

(2019) 07 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition No. 5219 Of 1999

Vidyavati Dubey And Ors

APPELLANT

Vs

District Cooperative Central Bank Limited And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 409
Madhya Pradesh Cooperative Societies Act, 1960 — Section 55(2)
Constitution Of India, 1950 — Article 311(2)

Citation : (2019) 07 CHH CK 0002

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Animesh Verma, Prafull N. Bharat, Jitendra Shrivastava, Sameer Behar

Final Decision : Disposed Of

Judgement

P. Sam Koshy, J

1. The main grievance of the petitioner in the instant case is the order of removal from service of the deceased employee namely Achchhelal Dubey (the original petitioner) dated 04.07.1992.

2. The said order of removal from service was questioned before the Deputy Registrar, thereafter before the Joint Registrar and further before the Board of Revenue. That vide order Annexure P/23, P/25 & P/27 dated 29.04.1998, 10.09.1998 and 22.12.1998, the three authorities have dismissed the claim of the petitioner, the appeal and the revision filed thereafter, which is also under challenge in the present writ petition.

3. For proper adjudication of the case, the relevant facts in brief is as under:

The present writ petition was originally filed by the dismissed employee himself. Pending the petition before this Court, the employee has since expired and substituted by the legal heirs. The employee concerned henceforth shall be

referred to as "deceased employee for convenience sake.

4. The deceased employee namely late Achchhelal Dubey was working as a Senior Cashier and was also holding the post of Assistant Accountant under the respondent No.1/bank. On 07.08.1991, an explanation was sought from the employee alleging that there was a deficit detected while the cash was being tallied and deficit was for an amount of Rs.2,42,000/-. The charge of cash at the relevant point of time was with the petitioner, therefore the explanation was issued to him. Though the petitioner had submitted his reply denying the petitioner's involvement in the said alleged shortage of cash, the respondent/bank later placed the service of the petitioner under suspension vide order dated 12.08.1991 contemplating enquiry.

5. Subsequently, the respondent No.1 issued an order Annexure P/3 dated 13.08.1991, whereby one Shri I.P. Singh, a Marketing Officer was appointed as an Inquiry Officer and the Branch Manager of the main branch, Bilaspur was appointed as the Presenting Officer. It is necessary to take note that the Inquiry Officer and the Presenting Officer were appointed, even before a charge-sheet was issued to the petitioner. Charge-sheet in the instant case was issued much later i.e. on 16.09.1991 (Annexure P/4).

6. The petitioner thereafter had given a detailed reply to the charge-sheet categorically denying the allegations. However, for the reasons best known to the respondent No.1 and which has not been divulged in any of the correspondences made thereafter vide order dated 11.10.1991 (Annexure P/6) changed the earlier Inquiry Officer and the Presenting Officer and appointed a new Inquiry Officer and Presenting Officer.

7. So far as the shortage of the cash is concerned, the respondent no.1 had also lodged an F.I.R. and a criminal case was also instituted vide Crime No. 339/1991 for the offence punishable under Section 409 of Indian Penal Code and wherein the employee in the present case was also an accused. Subsequently, the petitioner had moved a request letter before the Inquiry Officer to keep the departmental enquiry proceedings in abeyance till the finalization of the criminal case initiated against the petitioner. The Inquiry Officer initially took decision that the departmental enquiry shall not be further proceeded till the recording of the evidence in the criminal case.

8. Surprisingly, the respondents again without assigning any reason appointed a fresh set of Inquiry Officer and Presenting Officer and this time the respondent no.1 appointed one Mr. S.C. Das, Assistant Manager, as an Inquiry Officer and Mr. I.P. Singh (who at one point of time was an Inquiry Officer to be a Presenting Officer) vide its order dated 06.03.1992 (Annexure P/9). The subsequent Inquiry Officer appointed namely Mr. S.C. Das again issued a fresh notice for proceeding in the inquiry against the petitioner, to which the petitioner submitted an application along with his reply and sought for certain documents, which was required for his defense and also sought for the details of the preliminary enquiry

that was conducted.

9. The said request of the petitioner was rejected and the Inquiry Officer submitted an ex-parte inquiry report against the petitioner and a show cause notice thereafter was issued on 25.05.1992 and in which also the petitioner was granted time to produce oral and documentary evidence in his defense, if any. This show cause notice was issued by the Disciplinary Authority, who could not have called upon the petitioner to adduce oral and documentary evidence, this could have been only given by the Inquiry Officer. However, the petitioner to this also submitted his reply stating that he has not been issued with any relevant document in support of the allegations leveled against him. The petitioner thereafter requested that it would not be proper for him to lead evidence before the Inquiry Officer at that point of time when his defense before the criminal case had not been disclosed and otherwise the proceedings before the criminal Court would have a detrimental effect. The employee again requested for keeping the departmental proceedings in abeyance till the finalization of the criminal case. However without further proceeding with the matter, the Disciplinary Authority vide his order dated 04.07.1992 (Annexure P/15) inflicted the capital punishment upon the employee that of 'removal from service'.

10. This order of removal was subjected to challenge before the Deputy Registrar, Cooperative Societies under Section 55(2) of the Madhya Pradesh Cooperative Societies Act, 1960, which stood dismissed vide order dated 29.04.1998. The order of the Deputy Registrar was subjected to challenge before the Joint Registrar by way of an appeal, which too stood rejected vide order dated 10.09.1998. The employee thereafter preferred a second appeal before the Board of Revenue, which too stood rejected affirming the orders of the Joint Registrar and Deputy Registrar in terms of upholding the order of removal from service vide its order dated 22.12.1998 (Annexure P/27). It is all these orders, which are under challenge in the present writ petition.

11. Per contra, the counsel appearing for the respondent No.1/Bank opposing the petition submitted that there is no prejudice whatsoever caused to the petitioner in the course of the departmental enquiry. That the charge sheet itself is self-explanatory of the nature of misconduct leveled against the petitioner and that the documents brought before the Inquiry Officer is sufficient to reach to the conclusion that the misconduct has been committed by the petitioner alone and that there was no one else, who was responsible for the commission of the said misconduct.

12. It was further the contention of the counsel for the Bank that from the reply that the petitioner had given to the charge-sheet and also from the correspondences that were made, there is a clear admission on his part for being responsible for the shortage of cash. According to the counsel for the Bank, since the petitioner himself was the person, who was responsible for handling of the cash at the bank, it was he alone, who was to give a proper explanation for shortage of the cash. That since the petitioner alone was also having the keys of

the cash counter, the responsibility of explanation of the petitioner in respect of shortage of cash gets all the more increased.

13. According to the respondents, once when there is an admission of the allegations by the delinquent employee, the need for an inquiry itself is not necessary, but in the instant case, the Department in all fairness thought of conducting a departmental enquiry and it was conducted and relevant evidence was also produced before the Inquiry Officer, with which it was sufficiently proved that it was the petitioner alone, who was responsible with the cash and the keys of the cash counter were also with the petitioner. According to the respondents, the petitioner also has not given any explanation in respect of the relevance of these documents that he has sought, nor were the details of the documents, which he really intended for his defense provided to the management, except for a vague and bald demand made for certain documents.

14. According to the respondents, the petitioner also does not deserve any sympathy for the reason that the petitioner inspite of all proper service of notice in respect of departmental enquiry, he deliberately chose not to participate in the departmental enquiry and in the process the Inquiry Officer had no other option, but to proceed ex-parte and therefore the petitioner now cannot turn around and cry foul.

15. Lastly, it was contended by the respondents/management that the petitioner cannot have a grievance of non-supply of any relevant documents for the reason that the management had right at the first instance while issuance of the charge-sheet itself made it clear that if the petitioner intends, he can visit the branch and peruse the relevant registers, ledgers and the records, if any. That, inspite of this, if the petitioner does not avail the same, it cannot be said that the petitioner has been denied of a fair opportunity of defense and for all these reasons, the counsel for the Bank prayed that the writ petition deserves to be rejected.

16. Having heard the contentions put forth on either side and on perusal of record, what would be relevant at the first instance to be considered is the contents of the charge-sheet (exhibit P/4). Admittedly, along with the charge-sheet, the respondents had not provided any list of documents, articles of charges, list of witnesses, etc.

17. It would be relevant at this juncture to mention that even before a charge-sheet was issued, the Department already on 13.08.1991 (Annexure P/3) had decided to conduct a departmental enquiry and for which an Inquiry Officer and a Presenting Officer also were appointed. Under the service jurisprudence, in a disciplinary matter an Inquiry Officer is appointed only in case the reply to the charge-sheet of the delinquent employee is found to be unsatisfactory or the delinquent does not give reply to the charge-sheet. The fact that the respondents did not wait for issuance of a charge-sheet and its reply and before that itself they had appointed an Inquiry Officer and a Presenting Officer would show an

element of haste and a predetermined approach on the part of the respondents.

18. What further is established from the plain reading of the reply to the charge-sheet is that in the very first paragraph itself of the reply, there is a categorical denial of the charges leveled, particularly in respect of the shortfall of cash of Rs. 2.42 lacs. In the reply to the charge-sheet itself, the petitioner had specifically asked for the documents and the statements of witnesses examined during the course of the preliminary enquiry, on the basis of which the charge-sheet has been issued. The petitioner simultaneously had also apprised the Disciplinary Authority that for the same misconduct, he was being prosecuted in a criminal case on an F.I.R. that was lodged at the Police Station Civil Lines, Bilaspur vide Crime No. 339/91 and requested that the defense of the petitioner would get disclosed, if he leads an evidence before the Inquiry Officer and that can adversely prejudice the criminal case and had thus requested for staying of the disciplinary proceedings.

19. Another aspect, which cannot be lost sight of is that in the inquiry proceedings, the person, who was initially appointed as an Inquiry Officer namely Mr. I.P. Singh, subsequently was changed without any justification or reasons and the same Inquiry Officer later on was made the Presenting Officer. In the opinion of this Court, a person, who was appointed as an Inquiry Officer first of all could not have been changed without any cogent reasons. At the same time, the same Inquiry Officer could not have been subsequently appointed as a Presenting Officer as this would prejudice the interest of the delinquent employee and the inquiry in as much as, a person, who was initially appointed as a judge (in the capacity of an Inquiry Officer) was subsequently appointed as a Prosecutor (in the capacity of a Presenting Officer) to represent the management before a new Inquiry Officer. This would definitely have a prejudicial adverse impact on the inquiry proceedings and the element of fairness would get reduced and the chances of bias would get increased.

20. Such a practice adopted by the respondent/bank appears to be a very unusual practice and procedure. That apart, in the instant case what is also reflected is that the Inquiry Officers, who were appointed have been abruptly changed on more than couple of occasions and each time there was a change in the Inquiry Officer, no specific reason was assigned for the change made. This again is not a healthy practice of conducting a departmental enquiry, unless of-course the Inquiry Officer were required to be changed under compulsion with adequate reasons for the same.

21. Another aspect which cannot be lost sight of is that when the delinquent employee at the first instance had requested the enquiry officer for keeping the Departmental Enquiry in abeyance in the light of the criminal case that was going on and that by adducing evidence before the enquiry officer, the defence of the employee would get exposed and finding the request of the employee to be fair and genuine, the enquiry officer had kept the department enquiry proceedings in abeyance. The management, not happy with the stand that the enquiry officer

had taken, changed the enquiry officer and proceeded with the enquiry which shows the element of predetermination on the part of the management in punishing the delinquent employee.

22. The fact that the management was also predetermined to punish the employee gets substantiated for the reason that in the instant case the appointment of the enquiry officer and presenting officer was much earlier to the charge sheet being issued to the delinquent employee.

23. Similarly, another aspect which needs consideration is that, in the instant case, after the enquiry officer had submitted his enquiry report, the disciplinary authority realizing the error committed by the enquiry officer passed an order permitting the delinquent to lead evidence both oral as well as documentary. This again is not a justified procedure for the reason that opportunity of defence should have been given by the enquiry officer himself and that should have been before the enquiry report is submitted. Though the delinquent was willing to adduce his evidence, but before that he has requested for certain documents with which he could have been able to defend himself more effectively or could have been established his innocence. This again was not acceded to by the management and the disciplinary authority thereafter straightway imposed the punishment on the delinquent employee. In addition to the aforesaid technicalities in the process of conducting departmental enquiry, there is another peculiarity in the instant case where there has been lot of enquiry officers who were appointed without there being any justification for the change of the previous officer. No plausible explanation or justification could be produced by the management. Moreover, in the latter stage of the enquiry, the management took a strange stand of appointing the previous enquiry officer in the same enquiry as the Presenting Officer.

24. With all the aforesaid peculiarity and strange conduct of the management in holding the departmental enquiry, this court is compelled to form an opinion that overall the delinquent employee seems to have been denied of his basic right of natural justice. The foremost and paramount factors which should be borne in mind by the management and by the enquiry officer is the principles of natural justice being honoured. The delinquent employee should be treated with all fairness. He should be given full opportunity of defence. The principles of natural justice is not one which could be put in a straitjacket formula. The manner in which the enquiry is conducted should by itself reflect that the delinquent employee has been afforded with enough opportunity and sufficient materials to prove his innocence. In the instant case, after the first enquiry officer having kept the enquiry in abeyance, there was no justification provided for proceeding further with the enquiry particularly when the criminal case was still undergoing.

25. For all the aforesaid reasons, this court has no hesitation in reaching to the conclusion that the enquiry conducted against the delinquent employee had technical flaws which overall was detrimental to the interest of the employee concerned and since these technical flaws leads to the denial of the fair natural

justice to the delinquent employee, the entire enquiry gets vitiated and the findings of the enquiry officer and the disciplinary authority based on such illegal enquiry would not be sustainable.

26. The enquiry proceeding is infact a quashi judicial function and the enquiry officer is supposed to discharge the duties of a Judge in the capacity of enquiry officer and in the process firstly the enquiry officer could not have been changed by the management time and again without any cogent and sufficient reasons. Secondly, the enquiry officer who has been changed should not have been appointed as a Presenting Officer to act as a prosecutor in the capacity of Presenting Officer.

27. So far as judgments which have been relied upon by the respondents-Bank is concerned, there can be no dispute so far as principles of law that has been enunciated in the cases which have been relied upon by the management, like Himachal Pradesh Road Transport Corporation and Another Vs. Hukum Chand, 2009(11)SCC 222 and Ramesh Chandra Vs. Delhi University and Others, 2015(5)SCC 549. However, all these principles of law could be made applicable in a case where the departmental enquiry has been conducted fairly after due compliance of the principles of natural justice.

28. In the case of Bilaspur Raipur Kshetriya Gramin Bank and Another Vs. Madanlal Tandon, 2015(8)SCC 461, the Supreme Court affirming the order passed by the Single Bench as well Division Bench of the Chhattisgarh High Court so far as quashing of the termination order is concerned, in paragraphs 4,5,8 and 9 held as under:

"4. Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause. The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies of the documents are not supplied to the concerned employee, it would be difficult for him to prepare his defence and to cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless.

The Division Bench of the High Court further observed that in the instant case neither the list of witnesses nor the list of documents was supplied to the respondent along with the charge-sheet. Though during the course of inquiry some documents were supplied to him but those documents, on which the reliance was placed by the Inquiry Officer for holding various charges proved, were not supplied to the respondent. The High Court further observed that the respondent is out of employment since 01.10.1991 and his claim for arrears of

salary, as stated by counsel for both the parties, would be more than 45-50 lakhs. The Bank's money is public money and a huge amount cannot be paid to anyone for doing no work. The principle of "no work no pay" has been evolved in view of the public interest that an employee who does not discharge his duty is not entitled to arrears of salary at the cost of public exchequer. By way of impugned judgment, the High Court, therefore, concluded that in the facts and circumstances of the case a lump-sum payment of Rs. 5,00,000/- towards the claim of salary, would be just and proper in this matter. The respondent was also held to be entitled to all other consequential benefits.

8. Indisputably, no documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry.

9. Admittedly, show cause notice was served along with 17 charges, but all the documents were not supplied to the respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the learned counsel appearing for the appellants whether documents viz. P-21, P-25, P-23, P-19, P-30, P-31 & P-32 were supplied to the respondent, on the basis of which various charges have been held to be proved, learned counsel was not able to demonstrate that the above documents were supplied to the respondent even during the course of inquiry. The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment cannot be sustained in law. However, taking into consideration the fact that the respondent was out of employment since 1991, a lump sum payment of Rs.5,00,000/- towards the salary would meet the ends of justice."

29. The Supreme Court in case of State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha, 2010(2)SCC 772, dealing with the issue of principles of natural justice in a departmental enquiry in paragraphs 29 and 30 held as under:

"29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings

which may culminate in imposition of punishment including dismissal/removal from service"

30. Again dealing with the issue of natural justice, the Supreme Court in *Anil Gilurker Vs. Bilaspur Raipur Kshetriya Gramin Bank & Another*, 2011(14)SCC 379, relying upon two of its earlier decision rendered in *Surath Chandra Chakrabarty Vs. State of W.B.*, 1970(3)SCC 548 and *Union of India Vs. Gyan Chand Chattar*, 2009(12) SCC 78, in paragraphs 13 & 14 held as under:

"13. As has been held by this Court in *Surath Chandra Chakrabarty v. State of West Bengal* (supra):

"5.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 also to be stated. This rule embodies a principle which is one of the basic 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....."

14. This position of law has been reiterated in the recent case of *Union of India & Ors. v. Gyan Chand Chattar* (supra) and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and 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."

31. For all the aforesaid reasons, the impugned orders passed by the disciplinary authority vide Annexures P/23, P/25 and P/27, dated 29.04.1998, 10.09.1998 and 22.12.1998 respectively is not sustainable and the same deserves to be and is accordingly set aside.

32. Since this court is setting aside the impugned orders on the ground of technicalities of it being violative of principles of natural justice, as a natural consequence the matter ought to have been remitted back to the disciplinary authority for conducting a fresh department enquiry altogether. However, since the delinquent employee in the instant case has, pending the petition, died and as such fresh enquiry is not practical any further.

33. Therefore, this court is of the opinion that ends of justice would meet if the writ petition is allowed and on the quashment of the order of termination and also quashment of the orders passed by the Joint Registrar and Board of Revenue. The petitioners are ordered to be entitled for all consequential benefits

that would flow to the petitioners on the termination order getting set aside/
quashed.

34. The writ petition accordingly stands allowed and disposed of.