

(1998) 04 MP CK 0016

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 358 of 1996

State Bank of India and Others

APPELLANT

Vs

Arvind Kumar Shukla

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Constitution of India, 1950 — Article 227

State Bank of India (Officers Service) Rules, 1992 — Rule 68(3)

Citation : (1998) 2 JLJ 103

Hon'ble Judges : Tej Shankar, J; Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : Rangam and O.P. Sharma, for the Appellant; R.D. Jain and R.V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Shacheendra Dwivedi, J.—This appeal is preferred by the Appellants under clause 10 of the Letters Patent (Nagpur) against the order passed by the learned Single Judge of this Court in Writ Petition No. 669/94 on 24.9.1996.

2. The Respondent had preferred a writ petition before the Writ Court challenging the order of his termination from service of Appellants. The Respondent-Petitioner was an officer in the cadre of Junior Management, Grade Scale-1 with the Appellants-Bank. He was working as Account and one K.P. Goswami was the Branch Manager in Ram Bagh Colony Branch, Gwalior. The Respondent-Petitioner had prayed for over-draft limit against his National Saving Certificates. The limit was granted and was further enhanced.

3. The allegation against the Respondent-Petitioner was that as passing officer, he had passed his own cheque for his own account exceeding the over-draft limit and he had also passed some Cheque and had received the cash amount against them from the Bank without posting those Cheque in his over-draft account.

4. The case of the Bank was that he had, thus overdrawn the amount to the

extent of Rs. 1,37,221.15 Ps. as against the sanctioned limit of Rs. 59,600/-. The Bank had also alleged that the Respondent-Petitioner had misrepresented in balancing the current accounts ledgers. As the ledgers were not balanced, the stated misconduct of the Respondent-Petitioner of overdrawing the amount than the sanctioned over-draft limit, could be discovered very late. The Branch Manager Shri K.P. Goswami had, thereafter, reported the matter to the Controlling Authority.

5. The Respondent-Petitioner was called upon to explain the lapse. By not finding his reply to be satisfactory, a chargesheet was issued to him. The departmental proceedings were drawn. The Enquiring Authority held the enquiry and submitted the report to the Disciplinary Authority. The Respondent was found responsible for procedural lapses, and minor punishment was proposed. The report of the enquiry was furnished to Respondent. He made no submission.

6. The Disciplinary Authority, however, did not agree with the findings of Enquiring Authority and had reversed the findings. It recommended the imposition of major penalty of removal from service, submitted such (report) note to Appointing Authority. After going through the report of the Disciplinary Authority, who had recommended the imposition of a major penalty on the Respondent-Petitioner, the Appointing Authority terminated him from service, under the provisions of Rule 68(3)(iii) of the State Bank of India officers Service Rules, 1992 (for short the "Rules"). The Rules came into effect from 1.1.1992 and are stated to govern the service of the Respondent-Petitioner.

7. After the Appointing Authority imposed the penalty on the Respondent-Petitioner was supplied the copies of the report of Disciplinary Authority and of the order of termination of his service. A departmental appeal was preferred by the Respondent-Petitioner. The Appellate Authority found that the order of the Appointing Authority was just and proper and, therefore, dismissed the appeal.

8. The Respondent-Petitioner had thereafter filed the writ petition before the learned Single Judge for the issuance of a writ, order or direction for quashing the order of his removal from service, passed by the Appointing Authority and the order of its confirmation by the Appellate Authority. The learned Single Judge found that the Respondent-Petitioner was prejudiced in his right to defend, since the report of Disciplinary Authority was not made available to him and. therefore, remanded the case by quashing the order of Appointing Authority Annexure P/23 and also the order of Appellate Authority Annexure p-26. The Appointing Authority has been directed to render a fresh decision in the light of the direction issued by the Single Bench. Aggreived by the order, the Appellants-Bank have preferred this appeal.

9. Shri Rangam, Advocate, appearing with Shri O.P. Sharma, contended for the Appellants that the report of the Enquiring Authority was furnished to the Respondent, but he had made no submission. Thereafter, if the report of the Disciplinary Authority was not made available, no prejudice could be said to be

caused. The learned Single Bench, in the facts of the case, fell in error in quashing the orders of the Appointing Authority and that of Appellate Authority for such technical reason. It is further contended by the learned Counsel for the Appellants that the acts and nature of allegations against the then Branch Manager of the Bank Shri K.P. Goswami, who was also found at fault, were totally different than that of the Respondent, which were more serious. Therefore, the punishment of censure, awarded against the Branch Manager, could not be equated with Respondent.

10. The contentions advanced by the counsel for the Appellants have been countered by the Respondent's counsel Shri R.D. Jain. It is submitted by Shri Jain that the Disciplinary Authority had exonerated the Respondent of the serious charges and had found him responsible for minor lapses, which were procedural in nature. But the Disciplinary Authority had disagreed with the findings of Enquiring Authority. No opportunity of submitting any explanation against the report to the Appointing Authority was allowed. The copy of report of Disciplinary Authority was not supplied to Respondent and the Appointing Authority had passed the order of termination of Respondent's service, therefore, the major penalty of termination from service could not be imposed upon him.

11. In order to examine the contention of the Appellants' counsel, that the writ Court erred in setting aside the order of the Appointing Authority and also of the Appellate Authority on the reasoning that the copy of the report, submitted by the Disciplinary Authority disagreeing with the findings of the Enquiring Authority, was not supplied to the Respondent : Petitioner, and it had materially affected the right of the Respondent-Petitioner, we have to examine whether any prejudice was caused to the present Respondent-Petitioner.

12. Shri Rangam, appearing for the Appellants, submitted that there was no provision in the Rules for supplying the copy or for affording opportunity of submitting explanation or of hearing. The Respondent was supplied the copy of the Enquiring Authority's report and he had not submitted any explanation against the report. The contention advanced may appear to be attractive, but has no merit. The Respondent was found responsible for the procedural lapses by the Enquiring Authority and only the minor punishment was proposed. In such a situation, if the employee was satisfied with the finding of the Enquiring Authority, he may not submit any explanation, but where the Disciplinary Authority, which is not the Punishing Authority/Appointing Authority, disagrees with the findings and recommendations of the Enquiring Authority, an employee will have a right to know the reasonings adopted by the Disciplinary Authority for its disagreement with the findings, so as to explain the circumstances in order to demonstrate that such disagreement was wholly improper and unjust.

13. Shri Rangam, learned Counsel appearing for the Appellants, has placed implicit reliance on the authority of the Hon'ble Supreme Court in *State Bank of India, Bhopal v. S.S. Kaushal* 1994 Suppl. (2) SCC 468. It is submitted by Shri Rangam that the Hon'ble Supreme Court had considered the relevant Rules and

had found that once a copy of the report of the Enquiring Authority was supplied to the employee, no fresh opportunity was contemplated, under the Rules.

14. But the facts of the cited authority were entirely different. That was the case which had concluded in only two stages, i.e., an enquiry was conducted and after the report of Enquiring Authority, the report was considered by the Disciplinary Authority, which had imposed the punishment of removal of the employee from service. In that case, the Disciplinary Authority was also the Punishing Authority and was, therefore, required to consider only the record of the enquiry proceedings and the report of Enquiring Officer.

15. But in the instant case, the report of the Enquiring Authority was first considered by the Disciplinary Authority. Since it had no jurisdiction to impose the punishment, it could not proceed further in the matter and had, therefore, submitted its report to the Punishing Authority. Before submitting its report, it had considered the report of the Enquiring Authority and had disagreed with its findings and also with the proposed minor punishment. It had, therefore, recommended the imposition of major punishment on the Respondent employee. Such was not the situation before the Apex Court in the authority of S.S. Kaushal (supra). When the findings of Disciplinary Authority, which had no jurisdiction to impose the punishment, had, on different reasonings, gone against the Respondent employee and those were to be considered by the Higher Authority, the Respondent had a right to meet those reasonings. In such a situation, as there was no provision in the Rules and no contemplation of opportunity of hearing, the principles of natural justice would yet be taken to be implicit in the Rules.

16. Their Lordships of Hon"ble Supreme Court in the celebrated case of State Bank of Patiala and others Vs. S.K. Sharma, held that even if there were no Rules/Regulations/Statutory provisions incorporating the principles of natural justice, yet those principles would be implicit in its very nature.

17. We have, therefore, to examine as to what actual prejudice was caused to an employee by the denial to him of a particular opportunity. When an employee participates in an enquiry, the evidence is collected in his presence, he is heard and the report is submitted. The employee knows that what is found against him, and on being satisfied, he may not make any representation and may not submit further explanation to the Disciplinary Authority. In such a case, as found by their Lordships of Hon"ble Supreme Court in S.S. Kaushal (supra), there would be no prejudice and the violation of principles, as such the requirement of the principles of natural justice may not be inducted in the Rules.

18. But when there is disagreement of the Disciplinary Authority with the findings of the Enquiring Authority on different reasonings and the recommendations are made to the Higher Authority, such report would constitute the additional material for the consideration of the Punishing Authority for passing the final order. An employee would certainly be prejudiced, if he is not asked to make

submissions or the representation or is not provided the opportunity of hearing, against such additional material, which came into existence behind his back.

19. Counsel Shri Rangam also relied upon the authority of Union of India (UOI) and Others Vs. B.K. Srivastava, . The cited authority also had entirely different facts, as the Enquiring Authority itself had come to the conclusion that the charges were proved against the Respondent employee. In that case Their Lordships, for the view taken, had relied upon the judgment of Union of India and others Vs. Mohd. Ramzan Khan, , which was affirmed in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

20. Further reliance was placed on the authority of Union of India and others Vs. Mohd. Ramzan Khan, . But at one occasion in that case their Lordships had observed that ""non-furnishing of the report to the delinquent employee would be violative of the principles of natural justice, rendering the final order invalid." Although it was also observed that "this statement of law would have prospective effect only." Their Lordships had, however, found that "the Respondent's grievance, that the enquiry report of June 29, 1988 was not supplied to him, was of no avail.", but the facts of the authority were not similar to the present case. In that case, the Tribunal had come to the conclusion that the proceedings held by the Enquiring Authority were violative of the principles of natural justice, as the delinquent employee was not given proper opportunity to defend. But on record, the contrary was found by the Hon''ble Supreme Court that the employee had received the fair treatment at the enquiry and too many opportunities were granted to him. The authority of B.K. Shrivastava (supra), therefore, does not carry the case of the Appellants any further.

21. The authority, which lays down the law and governs the facts of the present case, is the Supreme Court authority of State Bank of India and others Vs. D.C. Aggarwal and another, . The question before the Hon''ble Supreme Court in that authority was "can Disciplinary Authority, while imposing punishment major or minor, act on material which is neither supplied nor shown to the delinquent..." In that authority the Enquiring Authority in its report had exonerated the Respondent. The report was submitted to the Disciplinary Authority through Central Vigilance Commission. The Commission had disagreed with the report of Enquiring Authority and had recorded its findings of guilt against the employee, recommending the imposition of major penalty of removal. The employee was not supplied the copy of such recommendations of Central Vigilance Commission.

22. Since the Disciplinary Authority had its regard to both the reports, and had agreed with the report of Commission, their Lordships had observed that the said report..." being a material obtained behind back of the Respondent without his knowledge or supplying of any copy to him, the High Court, in our opinion, did not commit any error in quashing the order. "Non-supply of the Vigilance Report was one of the grounds taken in appeal (as was also taken in the present case). In the circumstances, the Court even declined to accept the contention that the Vigilance Commission Report being confidential, was not supplied to the

employee.

23. In the facts of the case, it was further observed by Their Lordships that:

6. Even the submission of no prejudice is not well founded. The Respondent was a very Senior Officer of the bank. He was promoted to the top executive grade in August, 1980. We have refrained from entering into merits but once the disciplinary authority found that the action of the Respondent did not cause any harm to the bank nor the Respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error.

24. The Hon^{ble} Supreme Court in the case of S.K. Sharma (supra) had also observed that "if it is found that employee has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment."

25. An employee has a right to know as to what had taken place behind his back, so as to be better situated to show his cause as to why the proposed penalty should not be imposed upon him.

26. In the case of Narayan Mishra v. State of Orrisa 1969 SLR 657 their Lordships of Supreme Court, had in the similar circumstances observed that as the enquiry officer had found the employee guilty only of the third charge and had acquitted him of the first two charges and had recommended for his reinstatement in service suggesting that the period of his suspension may be treated as his punishment, the punishing authority on dis-agreement with the finding of the enquiring officer and also with his recommendations was bound to afford opportunity of hearing to the employee. The order of punishing authority would also be violative of the principles of natural justice and fair play.

27. It was held that such order shall be set aside if the punishing authority had utilised the material and had invoked the charges of which he was acquitted by the Enquiring Authority. The employee in such a case ought to be informed and warned that Authority was going to use those charges against him, so that the employee may give explanation.

28. The basic concept in this regard is that fair play in action. It may be administrative judicial or quasi-judicial. The concept must depend upon the particular lis, between the parties. When a superior authority is to use the material against an employee which was not given due importance by the enquiry officer, the employee is to be informed of such a proposed action.

29. The cases would be different where a party does not controvert nor wants to controvert such material. In that case the question of opportunity may be meaningless as there would be no prejudice. Under those circumstances the punishment imposed cannot be said to have been vitiated for want of hearing, but where there is dis-agreement of the higher authority with the report and findings of the enquiry officer, the delinquent employee shall deserve a copy of the report and also opportunity of hearing.

30. However, if the report of enquiry officer and the recommendations made by it were to be accepted as they were, the opportunity of hearing would not be necessary. The object of principles of natural justice is to provide a fair hearing and to ensure that justice is done. There would be a failure of justice, if a person, whose rights are going to be affected by the proposed action does not get a fair hearing.

31. It was found in *State Bank of India and Ors. v. D.C. Agarwal and Anr.* (supra) by Hon''ble Supreme Court that the copy of the report of Central Vigilance Commission was required to be supplied since the recommendations were prepared by Commission behind the back of the employee and without his participation in such process.

32. In the instant case, the Enquiring Authority had taken into account the gravity of the misconduct, the previous record of the employee and the other extraneous circumstances and it was found that no loss to the Bank was caused nor the employee had unduly benefited himself. There was no intention to defraud the Bank and his honesty and integrity was not considered doubtful and only procedural violation was found proved. The employee, therefore, laboured under the impression that only some minor penalty would be imposed upon him. But, the Disciplinary Authority had not agreed with the findings and had proposed to the Punishing Authority/Appointing Authority, the sentence of removal of the employee from service.

33. The Punishing Authority before taking the decision of removal of employee/Respondent from service did not furnish copy of report of Disciplinary Authority nor allow him opportunity of hearing. In the circumstances, as discussed above, the Respondent had suffered serious prejudice. The order of Punishing Authority/Appointing Authority was therefore, liable to be set aside.

34. The High Court under Article 227 of the Constitution of India does not enjoy the powers which are vested in an appellate authority. As a superior Court, it has the power of superintendence and under such power, it has the power to scrutinise the orders of the subordinate Tribunals within its well accepted limitations. The High Court can, in appropriate cases, quash the award of the Tribunal and remit the matter to it for its fresh decision in accordance with law and directions issued.

35. The learned Single Judge, therefore, took the correct view in quashing the order as contained in Annexure P/23 to Annexure P/26 (filed before the writ Court) and in directing the appointing Authority for rendering a fresh decision in the light of the directions.

36. On the foregoing discussion, we have found no merit in the appeal. The appeal is, therefore, dismissed. However, in the facts and circumstances, there shall be no order as to the costs.