
(1985) 10 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2841 of 1982

Vaidyanath Thakur

APPELLANT

Vs

The Punjab National Bank and Others

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Citation : (1985) PLJR 254

Hon'ble Judges : S.S. Hassan, J

Bench : Single Bench

Advocate : Ram Narayan Sinha and Ashok Kumar Sinha No. 3, for the Appellant; Srinath Singh, Ranjit Prasad, Rajendra Kishore Prasad and Sanjay Priya, for the Respondent

Final Decision : Allowed

Judgement

S. Samsul Hasan, J.—The story is common place and a very usual one, the personas dramatis familiar, a delinquent, a disciplinary authority, inquiry officer and an investigator and the grand finale repetitive of similar situations, followed by usual critical appraisal and comments. The petitioner, joined the service of the Punjab National Bank in 1946 and in due recognition of his services and unblemished record he was promoted as the Officer-in-Charge of Barbiga Branch in March, 1970. In April, 1971, he was posted as the Officer-in-Charge, Barn Branch, where he continued till, July, 1974. In August, 1974, he was transferred to Jharia Branch on a post which was lower in rank than that he was holding at Barh. On 5th November, 1975, he was suspended from Service. Thereafter a criminal case instituted against the petitioner culminated in his discharge consequent upon the submission of final form by the police due to insufficient evidence. In the meantime in June, 1977, the petitioner was served with a charge sheet. Thereafter an internal inquiry was conducted by one Ramesh Chandra, Commissioner of Departmental Enquiries, who was not the disciplinary authority. In the said inquiry G.N. Asthana, Inspector of the Bank, was a witness on behalf of the Bank but he did not turn up in spite of repeated

requests by the petitioner as well. Ultimately, inquiry was concluded, followed by the dismissal of the petitioner (Annexure "6"). It is now sought that Annexure 6, the order of dismissal, and the order dismissing the appeal (Annexure 8), be quashed.

2. Incidentally this is his second odyssey to this Court. The first one culminated in remand by a Bench of this Court in C. W. J. C. No. 25 of 1980 with certain directions. On remand, the penal consequence remained undiluted. Hence, the present application.

3. The changes described by the Bank as grave are set out in Annexure "3" and are 23 in number, broadly based on the report of Shri Asthana. In view of their length and size I am not setting them out here. Basically the charges relate to acts of impropriety and non-observance of rules and procedures, thereby causing great financial risk to the Bank.

4. The enormity of charges cannot in isolation be a good ground for inflicting punishment on delinquent unless they are proved by the laws of evidence and in accordance with the well known principles of audi alteram partem. The sheet anchor of the petitioner's submissions are Violations of the principle of natural justice and of procedure of such a magnitude that the dismissal of the petitioner is entirely unjustified. Specifically, it was pleaded that there was violation of regulation 6 (3) and 6(10) of the Punjab National Bank Officer employees (Discipline and Appeal) Regulations, 1977, (in short, "the Regulations"). Their reproduction, therefore, is a prime requirement.

5. Procedure for imposing major penalties.

(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding fifteen days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

10.(a) The inquiring authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The inquiring authority shall also record an order that the officer employee may for the purpose of preparing his defence -

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents listed;

(ii) submit a list of documents and witnesses that he wants for the inquiry :

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the inquiring authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the inquiring authority : (iv) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of the documents referred to in item no. (ii)

6. The submissions of the Learned Counsel for the petitioner can be stated in a nut shell, as follows :-

(i) The charges were not drawn up by the Disciplinary Authority but, as submitted by the Learned Counsel for the respondents, merely endorsed by it;

(ii) The grounds were not accompanied by "(a statement of the allegations), non-supply of list of documents and witnesses and copy of the report of G. N. Asthana;

(iii) The report of G. N. Asthana was not made over to the petitioner;

(iv) G. N. Asthana was not examined as a witness; consequently the entire action against the petitioner is vitiated; and

(v) The appellate authority even after remand did not give an opportunity of hearing to the petitioner and merely disposed of the appeal by ex parte appraisal in the privacy of his own thoughts.

6. Before I embark upon examining these issues on law I may state that I am not delving into the correctness or otherwise of the enquiry in its factual aspect. Though a journey was made into the realm of facts at the instance of the petitioner, consequently inviting reply from the Learned Counsel of the Bank. I do not propose, as I have said, to venture into the jurisdiction where one should fear to tread.

7. Taking up the first point of attack, indeed regulation 6 (3) requires that the charges should be framed by the Disciplinary Authority. This being not done is not disputed but it was submitted on behalf of the Bank that it had been endorsed by the Disciplinary Authority. It was also submitted that regulation 6 (3), as it stands today, was a later introduction and, therefore, when the first charges were framed there was no error in that and on a new clause being introduced as at present, an endorsement was taken. A Bench of this Court in the case of Krishna Nand Choudhry in (sic) Punjab National Bank & ors. being C. W. J. C. No. 1896 of 1976 disposed of on 1st September, 1981, has held that this requirement is mandatory but goes on to hold later that it is also hypertechnical and in that case they refrained to grant relief on this ground in view of the seriousness of the charges. Since the requirement of regulation 6 (3) has been held to be mandatory, it follows that mere endorsement by a disciplinary authority cannot correct the mandatory flaw. But I am bound to follow the Bench decision in all its aspects, though I feel that generally the violation of a mandatory provision means total annihilation of consequential" steps, and, I,

therefore refrain from saying anything further on this point and I hold that the petitioner cannot be granted any relief due to this violation, particularly when no objection was raised in this regard at the initial stages.

8. The second and third points, in my view, however, are of extreme consequence and affect the entire action and the earlier proceedings. It is not disputed that the statement of allegations was not served on the petitioner along with the grounds drawn up by the Disciplinary Authority. In fact, nothing more than a ground was served in bland form. Subsequently, the list of witnesses and documents was not served on the petitioner at the commencement of the inquiry. This is borne out by the statement in paragraph 28 of the writ petition. In reply in paragraph 23 of the counter affidavit it is stated that the petitioner was asked to inspect the report and other documents if he so wanted. It is further stated relying on the order sheets dated 21.10.78 thus the petitioner having waived formal admission of the documents into evidence could not raise the defence of non-supply of their copies. In my view, on both counts I have to hold that the rules of natural justice have been completely violated and the procedure ignored, it was essential that the statement of allegations be served on the petitioner along with the charges and list of witnesses and documents prior to the inquiry. Merely asking the petitioner to inspect the report does not amount to the compliance of regulation 6 (10) (a) but only of 6 (10) (b) (i). Also if the petitioner did not insist on the formal proof of the report it does not mean that the petitioner waived all objections relating to that report. Dispensing with the formal proof is entirely different from waiving the right to receive a copy or to attack the contents of a document after copy is received during the inquiry. In this situation, undoubtedly the petitioner was denied a valuable right. Not only is this right mandatory in the light of the regulations but also on the ground of natural justice. The above grounds are, in my view, enough to quash the impugned action.

9. The fourth objection is clear example of the patent dereliction on the part of the Inquiring Authority. If G. N. Asthana had made an inquiry and submitted his report, I do not see why he should not have had the moral courage to appear and support his report. The excuse of mother's illness, though may rouse a lot of sympathy, cannot be a good excuse for depriving a person about to be subjected to penal consequence of a valuable right. If Shri Asthana had to go away, the inquiry should have been postponed till his presence was made available. The unjustified haste itself shows that the Inquiring Authority was anxious to achieve dismissal of the petitioner even at the cost of violation of norms and procedures. His non-appearance therefore, does away with the main prosecution witness. The submission made on behalf of the Bank that the petitioner at no time insisted for his appearance cannot be accepted as it was not necessary for a delinquent to seek evidence against himself. I have, therefore, no hesitation in holding that the effect of this lapse is telling on the acceptance of the impugned order as correct.

10. The last point is also of considerable importance when grounds of appeal had

been filed on the basis of the order of this Court some grounds had been added, the Appellate Authority would have been well advised to afford a hearing, personal, to the petitioner. This violation also, in my view, cannot be lightly treated.

11. While it is true that the standard of morality and efficiency in a Bank has to be at its highest and a confidence reposed in it by the unwary citizen should not be shattered by acts of impropriety of an employee. It is equally true that a man cannot be punished in gross dereliction of the rules, procedures, norms, and above all, rules of natural justice. If, as submitted by the Learned Counsel for the Bank, the petitioner and the like should not be allowed to function in the Bank, it is also true that his functioning could not be decapitated in the manner done, if the application has to be allowed, the Authority holding inquiry is to blame. If he had observed the rules, procedure and rules of natural justice, followed the regulations in word and spirit and came to a finding against the petitioner, nothing could have been said. But, if the petitioner, according to the Bank, was a criminal, the Inquiry Authority cannot be absolved of murdering the procedures and the rules. I have, there fore, no hesitation in holding that the entire inquiry and the consequential punishment are vitiated, and, therefore, its consequence, Annexures 6 and 8 are quashed. In the result, the application is allowed, the orders as contained in Annexures 6 and 8 as stated above, are quashed. The petitioner should be reinstated forthwith and he will be entitled to receive his pay and other emoluments and benefits from the date he stood deprived of them. I may also add that if the Bank still wishes to persist in its action against the petitioner, this judgment should not in any way be treated to be a clog for such an exercise but till then the petitioner must be reinstated, with all benefits.