

(2008) 01 CAL CK 0016
In the Calcutta High Court
Case No : M.A.T. No. 4114 of 2001

State Bank of India and Others

APPELLANT

Vs

Balai Chandra Sarkar

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Citation : (2008) 1 CALLT 481 : (2008) 4 CHN 53 : (2008) 118 FLR 175 :
(2008) 2 LLJ 759

Hon'ble Judges : Tapas Kumar Giri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ashim Kumar Routh, A. Dasgupta, P.K. Pal Choudhuri, S. Pal Choudhuri and Arpita Biswas, for the Appellant;Arunava Ghosh, Anant Kumar Sahoo and Sk. T. Mohammad, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—The appellant was working as a Messenger Boy in the State Bank of India in Beliaghata Branch, Kolkata at material times. One customer of the bank approached the Deputy Cashier with a bag containing currency notes for being deposited in his account. The Deputy Cashier sent the bag through the Messenger Boy in Counter No. 5 where Mr. Kamalesh Mukherjee was entrusted to work on that day. The respondent handed over the bag to Kamalesh. Kamalesh asked him to watch the bag and left the room to collect a pen from one of his colleagues. The tenderer of the money was also asked by the Deputy Cashier to approach counter No. 5 for receipt. Before Kamalesh could return and the tenderer could approach counter No. 5 it was alleged that fourteen currency notes of 100 rupee denomination were removed from the packet as after counting a sum of rupees 1400 fell short. Since there was no other person present at the material time to guard the said bag the respondent was charged with the offence of removal of the said sum. His pockets were searched wherefrom fourteen currency notes of Rs. 100 denomination were recovered along with small notes amounting to rupees 98.

2. He was proceeded with departmentally. He was also afforded opportunity to defend his case. Before the enquiry officer three witnesses were produced by the management. The respondent examined himself apart from one of his colleagues. The enquiry officer in his report exonerated him from the charges. The disciplinary authority differed with the finding of the enquiry officer. The disciplinary authority passed a reasoned order recording reason for disagreement and sent a copy of the same to the respondent for his comment as and by way of a second show-cause notice. The respondent replied to the same by dealing with all the points of difference on merits. His principal contention was that Kamalesh should have been examined being a relevant witness. The Deputy Cashier was also not examined and such non-examination vitiated the proceeding. At the end he prayed for acceptance of the report of the enquiry officer or else to order for a fresh enquiry. Pertinent to note, he did not demand any personal hearing before the disciplinary authority.

3. The disciplinary authority after considering his explanation passed an order of dismissal from service.

4. The respondent approached this Court by filing a writ petition. He, however, did not subsequently challenge the order of dismissal as according to him, same did not reach at the time when the writ petition was filed. He, however, dealt with the order of dismissal in his affidavit-in-reply after getting the same through the affidavit-in-opposition wherein it was annexed by the appellant bank. In the affidavit-in-reply it was never contended on behalf of the respondent that no reason had been disclosed by the authority while passing the order of dismissal. It was also not contended that no personal hearing was given to him which vitiated the entire proceeding and the result thereof. He dealt with the order of dismissal on merit. He consistently defended himself on merit reiterating what was stated in his writ petition. It was contended that the order of dismissal was passed on no evidence as such, and was violative of principle of natural Justice.

5. The learned single Judge heard the matter. On perusal of the Judgment of His Lordship it appears that although several grounds were taken in the pleadings two issues were raised by the respondent before His Lordship which are as follows:

- i) Non-production of material witnesses vitiated the proceeding and the result;
- ii) The order was not a speaking one, hence was void.

6. His Lordship after considering the relevant contentions of the parties rejected the first contention by observing that some of the officers and employees present at the time of incident had been examined and, therefore, omission to examine other witnesses would not result in any irregularity which required interference by the Court.

7. After observing as such, His Lordship, however, quashed the final order on the ground that it did not disclose any reason.

8. The appellant bank has now come up in appeal against the second part of the order by which His Lordship quashed the order of dismissal. Pertinent to note, the respondent did not file any appeal or cross objection despite his case on merit had been specifically rejected by His Lordship as discussed (supra).

9. Mr. Ashim Kumar Routh, learned Counsel, appearing in support of the appeal, has raised the following issues:

i) The Writ Court being not an appellate authority was only entitled to see where the decision making process was fair and transparent and the order of dismissal was not available for judicial review on merits.

ii) There had been a specific provision in the service rule for appeal. The respondent did not avail of such remedy. Hence his writ petition was not maintainable.

iii) The respondent being a workman within the meaning of Industrial Dispute Act, 1947 should have approached the Industrial Tribunal for redressal of his grievance. Having not done so his writ petition should not have been entertained by His Lordship.

iv) Having no ground taken in the writ petition or affidavit-in-reply the respondent was not entitled to raise the plea to the effect that the order was not a speaking one and the learned Judge erred in accepting such contention of the respondent.

In support of his contention Mr. Routh has cited the following Apex Court decisions:

i) National Fertilizers Ltd. and Another Vs. P.K. Khanna, ,

ii) Air India Cabin Crew Association Vs. Yeshawinee Merchant and Others, ,

iii) U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another,

iv) Lalit Popli Vs. Canara Bank and Others, .

10. Mr. Arunava Ghosh, learned Counsel, appearing for the respondent employee, while opposing the appeal has contended that it was incumbent upon the respondent authority not only to give personal hearing to the respondent before passing of the said order but also to assign reason while rejecting his contention and/or explanation given in reply to the second show-cause notice.

11. Assuming the service rule is silent on the above score assigning reason was a bounden duty of the disciplinary authority. Having not done so the disciplinary authority misconducted the proceeding and the order should be declared as null and void.

12. Mere absence of ground in the pleadings should not debar the litigant to take a legal plea and this Court being a Court of equity should not be so technical on that score.

13. In support of his contention Mr. Ghosh has cited the following decisions:

i) The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, ,

ii) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

iii) Central Bank of India v. Vikram Singh Baxla (2000) 1 CLJ 322,

iv) State Bank of India and Others Vs. K.P. Narayanan Kutty, ,

v) S.N. Mukherjee Vs. Union of India, ,

vi) Travancore Rayon Ltd. Vs. Union of India (UOI),

vii) Ram Chander v. Union of India and Ors. 53 FLR 191.

14. Times and again Apex Court observed that the bank employees being charged with defalcation of fund must be dealt with rigidly as it would otherwise shake the trust of the public at large who keep their wealth with the bank in trust. In the instant case, the respondent was charged with the allegation of defalcation of fund. On a search being conducted on his person the money was recovered contemporaneously. He later on raised the plea by way of a defence that the said sum was, in fact, paid by his brother for shopping. He neither disclosed the said fact before the search was conducted nor disclosed such fact contemporaneously. In this back drop he was proceeded with departmentally. He approached this Court with a grievance that relevant witnesses were not examined. His Lordship was invited to adjudicate on the said contention. His Lordship after considering the rival contentions negated such plea. The respondent did not prefer appeal. No cross-objection was also filed.

15. Mr. Ghosh has strenuously contended that personal hearing should have been given. In our view, one has to ask for the same. Reason for disagreement was communicated to him in detail. He offered his explanation by way of reply to the second show-cause notice. He never demanded personal hearing.

16. Mr. Ghosh contends that the order was a non-speaking one and on the said ground the same should have been quashed and His Lordship rightly did so. His argument sounds logic. We, however, wish to look from a different angle. When the affidavit-in-opposition disclosed the order of dismissal the respondent could have approached His Lordship with a prayer for quashing the same on the said ground alone. The respondent did not do so. Instead, he invited His Lordship to consider the merits of the case. He invited His Lordship to deliver Judgment on merit. His Lordship negated his contention on merit. Hence there was no scope for His Lordship once again to ask the authority to assign reason. Assuming His Lordship was correct on that score what reason now the appellant can offer? We do not find any more reason to offer as His Lordship rejected all contentions raised before His Lordship on merit by the respondent. No further explanation is required to be given to support the order of dismissal. His Lordship could quash the order of dismissal on the said ground alone. His Lordship, however, did not

do so. Once His Lordship gave his opinion or decision on merit quashing of the order of dismissal was not warranted.

17. The appeal succeeds and is allowed. The part of the order impugned before us by which His Lordship quashed the order of dismissal on the ground that the same did not disclose reason coupled with the direction upon the appellant to assign reason, is set aside.

18. There would be, however, no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties on usual undertakings.

Tapas Kumar Giri, J.

19. I agree.