

(2008) 07 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. 3233 of 2005

State Bank of India and Others

APPELLANT

Vs

Ranjit Kumar Chakraborty and Another

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Citation : (2009) 120 FLR 608

Hon'ble Judges : P. Sathasivam, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Mathur and P. Sathasivam, JJ.—Heard learned Counsel for both the parties.

We have gone through the order passed by the Division Bench of the Calcutta High Court and we are in full agreement with the same.

The Respondent was charge-sheeted and an informal enquiry was held against him and he was found guilty of all the charges except one charge. However, the Disciplinary Authority was not competent to pass a major penalty. Therefore, all the papers were placed before the competent authority for passing the major penalty. The Appointing Authority passed the major penalty of dismissal from service without hearing delinquent.

This was challenged by filing a writ petition before the High Court of Calcutta. Learned Single Judge dismissed the petition and the appeal filed by the delinquent is succeeded. The Court interpreted the Rule 68 (3)(iii) which reads as under:

If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Rule 67 should be imposed on the officer, it shall, notwithstanding anything contained in Sub-rule (4), make an order imposing such penalty:

Provided that where the Disciplinary Authority is of the opinion that the penalty

to be imposed is any of the major penalties specified in Clauses (e), (f), (g) and (h) of Rule 67 and it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority the records of the enquiry specified in Clause (xxi) (b) of Sub-rule (2), together with its recommendations regarding the penalty that may be imposed and the Appointing Authority shall make an order imposing such penalty as it considers in its opinion appropriate.

2. In this case the Respondent was punished with a major penalty was not heard; Therefore, the order of removal was set aside. We have been taken through the Rule 68(3)(iii) and we are in full agreement with the view taken by the High Court. When the Disciplinary Authority is not competent to pass a major penalty, that is, of the removal or other major penalty prescribed in the Rule, the papers are required to be placed by the Disciplinary Authority to the Appointing Authority who is competent to pass a major penalty. In the present case Disciplinary Authority was not competent to pass major penalty, therefore, matter was placed before the Appointing Authority and Appointing Authority passed major penalty of dismissal without hearing delinquent. Such order which is on the face of it is against the principles of natural justice, cannot be countenanced as it is void ab initio. The proviso certainly says that the Appointing Authority, on the recommendation given by the Disciplinary Authority, shall be competent to pass the major penalty. Simply by recommending the matter and sending the papers to the Appointing Authority, does not mean that the incumbent who is going to be served with the major penalty is not required to be heard in the matter. It is now settled principle that where ever the Rule is silent the principles of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of natural justice has to be read in this Rule. A notice ought to have been issued to the delinquent by the Authority to whom papers were sent to show cause why the major penalty may not be imposed on him. It is true that the competent authority could pass the order of major penalty but not without hearing the incumbent. Therefore, in this context of the matter, we are of the opinion that the view taken by the Division Bench of the Calcutta High Court is correct and there is no ground for interference in this appeal.

Accordingly, the appeal is dismissed.

No order as to costs.