
(2022) 03 MP CK 0156
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4959 Of 2015

State Bank Of India

APPELLANT

Vs

Tarun Kumar Pradhan And Others

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2022) 03 MP CK 0156

Hon'ble Judges : Purushaindra Kumar Kaurav, J

Bench : Single Bench

Advocate : Ashish Shroti, Praveen Yadav

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. This petition under Article 227 of the Constitution of India is directed against the award dated 15.10.2012 (Annexure P/15) and award dated 16.07.2014 (Annexure P/16) passed by the Central Government Industrial Tribunal (for short "CGIT") in case No. CGIT/LC- 241/1997, whereby, the order dated 06.09.1995 imposing punishment of termination of the respondent-workman, has been set aside and the respondent- workman has been directed to be reinstated with continuity of service and 40% back wages.

2. The facts of the case are that respondent/workman was appointed in the petitioner-Bank on 01.09.1975 on the post of Clerk-cum-Cashier. He was confirmed in service w.e.f 01.03.1976. On account of some financial irregularities relating to withdrawal of certain amount, a charge sheet dated 11.03.1993 (Annexure P-1) was served on the respondent- workman, wherein, as many as 06 charges were leveled against him. The charges are mainly related to fraudulent withdrawal of certain amount with an object to take wrongful pecuniary advantage, causing loss to the Bank, utilizing official position and violating the rules- procedure applicable to the employees of the petitioner-Bank.

The respondent-workman was required to submit his reply to the charge sheet. The respondent-workman denied all the charges vide communication dated 25.11.1993 (Annexure P-2). Accordingly, a departmental inquiry was directed to be conducted.

3. Shri R.K.Jaiswal, Branch Manager, Nawgaon Branch was appointed as the Enquiry Officer, whereas, Shri A. Shastri, Branch Manager, City Branch, Damoh was appointed as Presenting Officer. Five witnesses were examined in order to prove the charges against the respondent- workman. After departmental inquiry, a report was submitted by the Enquiry Officer to the disciplinary authority on 14.02.1995 (Annexure P-3), wherein, all the charges were found to be proved against the respondent-workman. The disciplinary authority after considering the material available on record was, prima facie, of the opinion that the charges were found proved and, accordingly, an action was required to be taken against the respondent-workman. Pursuant to it, a show cause notice was issued to the respondent-workman on 25.4.1995 (Annexure P-4) proposing the punishment of dismissal from service. The disciplinary authority also provided opportunity of personal hearing to the respondent- workman. Being satisfied with the material available on record against the respondent-workman, the disciplinary authority passed an order of punishment dated 06.09.1995 (Annexure P-7), whereby, the punishment of dismissal from service was inflicted upon the respondent-workman. The respondent-workman preferred an appeal (Annexure P-8) which has also been dismissed by the appellate authority vide order dated 08.11.1995 (Annexure P-9).

4. Aggrieved by the action of the petitioner-Bank, the respondent-workman raised an industrial dispute with regard to punishment and the appropriate government referred the following dispute to the CGIT for adjudication:-

"Whether the action of the management of the State Bank of India, Gwalior Branch in terminating the services of Shri Tarun Kumar Pradhan, Clerk-cum-Typist Damoh Branch w.e.f. 06.09.1995 is legal and justified ? If not, what relief the workman is entitled?"

During the proceedings before the CGIT, vide award dated 15.10.2012 (Annexure P-15), the preliminary issues regarding legality and validity of the departmental inquiry was decided and it was held that the inquiry proceedings are vitiated on account of various reasons mentioned therein. Thereafter, CGIT proceeded to grant opportunity to the petitioner-Bank to prove the charges on merits. Since no evidence was adduced before the CGIT to prove the charges on merits, hence vide final award dated 16.07.2014 (Annexure P-16), the petitioner- Bank has been directed to reinstate the respondent-workman with 40% back wages and continuity in service.

5. Shri Ashish Shroti, learned counsel appearing for the petitioner-Bank has argued that the interim award dated 15.10.2012 is not sustainable mainly for the following reasons:-

(i) Neither it was necessary to disclose the list of Management witnesses nor to disclose the list of documents over which the Management had relied in the departmental inquiry to prove the charges;

(ii) The copies of the documents were not required to be supplied alongwith the charges to the delinquent workman;

(iii) Non grant of opportunity to the respondent- workman to cross-examine the Management witness Shri O.P.Dubey is of no consequence when there were 6 transactions for which the charge sheet was issued and notwithstanding the fraudulent transaction relating to Shri O.P.Dubey, the Management had successfully proved the charges relating to fraudulent transaction from the account of Shri Ramkishan. Since, Ramkishan was cross-examined, therefore, non-grant of opportunity to cross-examine Shri O.P.Dubey does not vitiate the proceedings.

(iv) The respondent-workman has not been able to show whether any prejudice has been caused to him.

(v) Supply of inquiry report to the respondent-workman is not necessary and the same cannot be said to have caused any prejudice to the respondent-workman.

He placed reliance on the decision of Hon'ble Supreme Court in the cases of State Bank of India and Others Vs. Narendra Kumar Pandey (2013) 2 SCC 740., Sarva Uttar Pradesh Gramin Bank Vs. Manoj Kumar Sinha (2010) 3 SCC 556., Railway Board, New Delhi and another Vs. Niranjana Singh AIR 1969 SC 966 and judgment of High Court in the matter of Ram Sharan Verma Vs. State of M.P. and others 2007(3) MPLJ 226.

6. Shri Praveen Yadav, learned counsel appearing for the respondent-workman has opposed the petition and submits that in exercise of limited jurisdiction under Article 227 of the Constitution, the High Court should not reappreciate the evidence and material which has already been considered by the CGIT. During the departmental inquiry, principles of natural justice were not followed and the documents were not supplied to him. Not allowing opportunity to the respondent to cross-examine the prosecution witness, namely, Shri O.P.Dubey has substantially caused prejudice to the respondent-workman. The interim award dated 15.10.2012 is well reasoned award.

The same does not call for any interference. Even after holding that the departmental inquiry is vitiated, the CGIT had given ample opportunity to the petitioner-Bank to prove the charges and, admittedly, the petitioner-Bank had miserably failed to prove any of the charges leveled against the respondent-workman. The order of disciplinary authority and the appellate authority are completely non-speaking orders. He placed reliance on the decisions of Hon'ble Supreme in the matter of The State Bank of India Vs. R.K.Jain and others AIR 1972 SC 136. and decision of this court in the matter of Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari 2022(1) MPLJ 431. to contend that the High

Court should not go into the evidence on which findings are recorded or even to correct the error of fact, however, grave it may be.

7. I have heard the learned counsel for the parties and perused the record.

8. The Hon'ble Supreme Court in the matter of Narendra Kumar (2013) 2 SCC 740 considered the legality of the judgment of High Court of Judicature of Allahabad, Lucknow Bench, whereby, an order of dismissal of Charged Officer passed by the Management-Bank was the subject matter. In para-6 of the decision, the Hon'ble Supreme Court noted that the inquiring authority permitted the Charged Officer to inspect the record in the presence of the investigating officer and accordingly, the date was fixed. Even thereafter various opportunities were granted to the Charged Officer. However, the Charged Officer did not avail the opportunities and remained absent on various dates. In para-8 of the said decision, it has been noted that the Presenting Officer produced original documents before the inquiring authority and after elaborate consideration of the charges, the inquiring authority came to the conclusion that the charges were found proved. Under such facts and circumstances, in para-20 of the said decision, it has been observed that fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge sheet

9. Another decision cited by learned counsel for the petitioner is Sarva Uttar Pradesh Gramin Bank (2010) 3 SCC 556. While examining the appellate orders passed by the High Court of Uttar Pradesh, Lucknow Bench, whereby, the order imposing punishment was quashed and liberty to serve show cause notice afresh along with copy of the inquiry report was granted, the Hon'ble Supreme Court in para-30 considered the issue with regard to non supply of the inquiry report which was raised for the first time in appeal. Even at that stage the appellant therein neither pointed out as to what prejudice was caused on account of non-supply of the inquiry report nor was any adjournment sought on that ground.

10. For the same proposition, learned counsel for the petitioner placed reliance on the Single Bench decision of this court in the matter of Ram Sharan Verma 2007(3) MPLJ 226.. In that case, the petitioner was dismissed from service. However, the finding recorded by the Inquiry Officer was not supplied to him and, therefore, dismissal was not held to be illegal in absence of any prejudice.

11. The last decision cited by learned counsel for the petitioner is for the proposition that notwithstanding the allegations relating to Shri O.P.Dubey, the petitioner-Bank had successfully proved the allegations relating to other account holder and, therefore, on the basis of that material alone, the order of dismissal of service of respondent-workman can be held to be valid. Reliance is placed in para-8 of the decision of Railway Board, New Delhi and another³.

12. So far as decisions cited by learned counsel for the respondent-workman is concerned, the Hon'ble Supreme Court was considering the validity of the award at the instance of the State Bank of India which was passed by the Industrial Tribunal, Chandigarh setting aside the order of the Bank discharging the service

of the respondent- workman with a direction of reinstatement etc. The Hon'ble Supreme Court in that case dismissed the appeal of the Bank after referring to various decisions. Learned counsel for the respondent relied on para- 19 to contend that the services of the respondent-workman are governed by Sastry Award and Chapter XXV deals with the method of recruitment, conditions of service, termination of employment, disciplinary action etc. According to him, only the charge sheet is required to be served on the delinquent employee but sufficient time to respond to it and to produce any evidence etc. has to be given. The cross-examination of the prosecution witnesses is also necessary and, therefore, applying the principles of law laid down in the case of State Bank of India Vs. R.K.Jain⁵, the present writ petition deserves to be dismissed.

13. This court has carefully examined the material available on record. The interim award dated 15.10.2012 in its concluding paragraph records following findings:-

"The charge sheet dated 11.03.1993 did not disclose the list of management witnesses nor it disclosed the list of documents, over which the management had relied in the departmental enquiry to prove the charges. It is alleged by the workman that the copies of the documents were not supplied.

There is nothing to show that the copies of the documents were supplied to the delinquent workman. Admittedly, the opportunity was not granted for cross-examination to the management witness Shri O.P.Dubey whose amount is said to have been fraudulently withdrawn. This aspect shows that the workman was prejudiced. It appears that there were five management witnesses in the case but the management has not filed either copy or the original papers of the entire day-to-day departmental proceedings recorded by the E.O. wherein the evidences were recorded and they were alleged to have been cross-examined after giving reasonable opportunity. There is nothing to show that the enquiry report was also supplied to the workman. This shows that the workman is prejudiced and there is violation of the principles of natural justice. I find and hold that the departmental enquiry conducted by the management against the workman is not legal and proper.

The management has pleaded that if the departmental enquiry is vitiated, the management be given opportunity to lead evidence to prove misconduct against the workman before the Tribunal. Accordingly, the management is permitted to prove misconduct before the Tribunal. Fix 13.2.2013 for filing evidence by the management."

14. After giving opportunity to the petitioner-Bank, the final award dated 16.07.2014 records following findings:-

"8. Workman is challenging dismissal. As per order dated 15.10.2012, my predecessor held enquiry conducted against workman is not legal and proper. Management was permitted to prove misconduct before Tribunal. However management failed to adduce in evidence about alleged misconduct. The

evidence of management is closed on 30.09.2013. Workman has filed affidavit of his evidence on other issues. Workman says he was appointed as clerk cum typist in Bank. He was working with devotion. He was served with charge sheet. The charge sheet were false. He denied charges. Enquiry was conducted against him. The Account Holders were not examined in enquiry. The charges cannot be proved against him. After dismissal from service he is unemployed. In his cross-examination, workman says he was working as clerk. He was unable to tell when Departmental Enquiry was initiated against him. He received charge sheet Exhibit M-1. The monthly account was prepared by all the employees collectively. He was checking Day Book every day. That withdrawal form of Rs.10,000/- of Shri O.P.Dubey may bear his signature. He had not deposited amount in Account of Shri Mahesh Kumar Agrawal. The workman is not acquainted with Santosh Kumar and Laxmi Narayan. The evidence of workman is by way of denial of he charges. IInd party has failed to examine any witness to prove charges alleged against workman. When charges are not proved, the action of dismissal of 1st party workman by IInd party cannot be said illegal. Therefore, I record Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 that charges against workman are not proved, the dismissal of workman is illegal. Question arises whether the workman is entitled for reinstatement with back wages. Workman in his evidence says that after dismissal of service, he was unemployed, he was not engaged in gainful employment. IInd party has not adduced any evidence in its liberty. If evidence of workman is totally appreciated, the evidence does not show how he was maintaining his family when he had no source of income. Considering those aspects in my considered view reinstatement of workman with 40% back wages would be appropriate. Accordingly, I record my finding in Point No.2.

10. In the result, award is passed as under :-

(1) The action of the management of State Bank of India, Gwalior Branch in terminating the services of Shri Tarunkumar Pradhan, Clerk cum typist from 06.09.1995 is not legal and proper.

(2) IInd party is directed to reinstate workman with continuity of service and 40% back wages.

Amount as per above order shall be paid to workman within 30 days from the date of publication of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules."

15. Thus, even assuming that the petitioner-Bank was correct in contending that the copies of the documents were not required to be supplied, it should have proved its case before the CGIT, wherein, opportunity to adduce evidence was given. In the instant case, it is not only a singular reason on account of which

action of the petitioner-Bank has been held to be improper, but, after examining the cumulative effect of all the reasons, it can be safely concluded that in the entire departmental proceedings the principles of natural justice have been violated. The charge sheet did not disclose the list of management witnesses nor does it disclose the list of documents over which the management had relied in the departmental inquiry to prove the charges. The copies of documents were not supplied to the workman.

An opportunity to cross-examine the management witness Shri O.P.Dubey from whose account alleged fraudulent transaction had taken place was not given. There are no details when the evidence of management witnesses was recorded. The contemporaneous, day-to-day note-sheet/ order sheet of the inquiry officer was not produced. The inquiry report was not supplied to the workman. The aforesaid facts clearly prove that a substantial prejudice has been caused to the workman.

16. In the instant case, the petitioner-Bank is praying for taking a different view than the view which has already been taken by the CGIT on the basis of material available on record. Since the findings of the CGIT are based on examination of the proceedings of the departmental inquiry as was made available, therefore, this court is not inclined to go into the details of those findings. The same being finding of fact, this court should refrain itself from dilating upon such issues in exercise of powers conferred under Article 227 of the Constitution. So far the decisions relied upon by the counsel for the petitioner and counsel for the respondent referred to in the preceding paragraphs are concerned, the principles of law laid down therein are not disputed. In all the cases relied upon by the learned counsel for the Bank, the Hon'ble Supreme Court has interfered with the decision of the High Court when the High Court has taken a different view than the view taken by the disciplinary authority but in the present case, this Court is not inclined to take a different view which is already taken by the CGIT holding that the action of petitioner is vitiated on account of violation of principles of natural justice.

17. Taking into consideration the overall facts and circumstances of the case, this court does not find any substance in the instant writ petition. Accordingly, the same is dismissed.