union of India (UOI) and Others, (ii) D.K. Yadav Vs. J.M.A. Industries Ltd., (iii) State Bank of Patiala and others Vs. S.K. Sharma, and Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, .

8. Mr. Bose submits that question of quantum of punishment is absolutely the matter of discretion of the disciplinary authority and the disciplinary authority has lost confidence in the writ petitioner. So, he is considered not to be retained in service.

9. I have heard the respective submissions of the learned lawyers and further gone through the averment made in the writ petition, affidavit-in- opposition and

reply and also the documents annexed thereto. The following are the facts which appear to me to be admitted.

10. The writ petitioner was a Branch Manager under Hindustan Commercial Bank Ltd. Thereafter, the said erstwhile Bank was amalgamated with Punjab National Bank. At the time of amalgamation Punjab National Bank the present respondent No. 1 sought to exclude the petitioner as a continuing employee of the aforesaid Bank. Ultimately, in view of the order of the Supreme Court the service of the petitioner was accepted as a continuing officer subject to leave granted by the Supreme Court for initiating disciplinary proceedings against the writ petitioner for committing alleged misconduct during his service tenure under erstwhile Hindustan Commercial Bank Ltd". it further appears from the records that on or about 21st December, 1985 the petitioner was asked by the erstwhile Hindustan Commercial Bank Ltd. to furnish explanation in respect of his alleged Irregularity in dealing with loan transaction and/or credit facilities granted in favour of M/s. Rubl Tea and Allied industries Private Ltd. it further appears that prior to issuance of the said show cause for explanation an order of suspension dated 28th November, 1985 preceded. In the said letter of show cause dated 21st December, J985 it was alleged inter alia as follows:--

"(i) We refer to our letter No. CO/O&P/85/71G dated 1.7.85 wherein we had advised you not to extend any credit facility to the company unless the company brought the balance in packing credit to NIL and deposit Rs. 5.00 lacs in cash credit account But you vide your letter No. Adv./85/1874 dated 22nd July. 1985. advised us that you had Issued a payment confirmation letter of Rs. 28.00 lacs without prior permission from Central Office and in contravention of instructions contained in letter No. CO/O&P/85/716 dated 1.7.85. Your this action has put the bank''s funds in Jeopardy.

(ii) Secondly, vide your letter dated 31.7.85 you had certified that you had verified the stocks on 31.7.85 on the basis of stock-statement dated 30.7.85 ad found them in order but subsequently when AGM (O&P) visited Calcutta, he found that there were no stocks in the godown of the factory which were earlier hypothecated to us."

11. It further appears from the said order of suspension Issued by the erstwhile employer that the order of suspension was passed in contemplation of the issuance of domestic proceedings by a charge sheet The writ petitioner, it appears on 10th January, 1986 gave reply to the said letter of show cause dated 21st December, 1985. Admittedly the said reply giving explanation to the said show cause notice was received by the then employer. it further appears that after receipt of the said show cause the erstwhile employer by an order dated 11th August, 1986 in sum and substance revoked the order of suspension and allowed the writ petitioner to join his services but he was allowed to function as an Officer not as a Branch Manager. By the said order he was denied his functional allowance as Branch Manager which he had hitherto been enjoying.

12. In the present writ petition though the legality and validity of the first show cause notice dated 21st December, 1985 are not the issue but the aforesaid development of fact has got tremendous bearing and/or relevancy to the disciplinary proceedings which have been questioned in the writ petition. So, I am to examine what is the impact for taking action in the above manner by the erstwhile employer Bank against the writ petitioner. If the order of suspension dated 28th November, 1985 and the said letter of show cause dated 21st December, 1985 are taken together and are read side by side then it will appear that the erstwhile Bank decided to initiate disciplinary proceedings as contemplated in the said letter dated 21st December, 1985. In the letter dated 21st December, 1985 all the ingredients of charge sheet are apparent. In sum and substance the statement of imputation of charges of misconduct have been mentioned. it is specifically mentioned therein that because of the writ petitioner''s alleged act in contravention of instructions the Bank was put in Jeopardy. it further appears that after the order of suspension dated 28th November, 1985 was passed no other show cause and/or charge sheet was issued excepting the letter dated 21st December, 1985. Therefore, while accepting the argument of Mr. Dulta I am of the view that letter dated 2Ist December, 1985 is a charge sheet and the same was Issued aiming at to initiate disciplinary proceedings and my view would be clear from the further act and conduct of the then employer Bank. In spite of having received the explanation the then employer Bank neither held any enquiry nor took any penal measure against the petitioner excepting the petitioner was shifted from his post of Branch Manager to the post of Officer and further his functional allowance as a Branch Manager was stopped. In my view, the erstwhile employer took lenient view of this matter and some sort of punishment was imposed upon him.

13. It further appears that on 2nd April, 1986 by an order the writ petitioner was reinstated in his services after revoking the order of suspension. It is curious to note that the petitioner was allowed to look after the account of M/s. Rubi Tea and Allied industries Private Ltd. and its sister concern along with one S.K. Chowdhury, Manager, although the allegations of misconduct against the writ petitioner was levelled in respect of the transaction of the same very constituent Therefore, in my view, Uie erstwhile management after having reinstated the writ petitioner in services and allowed to function, the alleged charges of misconduct in respect of the transaction relating to M/s. Rubi Tea and Allied industries Private Ltd. stood extinguished and/or discharged upon taking action as aforesaid. The writ petitioner, however, accepted the aforesaid position.

14. The present charge sheet which Is a subject matter in the writ petition relate to three counts of charges bearing Charge Nos. I, II and III. The charges of misconduct bearing Nos. I & II were not previously dealt with by the erstwhile management. So, in terms of the Judgment of the Supreme Court it is quite permissible under the law to proceed against the writ petitioner by the present management, viz., respondent No. 1. it appears to me the charge No. III is identically same and also in verbatim. Mr. Malay Rose, however, wants me to

accept his submission that in view of the order of the Supreme Court the writ petitioner could be proceeded departmentally in respect of the charge No. HI also. I am unable to accept this submission of Mr. Bose as I have already held that earlier show cause notice was issued as a disciplinary measure and the said show cause notice had culminated in passing some sort of punishment against the writ petitioner by taking a lenient view. So it is not open for the respondent Bank now to exhume and/or make a post mortem of the alleged misconduct which had been dealt with according to the wisdom of the erstwhile management. So the alleged misconduct under heading charge "No. HI cannot be proceeded with at all. This action on part of the respondent Bank per se Is a manifestation of biased and arbitrary attitude.

15. As I have already held that the alleged misconduct under heading charge Nos. I & II can be dealt with and/or proceeded with against the writ petitioner by the respondent No. 1. The writ petitioner has given a reply to the said charges. A departmental enquiry was also held by appointing Enquiry Officer. The Enquiry Officer after analysing evidence both documentary and oral has come to findings that the writ petitioner Is not guilty. The disciplinary/punishing authority, however, has not agreed to the findings of the Enquiry Officer who held the writ petitioner not guilty. The punishing/disciplinary authority has differed on the findings and report of the Enquiry Officer. The punishing/disciplinary authority, however, has not given any reason as to why he has differed from the findings and opinion of the Enquiry Officer. The Enquiry Officer had discussed all materials and documents. it has not been mentioned by the disciplinary/punishing aufhority as to why and to what extent the report of the Enquiry Officer is oad. It is now settled law that the punishing/disciplinary authority has right and/or authority to differ from the findings and opinion of the Enquiry Officer but he has to give reasons as to why report and findings of the Enquiry Officer should be discarded. As I have already observed there Is no such reason rather the disciplinary/punishing authority has, come to his own findings without discarding reasons given in the report of the Enquiry Officer. There is no disputes to the proposition of law laid down in the decisions of Supreme Court, reported in K.I. Shephard and Others Vs. Union of India (UOI) and Others, , D.K. Yadav Vs. J.M.A. Industries Ltd., , M.R. Gupta Vs. Union of India and others, and Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, cited by Mr. Bose. Those decisions have no manner of application on the facts and circumstances of this case. So, the findings and decision of the punishing/disciplinary authority Is perverse and the same is not sustainable in law. The appellate authority too has mechanically accepted the findings and further action of the disciplinary/punishing authority. So, the order of the appellate authority is not sustainable in law. In that view of the matter I set aside and quash the order and decision of disciplinary authority, viz., Deputy General Manager (P), as well as. the appellate authority being the General Manager.

16. Thus, the writ petition succeeds with costs assessed as 60 (sixty) G.Ms, to be

paid by the respondent Bank to the writ petitioner.

17. The writ petitioner shall be reinstated in his services forthwith, if he has not retired already. If he has already retired then the petitioner shall be deemed to be in services up to the date of his retirement and shall be paid his 50% back wages from the date of dismissal up to the date of retirement and shall be paid full salary from the date of the order of suspension issued by the respondent No. 1 till the date of dismissal after adjusting subsistence allowance, if any paid. All the retirement benefits shall also be given to the writ petitioner treating the petitioner as if he were in services.

18. Petition succeed with Costs.