

(2009) 02 GAU CK 0052
In the Gauhati High Court

State Bank of India and Others

APPELLANT

Vs

Rehan Ahmed Laskar

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 2 GLT 504 : (2009) 3 LLJ 596

Hon'ble Judges : Ranjan Gogoi, J; Ashok Potsangbam, J

Bench : Division Bench

Judgement

Ranjan Gogoi, J.—The writ petition W.P. (C) No. 83/2002 filed by the present respondent against the order of dismissal from service having been allowed by the learned single Judge, by order dated February 16, 2005, the present appeal has been filed.

2. The core facts that will be required to be noticed for the purpose of the present adjudication are set out herein.

At the relevant point of time, the respondent-writ petitioner, was working in the State Bank of India as the General Manager (Commercial Banking i.e. CB) at its Head Office at Guwahati. He was due to retire with effect from March 31, 1998. On March 23, 1998 he was served with a show cause notice dated March 21, 1998 asking him to submit his reply against the charge set out in the articles of charges based on the statement of imputations of misconduct enclosed to the charge memo. At or about the same time the respondent-petitioner received another order dated March 23, 1998 by which, in view of the proceeding initiated against him by the charge Memo dated March 21, 1998, he was ordered to be treated to be continuing in service. The said action was stated to be in terms of Rule 19(3) of the State Bank of India Officers Service Rules (hereinafter referred to as the Rules).

3. On receipt of the charge memo dated March 21, 1998 the respondent petitioner by communication dated March 25, 1998 requested his disciplinary authority to furnish to him three documents, details of which are stated below,

so as to enable him to file his written statement/reply against the charge memo:

(1) A copy of the investigation report submitted by Shri P.N. Bhatt, General Manager in respect of complaint against him (petitioner) in the early 1997;

(2) A Copy of the investigation report Submitted by Shri A.W. Siddiqui; General Manager in early 1998 in respect of complaint/allegations against the petitioner; and

(3) A copy of the handwritten letter with enclosures of Shri D. P. Srivastava, erstwhile Chief General Manager of the Bank which was sent to the Central office at the time of his retirement allegedly involving the petitioner.

4. By letter dated April 3, 1998 the disciplinary authority declined the request made by the respondent petitioner for the documents mentioned above on the ground that such request was "not justified." Situated thus, the respondent-petitioner submitted his written statement of defence on March 31, 1998 denying the charges/allegations levelled and enclosing to his said statement a copy of an earlier reply submitted by him in response to a letter dated February 27, 1998 of the Chief General Manager (North Eastern Region). By the said letter dated February 27, 1998 explanations were called for from the respondent petitioner in respect of allegations which the Respondent petitioner contends to be the same as contained in the charge memo dated March 21, 1998.

5. Thereafter, the Bank, having decided to hold an enquiry in the matter, appointed an Enquiry Officer before whom the respondent petitioner submitted a list of documents required for his inspection so as to prepare his defence and to present his case in the enquiry to be held. In the said list the above-stated three documents were, once again, mentioned by the respondent petitioner. Though the respondent petitioner was allowed to inspect and was also given copies of all other documents sought for, inspection or copies of the three documents in question was refused by the disciplinary authority on the ground that the said documents were privileged. This was communicated by letter dated August 10, 1998. The enquiry against the respondent petitioner proceeded in the aforesaid circumstances and report thereof was submitted on January 21, 1999 holding imputations No. 1 and VIII in support of the charge levelled to be not proved and imputation No. V to be partially proved. In the report of enquiry, imputation Nos. II, III, IV, VI and VII were held to be proved. The disciplinary authority on consideration of the report of enquiry informed the respondent petitioner by letter dated April 9, 1999 that while the findings of the enquiry officer with regard to imputation Nos. II, III, IV, VI and VII was being concurred, imputation Nos. 1 and VIII were proposed to be held as proved and the charges levelled as a whole to be proved against the respondent petitioner. The respondents-petitioner was granted liberty to file a reply in the matter for which purpose a copy of the enquiry report was also furnished to him.

6. The respondent-petitioner submitted his reply on May 29, 1999. Thereafter, by order dated February 23, 2000, the penalty of dismissal from service with effect

from March 31, 1998 was imposed on the respondent petitioner. The appeal filed by the respondent petitioner was rejected which order was communicated to him by letter dated November 6, 2001. As a consequence of the imposition of the penalty of dismissal the pensionary benefits of the respondent petitioner have been denied along with the employer's contribution in the provident fund account of the respondent petitioner. Aggrieved, the writ petition out of which this writ appeal had arisen was filed.

7. Several arguments and contentions were advanced on behalf of the respondent petitioner before the learned single Judge in support of the challenge made in the writ petition, The charge levelled was contended to be vague and therefore in contravention of Rule 68(2)(iii) of the Rules. It was contended that the acts attributed to the petitioner in the statement of imputations do not constitute misconduct under Rule 50(4). It was also contended on behalf of the respondent-petitioner that the financial accommodation which formed the subject matter of the charge was provided to the customer on the basis of a decision taken by the Circle Credit Committee of which the respondent petitioner was one of the members. It was also urged that the acts attributed to the respondent petitioner, at best, could be an error of judgment or a bona fide mistake or even negligence on his part but such acts cannot amount to misconduct under the Rules in force. Arguments were also offered that the findings in respect of imputation Nos. II, III, IV, VI and VII are not sustainable on the materials on record and further that the disciplinary authority could not have unilaterally held imputation Nos. 1 and VIII to be proved as has been done in the present case.

8. However, the main thrust of the arguments advanced before the learned single Judge, on behalf of the respondent petitioner, pertained to the legality of the refusal of the Bank to furnish copies of the three documents sought for by him, initially, on the ground that such request was not justified and subsequently on the basis that the same were privileged documents. According to the respondent petitioner, the aforesaid documents were reports submitted by different authorities of the Bank with regard to the culpability of the respondent petitioner on the same charges as mentioned in the charge memo dated March 21, 1998. The said reports were submitted in connection with certain preliminary enquiries in the matter. It was, therefore, the contention of the respondent-petitioner that, regardless of the fact as to whether the documents in question were relied upon or not in bringing the charges against the respondent petitioner, the same were vital for his defence and therefore under Rule 68(2)(ix)(b) of the Rules the respondent petitioner had a right to be furnished with the said documents. It was also urged that the claim of privilege made in the present case was wholly unfounded and untenable and in any case the affidavit claiming such privilege was filed by the appellant-respondent No. 5 who was not the competent authority to set up a claim of privilege on behalf of the Bank.

9. The contentions advanced on behalf of respondent petitioner before the learned single Judge were contested by the present appellants by contending

that the charge levelled against the respondent petitioner, based upon the statement of imputations of misconduct, leaves no room for doubt or ambiguity as to what had been alleged against the respondent-petitioner. The contention that the imputations held to be proved were contrary to the materials was hotly contested on behalf of the appellant Bank. Furthermore, insofar as the imputation Nos. I and VIII are concerned, the appellant respondents had contended that the materials on record fully supported the finding reached by the disciplinary authority which was so reached after giving the respondent petitioner an opportunity to submit his reply. Insofar as the three documents which were not furnished to the respondent petitioner is concerned, the Bank had claimed privilege in respect of the same. The said claim made under the proviso to Rule 68(2)(xii) was on the basis that production of the documents in question would be against the interest of the Bank in question as said documents were in respect of matters pertaining to the internal working of the Bank.

10. The learned single Judge, as evident from the order dated February 16, 2005 under "challenge, after holding the charge levelled against the respondent petitioner to be sufficiently intelligible thought it proper to take up the issue pertaining to the documents sought for by the respondent petitioner and the consequent violation of Rule 68(2)(ix)(b) of the Rules. After an elaborate discussion the learned single Judge came to the conclusion that the claim of privilege in respect of the documents in question was not sustainable and that the said documents were relevant to the defence of the respondent petitioner in the enquiry held. As the documents were not furnished to the respondent petitioner the learned single Judge thought it appropriate to hold that the mandate prescribed by Rule 68(2)(ix)(b) of the Rules had been breached in the present case. In view of the aforesaid conclusion reached the learned single Judge did not consider it necessary to go into the other issues raised by the parties. Accordingly, the order of dismissal was interfered with and directions for grant of consequential benefits were issued. The correctness of the aforesaid view of the learned single Judge has been raised in the appeal filed by the Bank.

11. As the charge levelled against the respondent petitioner and the imputations of misconduct have been set out in the judgment under appeal we do not propose to reproduce the same in the present order. However, on reading the charge levelled and the imputations of misconduct in support thereof, we feel fortified to express our agreement with the essence of the charge read with the imputations of misconduct as summarized by the learned single Judge in paragraph 33 of the order which is reproduced below:

33. The essence of the charge and the imputations of misconduct against the petitioner is that by/disregarding the negative recommendations of the Deputy General Manager and other infirmities featuring in the export bill purchase proposal, he instead of making a detailed review of the accounts of the Group of Companies involved and without dealing with the issue himself (as it was within his discretionary powers) got the matter referred to the committee by

circumventing; the procedure for seeking its views regarding acceptability of the proposal and thereby played the role of a facilitator for interplay of funds amongst the said Group of Companies. Further, though in the capacity, of the General Manager (Commercial Banking), Local Head office, he was aware of the irregular accounts of the Group of Companies involved and their falling financial condition, he played a decisive role in the process of consideration of the sanction proposals by the committee which readily endorsed his view in the matter. The imputations of personal connivance of the petitioner in getting the sanction proposal passed in favour of the Group of Companies involved was, therefore categorically made and is discernible from the supporting statement of allegations. The assertion of personal complicity and extra zealous role as a facilitator for purchasing the documentary export bill and for sanction of financial limits to the Group of Companies facilitating interplay of funds not permissible under the bank's guidelines is therefore the gravamen of the charge.

12. Having understood the essence of the charge levelled against the respondent petitioner in the above manner, we may indicate that the only point that would require our consideration in the present appeal is whether the Bank was justified in not furnishing the three documents in question to the respondent petitioner and if not whether the enquiry was held in infraction of Rule 68(2)(ix)(b) of the Rules.

13. Before delving into a consideration of the above question it must be noticed that before the learned single Judge the documents in respect of which privilege was claimed had not been produced by the appellant Bank. The learned single Judge, therefore had to record his findings on the issue on a consideration of the affidavit filed on behalf of the Bank. Relying on the several decisions of the Apex Court referred to in the order dated December 16, 2005 the learned single Judge came to the conclusion that even if the documents in respect of which privilege is claimed pertains to the affairs of the State, the claim of privilege was required to be raised before the Court by the head of the Department, which not having been done in the present case the claim of privilege was unsustainable. The learned single Judge also took note of the fact that in the affidavit filed, though the Bank had denied the claim of the petitioner of being absolved in two out of the three reports in respect of which inspection was sought by the petitioner, the fact that the said preliminary enquiries were conducted in respect of the same subject matter as involved in the disciplinary proceeding against the petitioner was admitted by the Bank. On the basis of the said findings recorded the learned single Judge thought it proper to arrive at the conclusion that the documents sought for by the respondent petitioner were relevant and, therefore, the enquiry conducted by denying him the said documents was in breach of Rule 68(2)(ix)(b) of the Rules.

14. The position before us, however, is a little different. Copies of the three documents sought for by the respondent petitioner, have been placed before the Court by the learned Counsel for the appellant-Bank who has reiterated the claim

of privilege besides arguing that in any event the learned single Judge after finding fault with the enquiry, could not have passed orders for grant of consequential benefits to the respondent petitioner. According to the learned Counsel, the learned single Judge should have remitted the matter for a de novo enquiry.

15. The arguments advanced on behalf of the respondent petitioner before us in reply, need not be set out in details as the same are a reiteration of the arguments made before the learned single Judge which have already been noted.

16. We have read and considered the report of Sri P.N. Bhatt, General Manager 91 & A); the report of Shri A.W. Siddiqui, General Manager (OMD) and the letter of Shri D.R. Srivastava, Chief General Manager, which have been placed before us by the learned Counsel appearing for the appellant Bank. On reading the aforesaid reports we are left with no doubt that the said reports deal with the conduct and liability of the respondent petitioner in respect of the very same transactions that were enquired into in the departmental proceeding against the respondent petitioner. Our reading of the reports in question also make it clear that in the report of Sri P.N. Bhatt the respondent petitioner has been exonerated from any liability. Similarly, in the report of Shri A.W. Siddiqui though the transactions with the customer have been found to be reflective of some soft paddling, the sole liability of any single individual had been ruled out. The letter of Shri D.R. Srivastava placed before us does not indict the respondent petitioner in any manner but merely suggests for consideration of the Managing Director of the Bank as to whether the respondent petitioner should be allowed to continue to work in Guwahati. It may also be noticed at this stage that though the report of Sri R.N. Bhatt is undated, the report of Sri A.W. Siddiqui is dated March 13, 1998 and the letter of Sri D.R. Srivastava to the Managing Director of the Bank is dated July 31, 1997. The aforesaid three reports read by us contain details of the manner in which the transactions with the customer in question were concluded and the extent of the exposure of the Bank pursuant to the transactions in question.

17. If, as already found by us, the contents of the three documents pertain to details of the manner in which the transactions in question were entered into with the customer and the role of the different Bank officials in course of the said transactions, it is difficult for us to visualize as to how publication of the said facts can be held to be contrary to the interest of the Bank which is the basis on which privilege has been claimed. Such facts are bound to be revealed in any regular enquiry held in respect of the transactions in question which is what had happened in the present case as evident from the report of enquiry dated January 21, 1999. In such a situation if the three reports deal with the very same transactions which had formed the basis of the subject matter of the departmental proceeding against the respondent petitioner and the contents thereof being what has already been noticed, the finding that must be reached is that the said documents were highly relevant to the possible defences that the

respondent petitioner could have taken on the basis thereof. The said documents having been denied to the respondent-petitioner, clearly Rule 68(2)(ix)(b) of the Rules has been breached while holding the enquiry against him. Consequently the impugned penalty imposed on the respondent-petitioner will be legally fragile. We, therefore, affirm the findings of the learned single Judge, though, on a slightly different basis.

18. The next question that has to engage our attention is whether the learned single Judge was justified in directing consequential benefits to the respondent-petitioner following the interference made with the order of penalty on the ground that the enquiry was held in infraction of Rule 68(2)(ix)(b) of the Rules. Our answer to the above question, for reasons obvious, has to be in the negative. If the departmental proceeding against a delinquent is invalidated on account of an infraction of the Rules laying down the manner of holding the enquiry thereby resulting in denial of fair opportunity, as in the present case, the disciplinary authority cannot be denied the option of having a fresh enquiry, if it is so inclined. The direction for consequential benefits in the order of the learned single Judge dated February 16, 2005, therefore, are open for interference.

19. However, Sri K.N. Choudhury, learned Counsel for the respondent petitioner, has submitted that the respondent petitioner, as on date, is suffering from cancer and is bed ridden and will not be in a position to face a fresh enquiry. Sri Choudhury has submitted that if required, an affidavit to the above effect may be allowed to be brought on record along with supporting documents.

20. We do not, for a moment, have any reason to doubt the facts stated by Sri Choudhury, as in our comprehension it is inconceivable that a human would attempt to take advantage of what even medical science has acknowledged to be an instance of human tragedy. In such circumstances, filing of affidavits would have only delayed the matter.

21. The fresh round of enquiry that can be ordered by the disciplinary authority is surrounded by several uncertainties. Such an enquiry may not be considered feasible by the disciplinary authority itself. On account of the long efflux of time or on any other valid ground. Alternatively, if such an enquiry is to be held, the respondent petitioner may be fully exonerated therein. Alternatively, he may be found guilty of the charge levelled leading to imposition of any of the prescribed penalties at the discretion of the disciplinary authority. Taking into account all the aforesaid uncertainties and the present predicament of the respondent petitioner, we are of the view that the ends of justice will be best served if the order of consequential benefits directed by the learned single Judge is maintained subject to the condition that the quantum thereof will be restricted to 75% of the amount actually found due.

22. The writ appeal, consequently, is disposed of in the above terms.