
(2014) 07 KL CK 0283

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 35951 of 2009

Suseelan, L.

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 4 ILR 271 : (2014) LabIC 4331

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : Elvin Peter P.J. and Pooja Surendran, Advocate for the Appellant; S. Easwaran, Advocate for the Respondent

Judgement

P.D. Rajan, J.—Based upon the challenge in this writ petition filed under Art. 226 of the Constitution of India, a substantial question that arises for consideration pertaining to the principles of natural justice is that, in a disciplinary proceedings when enquiry officer and disciplinary authority are different persons, whether the enquiry officer is justified in serving a charge-sheet without furnishing a statement of allegations along with it to the delinquent officer? and whether the failure of it amounts to violation of principles of natural justice?

2. This petition has been filed under Article 226 of the Constitution of India by the petitioner to quash the disciplinary proceedings initiated against him and the punishment imposed thereunder and also seeking a direction to reinstate him at Karakulam Branch of Indian Bank with all consequential benefits. The petitioner joined in the Indian Bank on 1-3-1982 as a sub staff, who was later promoted as Clerk on 19-8-1995 and was working at Karakulam Branch. While working in that branch, disciplinary action was taken against the petitioner, accordingly, he was suspended from service on 15-7-2008 and after inquiry, punishment was imposed on him. Petitioner contended that disciplinary authority had not followed the principles of natural justice and therefore, the punishment imposed on the petitioner in Ext. P-18 and his subsequent transfer to Kottarakkara Branch are

unsustainable in law. The statement of facts supporting the memo of charge was not issued to the petitioner in the inquiry, which is fatal to the disciplinary proceedings. Petitioner also contended that violation of principles of natural justice is a good ground to interfere in this matter.

3. The respondents in their counter-affidavit contended that when alternate remedy is available, petitioner is barred from filing a petition under Article 226 of the Constitution of India. The petitioner can approach the industrial tribunal according to the Industrial Disputes Act for redressing his grievance. When proper inquiry was conducted by the inquiry officer after following the principles of natural justice, there is no reason to interfere. The allegations in Ext. P-1 are made against the hierarchy, however, making false allegations against the hierarchy will amount to misconduct.

4. Now the question is whether there is any violation of the principles of natural justice while taking disciplinary proceedings against the petitioner? The respondents contended that the disciplinary action taken against the petitioner was due to misconduct under Rules 5 (e) and (j) of the Bipartite Settlement entered into between the Bank and the Union and there was willful insubordination, disobedience of the lawful orders of the management or of the superior, from the part of the petitioner. In this context, before adverting to the rival contentions advanced by both counsel, first, I extract the three charges levelled against the petitioner in Ext. P-2, which reads as follows:

"(1) You have been writing letters to Top Executives directly in an arrogant and indecent manner disregarding the established step-by-step grievance redressal procedure.

(2) You were allocated certain works at branch vide officer order dated 30-4-2008 and you have objected the said order by protesting the lawful and reasonable orders of the superior in an arrogant manner.

(3) On completion of your 25 years of service, Bank had offered Milestone award to you on 23-1-2008. On receipt of your representation that one watch is not working, Bank has offered another pair of watches on 27-5-2008. Even though the Branch Manager clarified the position vide letter dated 28-5-2008 addressed to you that earlier watch was exchanged from Circle Office, you have refused to accept the watch on flimsy grounds and making allegation that the watch presented second time is the same watch given earlier and returned by you."

The petitioner was suspended from service on 15-7-2008 by the Assistant General Manager, Indian Bank pending disciplinary proceedings. After that, Ext. P-2 memo of charges was issued to the petitioner, but, statement of allegation was not furnished with Ext. P-2 memo of charges. The 1st respondent admitted that statement of allegations was not furnished along with memo of charges, but they contended that since the allegations are very clear from Ext. P-2, there is no need to attach separate statement of allegations with the memo of charges.

5. In this context, I may observe that the purpose of holding an enquiry against a person is not only to establish a charge against him but also to record the truth of the matter. Therefore, the paramount consideration of the authority must be fair action. In a disciplinary proceedings, when a memo of charge-sheet is given to the delinquent officer, the statement of facts and allegations must be specifically furnished along with the charge. When statement of allegations are not served with the memo of charge it amounts to violation of the principles of natural justice. Normally, in administrative action, especially in disciplinary proceedings, when prejudice is caused to a person the principle of natural justice would automatically attract. Therefore, the right to a fair hearing requires that an employee or an officer should not be penalised by any decision affecting their rights without providing them prior notice of the accusation and an opportunity to present his own case.

6. Apex Court in *Shri Anant R. Kulkarni Vs. Y.P. Education Society and Others*, held that when statement of allegations are not served with the charge-sheet, the enquiry stands vitiated and it was in violation of the principles of natural justice. It was further held as follows:

"9. In *Surath Chandra Chakrabarty Vs. State of West Bengal*, this Court held that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up or rebuttal thereof. The Court observed as under:

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

10. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest against

that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. [Vide: State of Andhra Pradesh Vs. Sree Rama Rao, ; Sawai Singh Vs. State of Rajasthan, ; U.P.S.R.T.C. and Others Vs. Ram Chandra Yadav, ; Union of India (UOI) and Others Vs. Gyan Chand Chattar, ; and Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank and Another, ."

7. A Division Bench of this Court in Viswamithran, P. Vs. Manager, Sree Narayana College and Others, held as follows:

"Even after the receipt of the explanation, memo of allegations with details of the charges were not served on the petitioner. Therefore, in not serving the memo of allegations along with the charge-sheet, there is violation of a mandatory rule contained in Statue 71(2). Apart from the above, it cannot be stated that because memo of allegations were not given, no prejudice is caused. On a reading of the charge memo or the charges framed by the enquiry officer, it can be seen that the charges are not specific and vague. Details are not given. Therefore, real prejudice is caused to the petitioner in giving a proper explanation with vague and unspecific charges."

On a reading of the charges framed by the enquiry officer, it can be seen that the charges are not specific but it is vague, and the details of which were not given to the petitioner. Therefore, real prejudice is caused to the petitioner in giving a proper explanation on the basis of vague and unspecific charges.

8. Every person has the right to know about the allegations against him and to defend the case. Suppose a person fails to attend the hearing, even with adequate notice given, the enquiry officer has the discretion to decide whether the hearing should be proceeded or not In ordinary parlance natural justice does not demand oral hearing alone. An oral hearing will be futile if the affected person has no prior knowledge of the facts. The person charged with has a right to know, challenge or contradict any evidence, and also to fully aware of the nature of the allegations against him so as to have a proper opportunity to present his own case. To ensure fair trial, the party to the trial should have full information about the allegations which are made against him and the evidence in support of those allegations. Where the evidence is documentary, he should have access to the documents. Where the evidence consists of oral testimony, then he should be entitled to cross-examine the witnesses who gave that testimony, whose identity should be disclosed.

9. It is stated by the petitioner that he submitted Exts. P-6, P-7 and P-8 representations to the higher authorities on the basis of directions issued in Ext. P-3. It is clarified that the Indian Bank has introduced "Samadhaan Scheme"

from 11-5-2006 onwards to enable the staff members to take up genuine issues concerning both official as well as personal in nature which have a bearing on their work for the smooth functioning of the bank. The staff members can address real issues directly to the Chairman and Managing Director except for transfer requests and issues of routine nature.

10. Now the question is whether the grievance highlighted by the petitioner through Exts. P-6, P-7 and P-8 are grievances or genuine issues for the smooth functioning of the bank, according to "Samadhan Scheme". Ext. P-9 is to be noticed in this context. Ext. P-9 is a work allotment order, which is coming once in six months. Through Ext. P-6 the petitioner highlighted that the job rotation was given not according to the H.O. Circular No. PRNL 124/2004/05 dated 6-1-05 and PRNL 100/05-06 Dt. 20-10-05, hence he informed to the Chairman about favoritism and partiality shown towards him. Without allocating the single window work to the seniors, the petitioner was put in charge of the single window work. In Ext. P-7, he had informed about the lapses on the part of the Bank, as a part of the Milestone award, a "not working" titan watch was given to him, therefore, he returned it to the bank, but, the same watch was given to him again and he refused to take the "not working" titan watch. It is true that there was no financial loss caused to the bank while he was working in the bank. It is admitted by the respondents that the object of "samadhaan scheme" is to provide an opportunity to the staff members to take up genuine issues and grievances before the higher authorities. There was no mention by the enquiry officer as to whether Exts. P-6 to P-8 will come under "Samadhan Scheme" or not. Therefore, the failure on the part of enquiry officer to examine whether Exts. P-6 to P-8 will come under Samadhan Scheme or not, amounts to violation of his valid right.

11. A close reading of Exts. P-6 to P-8 shows that if petitioner sent those documents as per Samadhan Scheme, it is necessary to state such details appended to Ext. P-2 memo of charges. A perusal of Ext. P-16 shows that a charge was framed by the inquiry officer, he examined two witnesses and imposed Ext. P-18 punishment. It is clarified that the purpose of holding an inquiry against any person is not only to establish the charges levelled against him or to impose a penalty, but also with the object of recording the truth of the matter and the outcome of inquiry may either result in establishing or vindicating his stand either by execution or by imposing a penalty. It is the responsibility of the inquiry officer to proceed with a fair action in such proceedings. Coming to the procedure adopted in this case, it is clear that statement of allegations was not furnished along with memo of charges.

12. Another contention was that the petitioner is entitled to seek alternate remedy from the Industrial Tribunal and a petition under Art. 226 of the Constitution of India is not maintainable at this stage. Admittedly, there was a Bi-partite settlement dated 10th April, 2002 between the Management of Indian Banks and their workmen represented by All India Bank Employees Association,

National Confederation of Bank Employees and Indian National Bank Employees Federation, in which both parties admitted to refer the disputes in terms of settlement. Nowadays there are large number of cases coming to this Court for invoking writ jurisdiction challenging the violation of provisions of Industrial Disputes Act, 1947 and other enactments. Apex Court held that whenever a writ petition is filed for enforcement of a right deriving from any enactment, this Court should decline to entertain such writ petition under Art. 226/ 227 of the Constitution of India. Some important decision of the Apex Court are in U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, and Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, . Therefore, in catena of decisions Apex Court held that writ petition under Art. 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

13. In the instant case the writ petitioner submitted the reason as to why he thought that the alternative remedy would not be efficacious. The power relating to alternative remedy is essentially a rule of policy and discretion and it is never exercised as a rule of law. In spite of the existence of an alternate remedy, it is the discretion of the High Court to grant relief under Article 226 of the Constitution if the Court thinks that there exists good ground for invoking extraordinary jurisdiction. When a person approaches this Court, without availing an alternative remedy, this Court is expected to ensure that he has made out a strong case, such as there is violation of the fundamental rights or violation of principle of natural justice or the Forum provided under law is ultra vires in its operation. In this case, there is violation of principles of natural justice and therefore, this Court can invoke jurisdiction under Art. 226 of the Constitution of India.

14. With regard to cases pertaining to violation of principles of natural justice, Apex Court settled the law in L.K. Verma Vs. H.M.T. Ltd. and Another, , in which it is held as follows:

"13.....But it is well-settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised.

* * * *

20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the act is in question. In the aforementioned

circumstances, the alternative remedy has been held not to operate as a bar. [See State of Rajasthan Vs. Prakash Chand and Others, , Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., , State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another,]."

15. In short, natural justice gives a person the right to adequate notice of the date, time and place of the hearing as well as the details of the charge to be met. This information enables the person, in an adequate time, to effectively prepare his own case and to answer the charge against him. The non serving of statement of allegation along with the charge-sheet could be said to be a form of abuse, by the enquiry officer. The affected person usually cannot make effective representations without knowing what factors may weigh against his interests. Therefore fairness will very often require that he is to be informed of the gist of the case to enable him to defend himself against the allegations. Therefore, requirement of giving statement of facts serves three important purposes. Firstly, giving prior statements of facts increases the value of the proceedings. Secondly, when the person knows about the facts he can make useful contribution. The affected person has the right to know what are the allegations levelled against him and mere information regarding hearing is not enough. Thirdly, the disclosure of information open up the operations of the disciplinary authority to public scrutiny. Therefore, even after issuing memo of charges, it is the responsibility of the disciplinary authority to furnish statement of allegations along with charge-sheet. Such details are not found in this case. So, furnishing statement of allegations along with memo of charges is mandatory. Accordingly, the proceedings initiated as per Ext. P-18 is liable to be quashed under Art. 226 of the Constitution of India. Since the petitioner retired during the pendency of this writ petition, there is no scope for further inquiry. In the circumstances, respondents are directed to disburse original service benefits to the petitioner, at the time of taking disciplinary action, within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.