(2011) 01 DEL CK 0294

In the Delhi High Court

Case No : Regular Second Appeal No. 216 of 2003

S.S. Tyagi APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0294

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Som Dutt Sharma, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 01.4.2003 which had endorsed the finding of the trial judge dated 21.10.2000 whereby the suit of the plaintiff S.S. Tyagi seeking a declaration and an injunction to the effect that the report of the Enquiry Officer dated 26.12.1986 endorsed by the Disciplinary Authority and the Appellate Authority imposing punishment of compulsory retirement upon the plaintiff be set aside had been dismissed.

2. The plaintiff was posted as Branch Manager in Jalalpur Branch, Punjab National Bank in District Bijnor. He was in service since more than 27 years. On 5.6.1984 he was served with a charge sheet pointing out certain irregularities. On 23.6.1984 a second charge sheet on similar grounds was served upon him. Charges were denied. Enquiry proceedings culminated in the report of the Enquiry Officer dated 01.8.1985. Since there was an ex-parte order it was set aside by the Appellate Authority. Enquiry Report dated 26.12.1986 held him guilty. The Disciplinary Authority imposed penalty of compulsory retirement and this was endorsed by the Appellate Body. The order of the Appellate Body is dated 8.8.1987. The present suit was thereafter filed on 21.8.1987 challenging the affronted orders. It was stated that the findings of the Enquiry Officer were

vitiated for the reason that there was an unexplained delay in holding the enquiry; the charges related to period 1979 to 1981 whereas the charge sheets had been filed in the year 1984. Documents had not been furnished to the delinquent in time thereby prejudicing his defense as he was not able to give an effective reply to the charges which had been leveled against him. The Disciplinary Authority and the Appellate Body had given non-speaking orders without disclosing any reasons.

3. In the written statement these submissions were countered. It was stated that there has been no violation of principles of natural justice and no prejudice has been suffered by the delinquent. It was specifically denied that there was any delay in initiating the enquiry or that the documents have not been furnished to the delinquent. It was denied that the orders of the Disciplinary Authority and the Appellate Body were non-speaking order or non-reasoned orders.

4. The trial judge had framed the following four issues:

1. Whether the plaintiff is entitled for declaration? OPP

2. Whether the plaintiff is entitled for injunction? OPP

3. Whether the suit is maintainable? OPP

4. Relief.

5. Oral and documentary evidence was led. The trial judge affirmed the findings of the enquiry proceedings. The suit was dismissed. The impugned judgment had endorsed this finding

6. This is a second appeal. After its admission on 03.11.2004, the following substantial question of law was formulated; it reads as follows:

Whether the order of dismissal dated 2nd August, 1985 upheld by the Appellate Authority on 8th August, 1987 is valid in law?

7. On behalf of the Appellant, arguments have been urged at length. It has been argued that there was an inordinate delay in filing the charge sheet. The charges for which the delinquent has been charge-sheeted all relate to the year 1979 to 1981; not only the delay has to be explained but this explanation has to be accepted before the penalty could have been imposed upon the delinquent. For this proposition reliance has been placed upon State of Andhra Pradesh Vs. N. Radhakishan, also another judgment reported in State of Punjab and Others Vs. Chaman Lal Goyal, . It is pointed out that the charge sheet had been filed in 1984; documents had not been furnished to the delinquent up to 1986; this had prevented him from giving an effective reply to the charges leveled against him which has created a bias and prejudice against him. To support this proposition reliance has been placed upon (1998) 6 SCC 657 State of UP v. Shatrughan Lal and Ors. It is pointed out that the Appellate Body had also recorded no reasons for arriving at the finding and endorsing the stand of the Disciplinary Authority. Natural justice had not been adhered to. For this proposition reliance has been

placed upon S.N. Mukherjee Vs. Union of India, .

8. Arguments have been countered. It is stated that there has been no delay on the part of the department. The parameters which have to be taken into account to adjudge this issue has been dealt with by the Apex Court time and again and unless the delay causes prejudice to the charged employee, benefit of the same cannot be taken by him. Reliance has been placed upon a judgment of this Court delivered on 30.8.2010 in WP(C) No. 9493/2009 titled as Union of India v. Anil Purito support this submission. It is submitted that the documents had been given in time i.e. on the first date of hearing of the enquiry. No bias has been suffered by delinquent. To support this submission, reliance has been placed upon a judgment reported in 2006 (1) LLN 881 Syndicate Bank v. Venktesh Gururao Kuratias also another judgment of this Court decided on 03.3.2010 on the LPA No. 959/2004 B.D. Luthra v. The Chairman & Managing Director. It is submitted that the present case is also not a case of a non-speaking order; the Appellate Body had given sound reasons. Besides this where the punishing authority agrees with the finding of the Enquiry Officer and the reasons given by him, it is not necessary for the Disciplinary Authority to again discuss the evidence and come to the same finding as that of the enquiry officer. The scope of judicial review is limited; as has been held in AIR 205 SC 584 Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jainas also a subsequent judgment of the Apex Court reported in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, .

9. Record has been perused. The order of the Disciplinary Authority upholding the finding of the Enquiry Officer and imposing penalty of dismissal is dated 26.12.1986. This was upheld by the Appellate Body vide order dated 8.8.1987. Two charge sheets had been issued to the delinquent; first is dated 5.6.1984 and the second charge sheet is dated 23.6.1984. Allegations in both the charge sheets have been perused.

10. In the first charge sheet five charges have been leveled against the delinquent. Except for charge No. 2 which relates to period 09.4.1978 to 15.5.1979; all other charges are relate to periods after February 1980 up to September 1981. The second charge sheet has leveled seven charges against the delinquent all of which relate to the periods between September 1982 up to April 1983. These were by and large advances and loans sanctioned to parties without following the due procedure which were alleged to be serious irregularities and lapses on the part of the delinquent.

11. The reply filed by the delinquent to the first charge sheet is dated 14.8.1984. It is a bare denial of all the charges; implicit being denied and not admitted. The reply to the second charge sheet is also similarly worded. There has been a denial and no admission of the charges leveled against him; it is stated that there has been no breach or commission of any misconduct by the delinquent.

12. It is relevant to state that in none of the replies filed by the Appellant/

delinquent has there been any reference to the averment that the charge sheet is either a delayed charge sheet or that the delinquent for one reason or the other including non-supply of relevant documents is not in a position to give an effective reply.

13. The contention of the Defendant that there was an inordinate delay in filing this charge sheet had been answered by the Defendant in his written statement. Defense was that as per the regular procedure adopted in nationalized banks, branch inspections are carried out periodically. It is only when the inspection report is received and evaluated by the appropriate authority and when the discrepancies/irregularities come to light. In this case the charge sheet had been issued almost forthwith on this information of these irregularities which had been noted by the department. As already noted supra the allegation in both the charge sheets relate to periods 1980 to 1983; all the charges leveled against the delinquent are of the foretasted period except one or two lone instances which relate to the later part of 1979. The two charge sheets had been filed in the month of June 1984. The explanation furnished by the department is not only adequate but also satisfactory. There is no inordinate or unexplained delay in filing the foretasted charge sheets for the affronted periods. The facts in the judgment of N. Radhakishan (supra) are distinct; in the said case the charge sheet had been filed after a delay of 61/2 years. In the case of Chaman Lal (supra) the incident was dated 1987; case of the delinquent was to be considered for promotion in the year 1992; there was a delay of 51/2 years. Both these judgments are inapplicable.

14. In this context a Bench of this Court while deciding LPA No. 39/1999 on 29.10.2003 in the case of DDA v. D.P. Bambah and Anr. had held as follows:

15. In our opinion the legal position, when an action is brought seeking quashing of a charge- sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystallized as under:

(i)Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii)If bone fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defense is found to be denied as a consequences of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry."

15. The department had needed time to collect the necessary material and to verify the correctness of the allegations against the employee before he could be charge-sheeted. The concurrent finding of the two Courts below is upheld on this score. Both the Courts below had dealt with this contention while disposing of the issues; it was a justifiable delay.

16. The next contention urged by the learned Counsel for the Appellant is that the documents had not been furnished to the delinquent at the time when he had filed his reply to the charge sheet, the details of which have been affronted supra.

17. As noted above it was never contended by the delinquent that the documents had not been furnished to him which have prejudiced him thereby preventing him from giving an effective reply. The record shows that in the first charge sheet i.e. the charge sheet dated 5.6.1984 the documents including the list of witnesses and their statements were furnished to the delinquent on the date when the cognizance was taken i.e. on 06.3.1986; qua the second charge sheet dated 23.6.1984, documents i.e. list of witnesses and statement of witnesses had been furnished on the first date of hearing i.e. on 05.4.1986. There is no dispute about these dates. It has also come on record that the plaintiff had sought inspection of the documents which was permitted to him and for this purpose adjournment had been granted by the Enquiry Officer to the delinquent. On 09.5.1985 the delinquent was permitted to inspect the record at Muzzafar Nagar branch. Regulation 6(5)(iii) of the Discipline and Appeal Regulations 1977 which are the statutory Regulations governing the Defendant bank also do not provide for supply of copy of documents at the time of giving of charge sheet. No prejudice had been suffered.

18. The Supreme Court in Debotosh Pal Choudhary Vs. Punjab National Bank and

Others, the occasion to examine Regulation 6(5)(iii) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations 1977 and in this context it noted as follows:

4. Regulation 6(5) of the Regulations which requires the Disciplinary Authority shall, where it is not the inquiring authority, forward to the Inquiry Authority the following documents:

1. A copy of the articles of charge and statement of imputations of misconduct or misbehavior;

2. A copy of the written statement of defence, if any, submitted by the officer employee;

3. A list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;

4. A copy of the statement of the witnesses, if any;

5. Evidence proving the delivery of the articles of charge under sub-regulation (3); and

6. A copy of the order appointing the ''Presenting officer'' in terms of sub-regulation (6). Fulfillment of some of the requirements of this Regulation is purely procedural in character. Unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of this Regulation will not vitiate the entire enquiry.

19. The Apex Court while dealing with such a contention in Syndicate Bank (supra) had held as follows:

Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a strait-jacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

20. In the instant case as well no prejudice had been shown by the Appellant. The documents had admittedly been supplied to him although not along with charge sheet but by the Enquiry Officer before the enquiry commenced and before the witnesses were examined. This contention of the learned Counsel for the Appellant is also without any merit.

21. The last argument raised by the learned Counsel for the Appellant is that the orders of the Disciplinary Authority and of the Appellate Body are non-speaking orders. It would be relevant to reproduce the said orders. Order of the Disciplinary Authority read as follows:

PUNJAB NATIONAL BANK

ZONAL OFFICE

E.K.ROAD: MEERUT

REF:ZO:MRT:DAC:SST: Date 26.12.1986 ORDER Reg:

Date Shri S.S. Tyagi, Manager, BO: Jalilpur

-Charge sheets dated 5.6.84 & 23.6.1984

Shri S.S. Tyagi, Manager, BO; Jalilpur was served with charge sheet dated 5.6.1984 for the lapses committed by him at BO: Muzaffar nagar City and charge sheet dt.23.6.84 for the lapses committed by him during his incumbency at BO: Afzalgarh. The undersigned being the Disciplinary Authority instituted enquiries vide orders dated 30.1.1986 to find out the truth into the imputations contained in both the charge sheets.

The Enquiry Officer has submitted his report on both the charge sheets and the reports along with records of the enquiry have been placed before me. I have gone through the report of the Enquiry Officer and the records of the cases and I find the following Articles of charges have been established:

Charge Sheet dated 5.6.1984

-He allowed undue/unauthorized accommodation to certain parties.

-He did not act prudently.

-He did not follow the prescribed procedures of the Bank. Charge Sheet dated 23.6.1984 -He allowed undue/unauthorized accommodation to various parties.

-He concealed true state of affairs from the Authorities.

-He did not conduct pre-sanction appraisal in many accounts.

-He neglected post-sanction safeguards prescribed by the Bank.

-He failed to ensure end/use of bank''s finance in various accounts.

I accept the finding of the enquiry as above. From these findings, the facts available on the enquiry report and records of the Bank, I conclude that Shri Tyagi failed to discharge his duties with honesty, integrity, devotion and diligence and failed to protect the interest of the bank as required under regulation 3(1) of the PNB Officer Employees (Conduct) Regulations-1977.

Keeping an overall view of the gravity of the articles of charges established against him as above, I decide to impose a penalty of "compulsory retirement" with immediate effect.

Further, he will not be entitled for salary other than subsistence allowance already paid/payable to him for the suspended period.

I order accordingly.

DEPUTY GENERAL MANAGER

DISCIPLINARY AUTHORITY

Order of the Appellate Body reads as follows:

PUNJAB NATIONAL BANK

HO:NEW DELHI

August 8, 1987

Shri S.S. Tyagi, Ex. Manager, BO:Jalilpur (since compulsory retired from Bank''s service)-Charge Sheets dated 5/6/84 & 23/6/84 .

The appeal submitted by Shri Tyagi against the punishment of compulsory retirement imposed upon him by the Zonal Manager, Meerut as Disciplinary Authority vide orders dated 26.12.86, has been placed before me along with records of the disciplinary case comprising charge sheets dated 5.6.84 and 23.6.84 served upon him, his reply thereto, records of the enquiry proceedings including report of the Enquiry Officer and the orders passed by the Disciplinary Authority.

On perusal of records, I find that the Disciplinary Authority while agreeing with the findings of the Enquiry Officer has held Shri Tyagi responsible for the following lapses:

-CHARGE SHEET DT.5.6.84

-He allowed unauthorized/undue accommodation to certain parties.

-He did not act prudently.

-He did not follow the prescribed procedures of the Bank. -CHARGE SHEET DT.23.6.84

-He allowed undue/unauthorized accommodation to various parties.

-He concealed true state of affairs from the Authorities.

-He did not conduct pre-sanction appraisal in many accounts.

-He neglected post-sanction safeguards prescribed by the Bank.

-He failed to ensure endues of bank''s finance in various accounts.

I have gone through the appeal submitted by Shri Tyagi and find that he has mainly raised the following points:

- That the Enquiry Officer has not at all considered the evidence produced by him during the Enquiry proceedings and in a mechanical manner has accepted in toto whatever was presented by the Presenting Officer.

- That the allegation against him do not mention any dishonest intention or lack of integrity, devotion or diligence. Even the Enquiry Officer has also not indicated anywhere the he (Shri Tyagi) suffered from any of such vices. Even then, the Disciplinary Authority has imposed upon him the severe penalty.

- That he might have accommodated certain parties beyond his powers or authority, under extreme exigencies prevailing at the relevant time to retain the customers in the interest of the Bank. He has explained the circumstances fully and feels that this does not call for such extreme major penalty.

- That on account of his ceaseless efforts and public relations, during his posting at Muzaffarnagar city, the deposits rose from 3 crores to 5.7 crores and during his incumbency the Bank did not suffer a loss of even a single rupee.

- That there was more than 900 loan accounts in the branch and adequate staff was not provided with to handle these accounts. Additional staff was provided only after his transfer from the said office. In the absence of adequate staff, he was over burdened and due to heavy rush and over work, he might have inadvertently committed some trifling errors.

- That the extreme major penalty of compulsory retirement imposed upon him is a severe blow to his entire family.

Shri Tyagi has also raised objections to the findings of the Enquiry Officer in respect of each of the charges held to the established against him.

On going through the records of the case and appeal preferred by Shri Tyagi, I find that he has made no fresh grounds on merits. Keeping in view the gravity of the lapses/charges proved against Shri Tyagi, I do not find any merit in the appeal preferred by Shri Tyagi and reject the same. I agree with the conclusion arrived at by the Disciplinary Authority and the punishment imposed upon Shri Tyagi is hereby confirmed. I order accordingly and Shri Tyagi be informed.

GENERAL MANAGER

APPELLATE AUTHORITY

22. A perusal of these orders negatives this contention of the learned Counsel for the Appellant. It can in no manner be said that the punishing authority had not applied its mind to the case before it before ordering the dismissal of the Appellant. The punishing authority had in fact placed reliance upon the report of the Enquiry Officer and agreed with it and also accepted the reasons given by him in the finding. It is a well settled principle of law that when the punishing authority agrees with the finding of the Enquiry Officer and accepts the reasons given by him in support of such finding it is not necessary for punishing authority to again discuss the evidence and come to the same finding as that of the Enquiry Officer and give the same reasons for the said findings. This has been reiterated by the Apex court time and again.

23. The Supreme Court in National Fertilizers Ltd. and Another Vs. P.K. Khanna, reiterating the principles of 1995 SCC 1376 State Bank of Bikaner & Jaipur v.

Prabhu Dayal Groverhad held where the Disciplinary Authority agreed with the finding of the Enquiry Officer it is not necessary for it to pass a detail reasoned order. The same principle is also applicable to the Appellate Body. This contention is also without any merit.

24. This is a second appeal. The appeal had been admitted and the substantial question of law has been affronted. Scope of judicial review is limited. Court should be slow to interfere with the administrator''s decision unless it was illogical or suffers from procedural impropriety or was so shocking in the sense that it was in defiance of logic or moral standard.

25. It should be slow to substitute its own decision to that of the administrators unless it suffers from the affronted vices. The Supreme Court in Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, while dealing with the misconduct of a manager of a nationalized bank had noted as follows: "A Bank officer is required to exercise higher stands of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employer of the Bank is required to take all possible steps to protect the interests of the Bank discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank.

26. A bank officer needs to maintain high standard of honesty and integrity; this goes without saying. Acting beyond once authority by itself is breach of discipline and amounts to a misconduct. Charges leveled against the delinquent were not casual; they were serious.

27. The last contention urged before this Court that the bank had not suffered any actual monetary loss is also an argument only to be noted and rejected. The Supreme Court in Nikunja Bihari''s case (supra) had noted as follows:

In the case of a bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority, If each officer/employee is allowed to act beyond his authority, the discipline of organization/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favors and largesse. No organization, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Lesson, a minor officer stationed at Singapore, who was allowed by his superiors to act for beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdraw allowed by the Respondent beyond his authority have become sticky and irrecoverable.

28. The substantial question of law is answered against the Appellant and in favor of the department. There is no merit in the appeal. It is dismissed.