

(2005) 09 AHC CK 0324

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30723 of 2002

Subedar Pathak

APPELLANT

Vs

General Manager (Personnel), Union Bank of India,
Disciplinary Authority, Union Bank of India, Deputy General
Manager, Union Bank of India and Deputy General Manager,
Union Bank of India

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 5 AWC 4387 : (2005) 107 FLR 1080 : (2006) 2 LLJ 275 :
(2006) 1 UPLBEC 368

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashok Khare, V.S. Gupta, V.K. Gupta, V.D. Chauhan and Sanjeev Kumar Gupta, for the Appellant; Vijai Ratan Agarwal and Vivek Ratan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner was appointed as a class IV employee in the Union Bank of India in the year 1972. On the basis of the recommendation of the Departmental Promotion Committee, the petitioner was promoted to the post of a clerk- cum- cashier in the year 1981 and in the year 1985 was promoted to the post of a Head Cashier. In the year 1989, the petitioner was posted at Bhawaniganj branch in district Jaunpur.

2. On 22.11.1997, the petitioner was placed under suspension and subsequently a departmental charge sheet dated 10.1.1998 was issued to the petitioner. The petitioner submitted a reply dated 25.3.98. The disciplinary authority by an order dated 29.10.1998 held that the reply filed by the petitioner was not found satisfactory and directed that the enquiry against the petitioner would be conducted by Sri P.V. Bhashkar Reddy, Deputy Manager (Personnel) Regional Office, Varanasi, who would also be the disciplinary authority for the purpose of

the enquiry.

3. The enquiry proceedings was conducted by the officer concerned, who gave full opportunity to the petitioner to defend himself and further complied with the principles of natural justice. It transpires that after the recording of the evidence, the petitioner also filed his written arguments before the enquiry officer. The enquiry officer submitted the enquiry report. The enquiry officer found that the charges were proved against the petitioner. A copy of the enquiry report vide memo dated 9.8.99 was duly supplied to the petitioner calling upon him to appear for a personal hearing on the proposed punishment. The petitioner appeared and placed his objections. After the conclusion of the hearing but before the disciplinary authority could pass the order of penalty, Sri Bhaskar Reddy, the disciplinary authority was transferred from the Regional Office, Varanasi to the office of the General Manager, Chennai. Sri Bhaskar Reddy, issued an order dated 31.8.99 from Chennai, imposing a penalty of dismissal from the service and further held that the petitioner would not be allowed any allowance except the subsistence allowance during the period of suspension.

4. Aggrieved, the petitioner preferred an appeal before the appellate authority. The appellate authority by an order dated 7.5.2002 rejected the appeal. The petitioner has now filed the present writ petition.

5. Heard Sri Ashok Khare, the learned Senior Advocate assisted by Sri V.K. Gupta, Advocate for the petitioner and Sri Vijay Ratan Agarwal, Senior Advocate assisted by Sri Vivek Ratan, Advocate for the respondent Bank.

6. The learned counsel for the petitioner submitted that the findings of the enquiry officer was based on the statement of Sri Nam Sharma which was recorded during the preliminary enquiry. Sri Nath Sharma did not appear as a witness during the oral enquiry, and therefore, his statement could neither be considered nor could be relied upon. In support of his submission, the learned counsel placed reliance in the matter of Union of India (UOI) and Others Vs. Mohd. Ibrahim, wherein the Supreme Court held that the findings of the enquiry officer which was based upon the statement of persons made during the course of the preliminary enquiry, vitiated the order of dismissal.

7. The learned counsel for the petitioner submitted that if the statement of Sri Nath Sharma was to be relied upon, an opportunity to cross examine him ought to have been afforded to the petitioner which in the present case, was not done and therefore the enquiry proceedings were vitiated on account of the violation of the principles of natural justice. In support of his submission, the learned counsel placed reliance on the judgement in Union of India (UOI) Vs. T.R. Varma, , in which the Supreme Court held-

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the

opportunity of cross examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

and the decisions in Phulbari Tea Estate Vs. Its Workmen, Asha Ram Varma and Ors. v. State of U.P. and Ors., 2003(2) UPLBEC 1726, and decision dated 12.4.2005 in Mohd. Vakil v. Deen Dayal Upadhyaya and Ors. in writ petition No. 14770 of 2003.

8. Learned counsel for the petitioner further submitted that Shri P.V. Bhaskar Reddy had no territorial jurisdiction or authority to pass the order of penalty as upon his transfer from Varanasi to Chennai he was no longer the disciplinary authority. The learned counsel for the petitioner submitted that once Shri Bhaskar Reddy was transferred to Chennai, the petitioner was no longer under the administrative or territorial control and therefore, the order of dismissal was patently without jurisdiction. In support of his submission, the learned counsel for the petitioner placed reliance upon a decision in Allahabad Bank Vs. Prem Narain Pande and Others, , in which the Supreme Court held that where a delinquent during the pendency of an enquiry was transferred to another place under the territorial jurisdiction of another disciplinary authority, in such circumstances the disciplinary authority of the new area was competent to impose the order of penalty after considering the enquiry report.

9. The learned counsel for the petitioner also placed reliance upon a decision of the Supreme Court in Central Bank of India Vs. C. Bernard, in which it was held that the Disciplinary Authority, who was also an enquiry officer could continue to hold the enquiry even after his superannuation but could not pass the order of punishment as he had ceased to hold the office of the Disciplinary Authority after his retirement and, therefore was incompetent to pass the order of punishment.

10. On the other hand, the learned counsel for the respondents submitted that Sri Bhaskar Reddy was appointed as the enquiry officer as well as the disciplinary authority for the purpose of the enquiry and that he was competent to pass the order of punishment irrespective of fact that he was transferred from the Regional Office, Varanasi to Chennai. The learned counsel for the respondents submitted that the officer had territorial as well as the jurisdictional power to pass the order of penalty. Learned counsel for the respondents further submitted that the charges of misappropriation of the funds of the bank had been fully proved which could not be reappraised in a writ jurisdiction and since the charges were serious in nature, the petitioner was not entitled to any relief in a writ jurisdiction.

11. The petitioner was charge sheeted for serious acts of omission and commission and for defrauding the bank to the tune of Rs. 40,000.00. The petitioner alongwith Sri Nath Sharma and Mullu Sharma, who was engaged as a part time sweeper on a temporary basis, hatched a plan to defraud the bank of a sum of Rs. 40,000.00. It transpires that being the head cashier, the petitioner

stole a blank bank draft leaf in which the name of Sri Nath Sharma was filled in by Mulla Sharma and thereafter, the said bank draft was deposited and credited in the account of Sri Nath Sharma. When this transaction was detected, the petitioner was charge sheeted. The enquiry officer found that the charges stood proved and that he had connived with the other two employees of the bank. Before the Enquiry Officer, the petitioner admitted that he took a loan of Rs. 20,000.00 from Sri Nath Sharma for taking a National Savings Certificate and thereafter took a loan from the NSC in order to pay back the loan to Sri Nath Sharma. The Inquiry Officer found that the entire amount was not paid back to Sri Nath Sharma and only 3,000.00 was shown to have been paid back. The Enquiry Officer found that the bank draft was forged and, with the connivance of the petitioner, the draft was illegally passed and credited in the account of Sri Nath Sharma. The Enquiry Officer further found that it was not possible for Sri Nath Sharma, who was working as a part lime sweeper, to receive a sum of Rs. 40,000.00. The Inquiry Officer further found that the amount of Rs. 20,000.00 was taken from the petitioner from Sri Nath Sharma was not towards the loan, but was part of his share of the booty.

12. I have perused the enquiry report and found that the findings arrived at by the Inquiry Officer is not based entirely on the statement of Sri Nath Sharma, but is based on various other evidences and statements of other witnesses. In my opinion, the petitioner having admitted that he had taken a loan of Rs. 20,000.00 from a part time sweeper is indicative of the fact that he had a hand in the fraud that was played by him in connivance with the other two employees. The admission of the petitioner by itself cast a doubt on the integrity of the petitioner. Consequently, the contention of the petitioner that the findings of the enquiry officer was based only on the submission of Sri Nath Sharma was patently misconceived. Further, I find that full opportunity was given by the Enquiry Officer to defend himself and that the principles of natural justice was complied with. Consequently, the judgements cited by the learned counsel for the petitioner is not applicable to the present facts and circumstances of the case.

13. It may be stated here that the findings given by the enquiry officer cannot be reversed in a writ jurisdiction where the conclusion of the enquiry officer was based on some evidence and that the evidence supported the conclusion arrived at by the Enquiry Officer. In my opinion, the findings of the Inquiry Officer was supported by the evidence brought on record. In *Saini R.S. v. State of Punjab and Ors.*, 1999(II) LLJ 235, the Supreme Court held-

"Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the enquiry authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at this own independent finding. The enquiring

authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."

14. The aforesaid principle enunciated by the Supreme Court is squarely applicable to the present facts and circumstances of the case.

15. The submission of the learned counsel for the petitioner that Sri P.V.Bhaskar Reddy had no authority to pass the order of penalty after he was transferred to Chennai, since the petitioner was not under the administrative or territorial control of the office of the General Manager, Chennai, is patently erroneous and misconceived. The petitioner was placed under suspension and thereafter by an order dated 10.1.1998 was charge sheeted. From a perusal of charge sheet, it is clear that the charge sheet was issued from the Central Office, Bombay, even though, the petitioner was posted at the Bhawani Branch of the Bank in district Jaunpur. The explanation to the charge sheet was submitted by the petitioner to the Central office at Bombay. The disciplinary authority sitting at the Central Office in Bombay appointed Sri P.V. Bhaskar Reddy, Deputy Manager of the regional office at Varanasi to be the Inquiry Officer and who was also the disciplinary authority for the purpose of the enquiry. The petitioner was posted at Bhawani branch at Jaunpur and was never under the administrative control of the P.V. Bhaskar Reddy. The petitioner was always under the control of the Branch Manager of that branch at Jaunpur. Sri P.V. Bhaskar Reddy was posted in the regional office of the bank at Varanasi. The order dated 29.10. 1998 is clear that Sri P.V. Bhaskar Reddy was being appointed as the disciplinary authority for the purpose of the enquiry to be conducted by him. Consequently, his transfer from Varanasi to Chennai has no relevance. Sri Bhaskar Reddy was well within his rights and was competent to pass the order at Chennai. Thus, there is no question of lack of territorial jurisdiction. Further, I find that the petitioner had not raised this point before the appointing authority. In my opinion, the petitioner had no right to raise this issue for the first time in the writ petition. Consequently, the judgements cited by the learned counsel for the petitioner has no application to the facts and circumstances of the case.

16. In Union Bank of India Vs. Vishwa Mohan, , the Supreme Court held that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee, failing which the public and the account holders would loose its confidence and therefore, the dismissal order was upheld by the Supreme Court.

17. In Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, the Supreme Court held that in cases of financial irregularity, there cannot be any punishment other than the punishment of dismissal.

18. In the present case, the petitioner has been found guilty of misappropriation of the funds of the bank. Consequently, in my view of the aforesaid, I do not find

it to be a fit case for interference under Article 226 of the Constitution of India. The writ petition fails and is dismissed.