

(2006) 11 DEL CK 0094
In the Delhi High Court
Case No : WP (C) No. 4457 of 1998

Vijay Kumar Sharma

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Constitution of India, 1950 — Article 311
Evidence Act, 1872 — Section 25, 26
Industrial Disputes Act, 1947 — Section 10, 33(2)
Penal Code, 1860 (IPC) — Section 419, 420

Citation : (2006) 11 DEL CK 0094

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ashok Bhalla and Kailash Golain, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 10th March, 1998 passed by Central Govt. Industrial Tribunal(in short " the Tribunal"), New Delhi, whereby the reference was answered against the petitioner.

2. Briefly, the facts are that the petitioner was working as a clerk-cum-cashier with the respondent bank. He was found involved in a fraud as an accomplice of one Jagbir Singh Yadav. An account was opened jointly by the petitioner and Jagbir Singh Yadav in Bank of India, Kamla Nagar Branch and an amount of Rs. 10,000/- was transferred to this account by playing fraud with the petitioner bank. Out of sum of Rs. 10,000/-, Rs. 5000/- came into the share of the petitioner, which was deposited by the petitioner in his own account. This fraud was discovered and an FIR was lodged against Jagbir Singh as well as petitioner u/s 420/419/420 of the Indian Penal Code. Learned Metropolitan Magistrate discharged the petitioner and trial started against Jagbir Singh Yadav. Thereafter the bank issued a show cause notice to the petitioner on 22.5.1979, observing

that the petitioner bank had reasons to believe that the petitioner was associated in fraud with Jagbir Singh Yadav. The petitioner admitted his involvement in the fraud during the investigation and made a confessional statement to the police on 15.7.1974. He received half share out of the amount of Rs. 10,000/-. Because of involvement of the petitioner in the fraud, bank has lost confidence in him and considered that it was not fit to retain him in the service of the bank. He was asked to show cause as to why his services be not dispensed with due to loss of confidence.

3. An enquiry was conducted into the charges and after conducting the enquiry, it was found that the charge of loss of confidence was proved and the petitioner's service were terminated vide order dated 26.3.1980. The petitioner preferred an appeal which was also dismissed. The petitioner raised an industrial dispute but the Central Government refused to refer the same to the Industrial Tribunal. The petitioner, against the order of the Central Government of refusing to refer the dispute, went up to Supreme Court. Vide an order dated 14th January, 1985, a consent order was passed and it was directed that the appropriate Government will make a necessary reference u/s 10 of the Act. As a result of this, following dispute was referred for adjudication to the Tribunal:

Whether the action of the management of Punjab National Bank, Kamla Nagar Branch in terminating the services of Shri Vijay Kumar Sharma, Clerk-cum-Cashier w.e.f. 26.3.1980 is justified: If not, to what relief the workman is entitled to?

4. The Industrial Tribunal, after considering pleadings of parties framed the following issues:

1. Whether there was a fair and proper enquiry?

2. As in terms of reference?

5. The Tribunal held that the enquiry was conducted in a fair and proper manner and decided the issue against the petitioner. After deciding the issue, the Tribunal held that the management rightly come to conclusion that the petitioner could not be retained in service as the management had lost faith and confidence in him.

6. The order of the Tribunal is challenged by the petitioner on the ground that the Tribunal did not consider the case on merits and passed order in a mechanical manner. There was gross violation of the principles of natural justice. The petitioner was wrongly dis-allowed the production and examination of certain documents which were crucial to the defense of the petitioner and which would have positively established the innocence of the petitioner. No formal charge sheet was submitted to the petitioner. There was contravention of Section 33(2) (b) of the Industrial Disputes Act. The Tribunal had not given any finding on this issue despite the petitioner having raised the same in statement of claim. The petitioner was discharged by the Court of learned Chief Metropolitan Magistrate

and that itself showed that no case was made out against the petitioner. The enquiry officer wrongly held the petitioner guilty. The entire enquiry was vitiated and was perverse.

7. During arguments, learned Counsel for the petitioner laid emphasis on the plea that the enquiry was not fair and proper since the petitioner was not given the copies of documents mentioned below to enable him to cross examine the witnesses.

i). The T.P.O. with which the amount was transferred by B/o Kamla Nagar to to B/o Civil Line, Delhi.

ii) T.P.O. book containing the above T.P.O.'s counter foil amounting to Rs. 15,677.80p.

iii) A/c opening form of Shri Ram Charan at B/o Civil Lines relating to S.F. A/c opened on 5.7.1974 with a deposit of Rs. 50/-.

iv) A/c opening form of Shri Ram Charan relating to opening of Current A/c at B/o Civil Lines, Delhi which was opened on 9.7.1974.

v) Request letter dated 9.7.1974 of Shri Ram Charan for transferring the balance of S/f account to the newly opened current Account No. 2252.

8. The petitioner's counsel also argued that confessional statement of the petitioner made before the police was taken into account by the enquiry officer. The confessional statement made before police, was an inadmissible document and could not have been taken into account by the enquiry officer. Reliance was placed on cases Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , Union of India (UOI) and Others Vs. R. Reddappa and Another, ; Ajit Jain v. National Insurance Company Limited, (2003) 3 LLJ 558 SC ; Sawai Singh v. State of Rajasthan 1986 SCC 662; Tirlok Nath v. Union of India 1967 SLR (SC) 759; and Smt. Indrani Bai v. UOI 1994 (2) SLR 672.

9. In M. Paul Anthony's case (supra), Supreme Court held that wherein an order of dismissal had already been passed before decision of criminal case and the same witnesses were examined in criminal case by the enquiry officer, but the Court on consideration of entire evidence came to conclusion that no search was conducted and no recovery was made, the findings of the enquiry officer that charges against the petitioner were proved has to be set aside and order of dismissal passed, was liable to be set aside. I consider that this judgment is not applicable in this case. It is settled law that every judgment decides the case on the facts of it. The facts of this case are not similar to the present case. In the present case, the petitioner was discharged by the criminal court. The charges levied against the petitioner by the respondent bank, was of loss of confidence due to his involvement in a fraud along with another person. It is now settled law that the standard of proof in criminal proceedings and in departmental enquiry is not the same. While in criminal proceedings, State is the prosecutor and a person is sought to be punished for a crime as specified in Indian Penal Code or

other penal laws. The Courts have laid down stringent standards of proof because of the involvement of personal liberty of a person and the principle generally followed is let 100 guilty go scot free and let one innocent be not convicted. A person who is convicted for crime has to surrender his personal liberty and has to go to jail. He is punished for crime. In case of departmental enquiry, more especially in case of banks, the purpose of enquiry is to see whether this person was suitable for doing service with the Bank or not. The misconduct for which an employee is charged, may not be a crime under penal laws, but nonetheless, an enquiry can be held for those misconduct and if proved the person can be removed from service. The standard of proof, required in an enquiry, is altogether different and the enquiry officer has only to weigh the probabilities and see if on the scale of probabilities, the misconduct has been proved or not. When a person is dismissed from service, he is deprived of his livelihood from the employer but neither his liberty is at stake nor his life is at stake. He is a free bird after his dismissal. He is always free to seek employment anywhere else. He is free to do business, free to earn his livelihood by adopting any profession or by self-employment. For these reasons, the standard of proof in a domestic enquiry and the in criminal trials are quite different.

10. In *State of Haryana and Another Vs. Rattan Singh*, Supreme Court held as under:

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both side. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding ,even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passengers from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. the simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny.

Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

11. In *Ajit Kumar Nag v. General Manager(PJ), Indian Oil Corporation* (2005) SCC 1020, Supreme Court held that acquittal of a person by criminal court does not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of a criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules.

12. The case of *R. Reddappa*, relied upon by the petitioner is to show that merely because a dismissal is affirmed in appeal, recommendations of an Appellate Authority does not assume the character that the disciplinary enquiry was held in accordance with the principles of natural justice. There is no quarrel about this proposition of law. The petitioner's appeal against the dismissal before the Appellate Authority was rejected. The petitioner's contention that rejection of an appeal does not make an enquiry a valid enquiry, may be true. However, in this case, the Tribunal has considered the validity of enquiry impartially and without being influenced by the order of appeal and the Tribunal has come to conclusion that the enquiry was conducted in fair and proper manner. This judgment does not help the petitioner. In *Ajit Nag's* case (Supra), relied upon by the petitioner, the Supreme Court also held that if an enquiry is vitiated, the order of dismissal, shall also stand vitiated. There is no quarrel about this proposition of law. However, in this case, the Tribunal has not held that the enquiry was vitiated.

13. In *Swai Singh's* case (Supra), the Supreme Court held that if the charges were vague and it was difficult to meet the charges fairly by any accused, evidence adduced was perfunctory and did not at all bring home the guilt of the accused, the absence of challenge before the enquiry officer or before the High Court that the charges were vague would not by itself exonerate the department from bringing home the charges. If there was non-compliance of principles of natural justice, the order of removal will have to be held illegal. There is no quarrel with this proposition of law. The only fact to be seen is whether there was compliance of principles of natural justice, as observed by the Tribunal or not. In *Tirlok Nath's* case (Supra), the Supreme Court held that it is compulsory on the enquiry officer to furnish, before proceedings, copy of charges, grounds on which the charges were based.

14. There is no material brought by the petitioner, on record, to show that he was not made aware of the charges or the circumstances under which the charges were leveled against him. The show cause notice, which was served

upon the petitioner, gives in detail each and every ingredients of the charges leveled against him and why the confidence of the employer was shaken in him. It cannot be said that the show cause notice, which was in the form of a charge sheet, did not specify the charges against him in clear and categorical manner. Neither counsel for the petitioner, during arguments, could show how the show cause notice did not give him sufficient information about the charges against him.

15. The main emphasis of counsel for the petitioner had been about non supply of above documents. It is now settled law that principles of natural justice, cannot be put in a straitjacket formula. In each case, where violations of principles of natural justice are alleged, the courts will have to consider if the alleged violation of principles of natural justice caused any prejudice to the workman and hampered his defense. In *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), the sole question raised before the Supreme Court was whether the disciplinary proceedings taken against the appellant resulting in his dismissal were null and void as the Enquiry Officer allegedly failed to comply with the principles of natural justice. The petitioner therein had alleged that the department proposed to rely upon documents, copies of which were not supplied to him nor was he permitted to inspect the same. In absence of the documents, the appellant was handicapped in cross examination of witnesses. The Supreme Court held:

We have given our anxious consideration to the submissions made on behalf of the appellant and we have further considered the aforesaid authorities referred to by the learned Counsel for the appellant but we do not find any merit in the appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defense must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defense. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if its is not referred to or relied upon by the enquiry officer or the punishing authority

in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the orders. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant, we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

16. It is obvious from the above judgment that non supply of each and every document, does not amount to violation of principles of natural justice. Only material and relevant documents are necessary to be supplied to the delinquent. In the present case, documents mentioned in para 6 above, about which the petitioner has made complaint of non supply, were not relied upon by the management. All documents which were relied upon by the management were supplied to the petitioner. The petitioner made an application for supply of these documents alleging that these documents should be supplied to him because he wanted to take assistance of these documents for cross examination of one witness, He did not specify as to how these documents were necessary for cross examination. Even before the Tribunal, the petitioner failed to show as to how non supply of these documents prejudiced his case or how because of non supply of these documents, he could not cross examine the witnesses. The cross examination of each witness was done by the petitioner.

17. The other arguments of the petitioner's counsel is that these documents though not supplied to him by the enquiry officer, but at the time of appeal, the Appellate Authority considered it necessary to supply these documents. These documents were supplied to him at the appeal stage, while these documents should have been supplied to him at the initial stage. The Appellate Authority, after supply of these documents, should have remanded back the case and asked the enquiry officer to reconduct the enquiry. A perusal of the Appellate Authority's order would show that these documents were not supplied to the petitioner because the Appellate Authority considered these documents as necessary for the defense of the petitioner. After preferring the appeal, when the petitioner was given personal hearing, the petitioner raised this plea that as he was not supplied these documents, so he was not able to present his case in personal hearing. The Appellate Authority, in view of the fact that the petitioner was lingering the appeal, wrote letter to the petitioner that he would be supplied the documents and directed supply of these documents. The Appellate Authority did not observe that these documents were necessary for his defense. The plea of the petitioner that the Appellate Authority considered the documents necessary, is baseless.

18. During arguments before this Court, the petitioner has failed to show how these documents were necessary for the cross examination of the witnesses or what questions which he wanted to ask, could not be asked because of non supply of all these documents or what he wanted to show from these documents. I consider that the petitioner wanted to delay the enquiry proceedings and in order to delay the proceedings, he made an application for supply of these documents which were not at all relevant for the purpose of enquiry nor were relied upon by the management. He sought these documents as a tool to further delay the proceedings and there was no reason to supply these documents to him nor these documents were material. Non supply of these documents did not cause any prejudice to the petitioner in his defense.

19. The other plea of the petitioner is that the enquiry officer relied upon the confessional statement of the petitioner given to the police. This confessional statement was not believed by the learned Metropolitan Magistrate and could not have been relied upon by the enquiry officer. In Commissioner of Police, New Delhi Vs. Narender Singh, this issue had specifically arisen before the Supreme Court and the Supreme Court ruled that the confessional statement made before the police can be used as piece of evidence in the departmental enquiry. The Supreme Court held that the provisions of Evidence Act are not attracted in departmental proceedings, so inadmissibility of a statement made to the police u/s 25 and 26 of the Evidence Act goes and a confessional statement made to the police can be relied upon during an enquiry.

20. It is argued by learned Counsel for the petitioner that the evidence before the enquiry officer was not sufficient to prove charges against the petitioner. It has to be kept in mind that the misconduct alleged against the petitioner was of loss of confidence in the petitioner. This loss of confidence arose because of involvement of the petitioner in playing fraud, jointly with another person. There can be no dispute about the fact that working of the bank is based on trust of its employees. The employees of the bank have to deal with crores of rupees of its clients and a high degree of integrity and honesty is expected from the bank employees. If there is any employee in the bank whose integrity is doubtful and who is involved in a fraud of the kind in which the petitioner was involved, no bank can keep such an employee as a part of its organization. Frauds are not always detected and if detected, are generally detected after a long time, after the bank has been caused loss. It is not only the question of loss of money to the Bank but it is the question of loss of confidence of the clients in the bank. If the depositors and clients of a bank lose confidence in the bank, such a bank cannot survive. Thus it is a question of survival of the bank. It was not necessary, as in this case, that the fraud committed by the petitioner should have been proved beyond reasonable doubt. It was the right of the bank to dismiss the petitioner if, in the enquiry, it was proved that the petitioner was involved in a fraud committed jointly by him and his accomplice, and Bank lost confidence in him due to doubtful integrity, irrespective of the fact that the petitioner had been discharged by the criminal court.

21. In *Karnataka Bank Ltd. v. A.L. Mohan Rao* (2006) 1 LLJ 987, the respondent had committed misconduct of fraud in grant of loan facilities to his relatives and friends. The Supreme Court held that it is not for the courts to interfere in case of such gross misconduct and punishment of removal from service was proper. In 2006 LLR 268 *Chairman-cum-M.D., T.N.C.S. Corporation Ltd. v. K. Meerabai*, the Supreme Court held that wherein employee was found guilty of misappropriation of funds of the Civil Supply Corporation, there was nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal.

22. In view of the above discussion, I consider that the Tribunal rightly held that the enquiry was held in a fair and proper manner and the punishment awarded was not also disproportionate. I find no merits in the writ petition and same is hereby dismissed. No orders as to costs.