
(2000) 07 OHC CK 0035
In the Orissa High Court
Case No : O.J.C. No. 1518 of 1996

Subrata Kumar Mohanty

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 209, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(1)

Citation : (2000) 90 CLT 415 : (2001) 3 LLJ 1332 : (2000) 2 OLR 255

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Naik. J.

1. The challenge in this writ petition is to the order dated December 18, 1995 (Annexure-5) whereby the petitioner was placed under suspension. It is his case that he having been suspended once in contemplation of a departmental enquiry and said suspension having been revoked, the authorities could not place him under suspension for the second time in connection with the same charge.

2. The facts relevant for the purpose of this writ petition are stated thus:

While the petitioner was posted at Bantala Branch of the State Bank of India, he was charged for having committed serious irregularities which have been detailed in Annexure-2 to the writ petition. In contemplation of the departmental enquiry, he (petitioner) was suspended in terms: of the order dated December 27, 1993 (Annexure-1). This suspension, as the order indicates, was passed under paragraph 521 (4) (j) of Sastry Award and Desai Award. A charge-sheet was also served to which, according to the petitioner, an explanation was filed. As per the rules in force, the petitioner was given 50% of the salary as subsistence allowance for the first six months which was raised to 75% thereafter and, six months thereafter he was entitled to full salary during the period of suspension.

According to the opp. parties, since continuance of the petitioner under suspension on payment of full salary to him was not thought proper in the interest of the Bank, the order of suspension was revoked and he was given a posting. Subsequently, on the basis of a report, as it appears from the record, the matter was investigated by the C.B.I. which took a decision for prosecution of the petitioner u/s 19(1)(c) of the Prevention of Corruption Act. 1988. The Investigating Agency was of the view that the act and the conduct of the petitioner constituted an offence under Sections 120B/209/ 420/468/471/477A. IPC and Section 13(2) read with 13(1) (c),(d) of the Prevention of Corruption Act. 1988 and, as such, he was liable, for prosecution.

3. It is not disputed that after completion of investigation, the C.B.I. had sought sanction of the appropriate authority to prosecute the petitioner which, according to the learned counsel for the opp. parties, was granted. In view of the investigation report that the conduct of the petitioner constituted an offence for which he was to be prosecuted, the Bank authorities in supersession of its earlier order dated March 14, 1995, whereby the petitioner was given a posting after revocation of the earlier order of suspension dated December 27, 1993 (Annexure-1) placing the petitioner under suspension, passed the impugned order.

4. The contention of the learned counsel for the petitioner is that as the earlier order of suspension was revoked, the misconduct was deemed to have been condoned and, as such, the authorities were not justified in again suspending him for the same misconduct. It is also contended that once the order of suspension was revoked, it could not be invoked for the second time as it would result in punishing him for the second time for the same charge thereby causing prejudice to the petitioner. It is also contended that the authorities cannot continue the petitioner under suspension indefinitely as it causes serious prejudice to him.

5. The procedure for taking disciplinary action is contained in Section III of the Sastry Award which contains a provision relating to suspension of a Bank employee. The two provisions dealing with suspension read thus:

"521. A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances; With this object in view we give the following directions :

(1) xx xx xx

(2) (a) When in the opinion of the management an employee has committed an offence unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended.

521.(3) to 521.(8) xxxxxx

521 (9). When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof;

521 (10) (a) xx xx

521 (10)(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry, it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

521 (10)(c) xx xx xx

Thus, the contingencies in which the Bank employee can be suspended are (i) when in the opinion of the management the employee has committed an offence and he is being prosecuted or the Bank takes steps to prosecute him or gets him prosecuted, and (ii) when it is decided to take any disciplinary action against an employee.

6. In the case at hand, when the petitioner was placed under suspension for the first time in the year 1993, it was in contemplation of a departmental enquiry, as, according to the opposite parties, the management was of the opinion that the petitioner was to be proceeded against for misconduct within the meaning of paragraph 521 (4)(j) of the Sastry Award and this fact is reflected in the said order. Thus, suspension was under Paragraph 521 (10)(b) a reference to which has been made in the earlier part of this order. The suspension, however, was revoked but revocation thereof would not have the effect of wiping out the misconduct nor is the departmental inquiry deemed to have been waived. Suspension is a mere cessation of the contract of employment for a given period. It is not a punishment and the employer has the right, during the pendency of the departmental enquiry under the provision, to bring to a temporary halt the contract of employment and revocation thereof i.e., of the suspension order, does not in any way affect the employer's right to continue with the departmental proceeding for ascertaining as to whether or not the employee is guilty of the alleged misconduct. Exercise of power under Paragraph 521(10)(b) to suspend an employee contemplating a departmental enquiry under Paragraph 521 (9) is quite different from the power to suspend a Bank employee under Paragraph 521(2) which, as observed above, relates to a different contingency altogether i.e., a power to suspend, if in the opinion of the management, the employee has committed an offence. Thus, this is a separate and distinct power and operates in quite a different field. As the impugned order indicates and as it has not been disputed, on a complaint made, the C.B.I. has investigated the matter and has come to the conclusion that the conduct of the petitioner constituted an offence for which he is to be prosecuted and for which sanction has been accorded. It is

for this reason that the petitioner has again been placed under suspension. This action cannot be said to be unjustified or unwarranted.

7. It is no doubt true that the order (Annexure-5) does not in so many words express an opinion regarding commission of an offence but the facts that the sanction has been granted for prosecution of the petitioner and that investigation by the C.B.I. was on the basis of the complaint are clearly indicative of prima facie opinion of the Bank regarding the guilt of the petitioner. In other words, the fact that the concerned authority, the Bank, has given sanction to prosecute the petitioner itself indicates that the Bank was of the opinion that the petitioner had committed an offence, for if these were not so, sanction would not have been granted.

8. Much was sought to be made of an averment in the counter affidavit that continuance of the petitioner in active service of the Bank during his trial may be prejudicial and detrimental to the interest of the Bank as there was every likelihood and an apprehension that the petitioner might tamper with the records and erase material evidence, and in order to avoid such a contingency, it was felt necessary to again put him under suspension. It is submitted that the reasons given are improper and cannot be the basis of suspension for the second time because at that point of time the petitioner having been posted at a station 300 Kms. away from the place of occurrence and all relevant documents having already been seized by the C.B.I., there could be no apprehension of tampering therewith or of his erasing the material evidence. Hence, his suspension was not proper. But, this contention, for the reasons already indicated in the foregoing paragraphs, cannot be accepted. Since there is power with the authorities under Paragraph 521 (2)(a) of the Award to suspend, that power has been exercised.

9. The next ground of challenge to the impugned action that the act of suspending the petitioner was malicious by way of victimising him, cannot be accepted. The statute nowhere provides for highlighting the reasons for placing an employee under suspension nor does it provide that the order of suspension is to contain reasons which are to be tested. All what is required for placing an employee under suspension under the relevant provision is to take a decision for initiating disciplinary proceeding against him or when in the opinion of the management the employee has committed an offence for which the Bank takes steps to prosecute him or gets him prosecuted. In the case at hand, it is an admitted position that the petitioner is being prosecuted. Therefore, the case squarely comes within the ambit of Paragraph 521 (2)(a) of the Sastry Award and the order of suspension, therefore, cannot be said to be unwarranted so as to call for any interference in this proceeding.

10. In the result the writ petition fails and is dismissed.