
(2013) 07 CAL CK 0109
In the Calcutta High Court
Case No : W.P. No. 8114 (W) of 2011

Susovan Panda

APPELLANT

Vs

The Chairman, UCO Bank and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2014) 1 WBLR 714

Hon'ble Judges : Indra Prasanna Mukherjee, J

Bench : Single Bench

Judgement

Indra Prasanna Mukherjee, J.—Several substantial points are raised in this writ application. It is preferred by an officer of UCO Bank complaining against the order of the appellate authority dated 8th October, 2010, affirming the decision of the disciplinary authority. The order of the disciplinary authority was made on 15th March, 2010.

2. The allegation against the petitioner is that by his willful or negligent conduct, he caused or would cause a loss of Rs. 6 lakhs to the bank. He had conducted the other affairs of Kolaghat Branch of the bank, irregularly and negligently. He had not complied with the required standard of care and discipline to be followed by the Manager of a Bank.

3. The part of the proceedings, which is first glaring, is a recording in the record of proceedings of 16th January, 2010. Three documents, inspection of which had been sought by the writ petitioner were declared irrelevant by the bank. This would appear at page 64 of the writ petition.

4. First of all, whether a document is relevant or irrelevant is not for the bank to assess. If it is irrelevant, the adjudicator will take note of it. But if the adversary is in possession of a document stated to be required by the other party, it is his duty to make it available, otherwise an adverse inference is drawn against that party, under the Indian Evidence Act, 1872. Loss of a document has to be proved. Then, secondary evidence can be led of its contents.

5. Secondly, the documents, "balance books" required by the writ petitioner were not supplied by the bank on the ground that they were "not traceable and as such not available", Making available documents, which are in the custody of some other party, is so very important for cross-examination was enunciated by Samir Kumar Mookerjee J. in the case of Himangshu Kumar Bose Vs. Union of India and Others, . This is what his lordship had to say in paragraph 9 of the report:

.....It is an accepted position in law that the necessity copy of a document will have to be judged not only from the stand point of the prosecuting authority but also from the stand point of the defence. A document may not at all be relevant or useful for the purpose of prosecution but may be of immense value for the purpose of defence; the reason, justifying the recognition of this principle, is not far to seek. The right to cross-examine a particular witness, on which-reliance has been placed by the prosecution, is a fundamental part of the principle of natural justice. Keeping the defence or the delinquent deprived of the previous statements or reports renders illusory such a right. No doubt, normally, the rules of natural justice are intended to supplement the law and not to supplant it and their application can be excluded either by express words or by necessary implication, yet where it is found that the Rules are silent the principle operates with full force and a Court of law would not entertain an argument that even if such principle had been observed the result would have been the same, as justice must not only be done but must be shown to have been done. The grievance of the petitioner about the justice being denied to him as proved by non-supply of the copy of the necessary documents has been sought to be countered by Mr. Ghose for the respondents saying that the Rules do not provide for any opportunity being given to the delinquent at the stage of fact finding preliminary enquiry. Reliance was placed on the principle laid down in the case of Champaklal Chimanlal Shah Vs. The Union of India (UOI), . This case, however, is distinguishable on facts inasmuch as the termination of service in that case was made not in course of disciplinary proceeding but in terms of the contract and accordingly principles of article 311(2) were found inapplicable.

6. Moreover, I find in the impugned order that the statement of defence dated 13th February, 2010 which is at page 74 of the writ petition has not been considered in its entirety, particularly, paragraph 4 of the statement of defence.

7. Furthermore, I notice from the final order passed by the Enquiry Officer on 15th June, 2010, that certain findings had been arrived at without the necessary facts having been proved. For example, it is not shown how the following part of the said order is supported:-

.....Sri Panda has failed to prevent the LBY Agent from free access to Bank's stationery and LBY related Books. As a result, the LBY Agents were free to handle and use Bank's stationery for their own fraudulent purpose. Thus, he acted otherwise than his best judgment.

8. This finding of fact is also not supported by the following:-

....It is further observed from Kolaghat Branch letter dated 01.7.2009 addressed to Zonal Office that all LBY Accounts where fraud took place were opened during the period of incumbency of Shri Panda excepting one account which has since been closed.

9. The order of the disciplinary authority was affirmed by the appellate authority on 8th October, 2010. The effect of the order is sufferance of punishment by the writ petitioner by reduction of his basic pay by four stages in the time scale of pay for a period three years with immediate effect, with no earning of increment, for charge No. 1, reduction by two stages with similar effects for charge No. 2 and reduction by four stages with similar effects for charge No. 3.

10. In the case of Ananda Chakraborty Vs. Union of India and Others, , a Division Bench of our Court held that a decision based on no evidence was perverse. In the case of The Collector of Customs, Calcutta and Others Vs. Biswanath Mukherjee, another Division Bench of this Court also viewed such kind of a decision as perverse.

11. I would myself add that a decision based on inadequate evidence is equivalent to a decision being based on no evidence as the result is the same injustice.

12. In my opinion, the decision of the bank, be it of the Enquiry Officer or the Appellate Authority is based on no evidence or insufficient evidence. It is indeed very wrong to hold somebody guilty on such evidence which I consider as unsafe.

13. Furthermore, the punishment should be proportionate to the guilt. Even if all the charges in the charge-sheet were found to be proved, still the degree of punishment handed down for the guilt, in my opinion, was disproportionate. After all, the loss caused to the bank was only Rs. 6 lakhs. Punishment should have been proportionate.

14. For all those reasons, the order of the appellate authority is set aside with a direction upon him to consider the case of the writ petitioner by allowing him to produce or cause production of all documents relied on, as referred to above. If the said documents are not available or not made available or proved to be lost, then a proper conclusion should be drawn by the appellate authority in favour of the writ petitioner or in favour of the bank, as the case may be. The entire case of the writ petitioner in his statement of defence should be considered. Findings based on existing records and non-availability of other records or lost records should then be arrived at. The writ petitioner is to be given an opportunity of hearing.

15. The appellate authority is to consider the matter and pass a reasoned order within three months of communication of this order. However, this order will not entitle the writ petitioner to a reversal of the reduction of grade and consequential benefits, until and unless the appeal is disposed in his favour.

16. The writ application is disposed of by the above order. Let certified photocopy of this order, if applied for, be supplied as expeditiously as possible.