(1999) 10 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1598 of 1996 (G)

Yashpal Singh Jat APPELLANT

Vs

Chambal Kshetriya Gramin Bank and Others RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Citation : (1999) 2 MPJR 516

Hon'ble Judges : Shravan Shanker Jha, J

Bench : Single Bench

Advocate : Madhukar Rao, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

Petitioner has filed this petition against the order imposing a major penalty of stopage of three increments with extension of probation by 17 months. The petitioner has challenged the punishment on the ground that no enquiry was conducted according to rules.

Counsel for petitioner submitted that no opportunity was given to the petitioner in the departmental enquiry. The enquiry was conducted behind the back of petitioner and no evidence whatsoever was recorded. The punishment is imposed only on the documents, which were filed in the enquiry behind the back of the petitioner. The documents were neither proved nor copies of the documents were supplied to the petitioner.

Counsel for respondents submitted that the enquiry is conducted as per rules. The petitioner has willfully absented from the proceeding, therefore, enquiry officer proceeded ex parte against him and passed the order. There is no infirmity in the departmental enquiry and the punishment against the petitioner is commensurate with the nature of misconduct committed by the petitioner.

The services of respondent-bank are governed by Chambal Kshetriya Gramin

Bank (Staff) Service Regulations, 1986 (hereinafter referred to ''Staff Service Regulations''). Regulation 30 provides for penalty for misconduct. It provides that no officer or employee shall be subjected to the penalty except by an order in writing signed by the Chairman and no such order shall be passed without the charge being formulated in willing and given to the said officer or employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers and in the later case his defence shall be taken down in writing and read to him. However, in certain circumstances if the disciplinary authority feels that inquiry is not possible, the inquiry may be waived without injustice to employee. However, in every case where all or any of requirements of sub-regulation of Regulation 30 are waived, the reasons for doing so shall be recorded in writing. This regulation also provides that the inquiry and the procedure with the exception of the final order, may be delegated in case the person against whom proceedings are taken is an officer to any officer who is senior to such officer and in the case of an employee to any officer. For purposes of the enquiry, the officer or employee may not engage a legal practitioner. The Regulations do not provide for mode of enquiry.

Learned counsel for respondents submitted that the respondent-bank is following the procedure of enquiry as prescribed by National Bank for Agriculture and Rural Development. The procedure for enquiry is provided in para 10 of the Guidelines to be adopted for disciplinary action in Regional Rural Banks. It is provided that in every case of disciplinary action, where a charge sheet has been issued, it is necessary to have a formal enquiry. There may be cases where the official who is issued charge-sheet may confess his guilt and seek pardon. In these cases where the disciplinary authority is not inclined to grant a pardon as requested, a question arises whether a formal enquiry should be held and if disciplinary authority is satisfied that the admission of the charges on the part of the employee is unconditional and does not plead any extenuating circumstances the disciplinary authority may decide to dispense with a formal enquiry. However, Rider II provides that if the charge-sheeted official makes a representation either before or after commencement of the enquiry proceeding that the enquiry officer is biased or prejudiced against him for reasons indicated in his representation, disciplinary authority may consider the objections and pass appropriate orders. Rider III of para 10 provides that the bank shall appoint an officer to present the bank''s case before the enquiry officer known as Presenting Officer. The Presenting Officer shall endeavour to prove the charge to the satisfaction of the enquiry officer by producing witnesses and other documentary and other evidence in support of the charges. Para (E) provides for supply of copies of relevant documents. It provides that on the request of the charge-sheeted official, he shall be supplied with a copy of the original report on the basis of which charges have been framed against him. Para (F) relates to defence representative, wherein it is provided that the employee may be allowed to be represented by any other employee of the bank or an office-bearer of the trade union of which he is a member. It also provides that generally, the charge-sheeted official is not entitled to be represented by a legal practitioner or an outsider who is not connected with the bank. However, if the presenting officer is a legally trained man including a Law Officer or a Legal Adviser of the bank, the delinquent employee will have a right to be defended by a lawyer notwithstanding the prohibition contained in sub-regulation (3) of Regulation 30 of Staff Service Regulations. In this para itself, conduct of enquiry is also provided. It provides that the enquiry officer shall fix the date, time and venue for oral enquiry and thereafter give notice to both the parties in this regard, if the official does not attend on the appointed date and the case is adjourned then a fresh notice should be sent. Where the employee refuses to accept the notice, the fact should be officially recorded by the official serving the notice and countersigned by person in whose presence such notice is sought to be served. In such cases it is desirable to send the notice to the employee''s address by registered post. The enquiry into the charges against an official should be conducted in his presence and in the presence of his representative, if any. It is only where he refuses to participate, the enquiry can be held ex parte. Where enquiry is conducted, it shall be conducted in presence of following persons, namely, charge-sheeted official, the charge-sheeted official''s representative, if any, the presenting officer, and, any person chosen by the enquiry officer for his assistance. The witnesses should be called one by one for examination when considered necessary.

Sub-para (b) of Part II of para 10 provides that when the enquiry commences, the enquiry officer should record the date and time of the enquiry and the names of the persons present. He should also formally ask the charge-sheeted official his name, designation and the office/department to which he belongs, to establish his identity. The enquiry officer should himself read out the charges to the charge-sheeted employee and if the employee is not familiar with English language, the charge should be explained to him in the local language with which he is familiar. He should ask the official whether he understands the meaning of the charges and whether he admits the charges; then the enquiry officer should explain to all present, the procedure he would be adopting for the enquiry and record this. Even on the admission of the charge-sheeted official of the charges it would be desirable to proceed with the enquiry and establish the charge through evidence unless the charge is minor in nature.

Para (C) of Part II provides that after preliminaries are completed, the enquiry officer shall call upon the presenting officer to present the case in support of the charges. It also provides that the enquiry falls into two categories based on the kind of evidence that will be brought in at the time of enquiry. The charge-sheeted official does not examine any witness or documents on his behalf and the bank also does not examine any witnesses but relies only on documents to establish the. charge. Thus, most important condition in the enquiry is that the presenting officer must inform the authority that he does not wish to examine any witness but relies only on the documents to establish the charge. This statement should be recorded by the enquiry officer and countersigned by the charge-sheeted employee and his representative. Unless this procedure is followed, the enquiry cannot proceed.

In the present case, the petitioner was served with the charge-sheet; thereafter, enquiry was being proceeded in English language. Then the petitioner filed a writ petition before this Court and this Court directed that the enquiry be conducted in Hindi language.

In the present case, there is nothing on record to demonstrate that the presenting officer has stated that he shall proceed with the enquiry by relying upon the documents. It is not recorded by the enquiry officer that the presenting officer is relying upon documentary evidence. In fact the procedure itself was not followed by the authorities. On the first date of hearing, objection was filed by the petitioner. The presenting officer was present on the very first date of hearing. The petitioner asked for appointment of defence assistant and he objected to holding of the enquiry in English. The enquiry officer clarified the charges to the charge-sheeted official and informed that Hindi version will be translated in English and proper care will be taken in this regard. The defence representative was not present, therefore, next date was fixed for hearing on 10.2.1992. On 10.2.92 some objections were levied regarding impartiality of the enquiry officer. The enquiry officer when this application was filed has not forwarded the application to the disciplinary authority for appropriate orders but on 10.2.92 the enquiry officer directed the petitioner to bring his defence representative within one hour. Then the enquiry officer asked the charge-sheeted employee to submit the list of documents and witnesses, if any. At this stage, the petitioner has moved an application that the Chairman cannot be disciplinary authority. The enquiry officer rejected the prayer of the petitioner. Then presenting officer started questioning the petitioner and questions and answers were recorded by the enquiry officer. On 12.2.92 the petitioner was not present. The presenting officer requested enquiry officer to close the enquiry and ex parte order be passed. The enquiry was fixed for 26.2.92 with a notice to the petitioner. On 26.2.92 the petitioner was not present in the enquiry. The enquiry officer received an application that the petitioner is not feeling well and prayed for adjournment. The enquiry officer was of the opinion that the petitioner is intentionally avoiding the enquiry and direction was given to petitioner to furnish medical certificate and case was fixed for 17.3.92. On 17.3.92 the record demonstrates that the petitioner has furnished medical certificate dated 21.2.92, signed by authorised medical officer. The enquiry could not be conducted on 17.3.92, as the enquiry officer was out of station and it was postponed to 7.4.92. On 7.4.92 the medical certificate presented by the petitioner were considered. Again a prayer was made that the enquiry be conducted in Hindi only. It was ordered by the enquiry officer that they are initiating enquiry in Hindi and Hindi version will be translated in English. After going through the order passed, a prayer was made to appoint Deepak Shrikhande as defence assistant, an employee of Shivpuri-Guna Regional Rural Bank, which was not accepted by the enquiry officer. The proceedings then continued for 8.4.92. On 8.4.92 the petitioner was absent and the enquiry officer proceeded ex parte. On this date, the presenting officer has presented some documents and no witnesses were produced by the presenting officer and on the basis of these documents enquiry has been concluded and the enquiry officer has found the petitioner guilty of the charges.

Considering the facts of the case and procedure laid down, it is apparent that the enquiry was not conducted according to law. The enquiry was conducted by questioning the petitioner only and thereafter by producing the documents. No documents were confronted to the petitioner. Since the documents were presented subsequently after framing of the charges and there is nothing on record to show that the copies of documents were supplied to the petitioner, there is no material on record to assume that the documents before the enquiry officer were proved. There is nothing on record to show that the presenting officer has submitted that he would not like to produce any evidence but he is relying upon the documents. In the absence of such statement, the enquiry is vitiated. Principles of natural justice were not followed. There is no material on record to hold that the charges against the petitioner were proved. Unless the charges are proved after following appropriate procedure laid down, no punishment can be imposed. Unless the presenting officer has categorically stated that he is relying upon the documents and this statement was made on the very first date of hearing after preliminaries were over, no opportunity could be afforded to presenting officer to produce documents at the later stage. Thus, the enquiry as conducted itself is vitiated. Therefore, punishment on such enquiry report cannot be maintained. The order imposing penalty by disciplinary authority and appellate authority is quashed. Even otherwise, without examining the evidence in support of charges, examination of petitioner at the begining of the enquiry is contrary to law. Thus, the enquiry is vitiated.

In the result, orders of penalty imposed upon the petitioner (Annexures P/13 to P/17) are quashed. The petitioner be reinstated in service with all consequential benefits. The petition succeeds and is allowed without any order as to costs.

