

(2024) 02 GAU CK 0015

Gauhati High Court

Case No: Writ Petition (Civil) No. 4823 Of 2012

Santi Ram Nath

APPELLANT

Vs

Assam Co-Operative Apex Bank
Ltd. And Ors

RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Bank Staff Rules, 1980 - Rule 46(a), 46(b)

Hon'ble Judges: Arun Dev Choudhury, J

Bench: Single Bench

Advocate: R M Das, P N Goswami, S Kataki, Jk Goswami

Judgement

1. Heard Mr. S Kataki, learned counsel for the petitioner. Also heard Mr. JK Goswami, learned standing counsel for the Assam Co-operative Bank Limited.
2. The writ petition has been filed assailing an order dated 13.06.2012, whereby a penalty of stoppage of two years annual increment with cumulative effect was imposed upon the petitioner with a further punishment to treat the period of suspension of the petitioner without duty, thereby restricting the pay and allowances of the said period to the subsistence allowance already drawn by the petitioner. Such punishment was imposed upon the petitioner after a departmental enquiry.
3. The basic ground for challenge of such action on the part of the employer of the petitioner amongst others, are the violation of principles of natural justice and fair play inasmuch as it is the case of the petitioner that the petitioner was not allowed to cross-examine the management witnesses and that it is a case of no evidence and therefore the decision is perverse.
4. The brief facts leading to the filing of this writ petition can be summarized as follows:

I. The petitioner while was rendering his service as Subordinate Engineer, one Manish Choudhury, General Manager, Accounts and Audit Branch of the Bank lodged a complaint against the petitioner on 14.03.2011 alleging that while some of the employees of printing and stationary section of the Account and Audit department were engaged in official work on 13.03.2011, there were some altercation between the complainant and the petitioner and the petitioner physically assaulted the complainant Sri Manish Choudhury.

II. On the basis of such a complaint and after recording statements of one Sri Kanak Lal Thakuria and Md. Mozammil Hoque, both employees of accounts and audit department, who were engaged in official work on 13.03.2011 and also after recording statement of one Sri Akan Barman, Guard of the Bank, the petitioner was placed under suspension under Rule 43(a)(i) of the Staff Rules of the Bank pending drawal of departmental proceeding.

III. Thereafter, a departmental proceeding was initiated by issuing a show cause under Rule 46 (b) of the Bank Staff Rules, 1980 by a communication dated 23.03.2011, asking the petitioner why penalty prescribed under Rule 46(a) thereof should not be inflicted upon the petitioner for committing gross insubordination and acting in a manner detrimental to the interest of the bank.

IV. An article of charge was also framed. Along with the show cause, a statement of allegation was also given to the petitioner. The article of charge is quoted hereinbelow:

"Article of Charge No. 1: That as detailed in the Statement of Allegation of charge No. 1 you have physically assaulted Sri Manish Choudhury, General Manager, Accts. & Audit Deptt. On 13.03.2011, while he was attending to official duties at the Department along with Sri Kanak Lal Thakuria, S.A. and Sri Mozammil Hoque, Asst. Cashier attached to Printing & Stationery Section in connection with works related to annual closing of Bank A/C. The laborers of the Contractor entrusted for renovation and printing of H.O. Building made the 4th floor i.e. Accts. & Audit Deptt. Alongwith the members of the staff as in above and the Guard of the Bank Sri Akan Barman were witness to the incident and also witness to your unruly and indecent behavior which tantamount to Criminal Offense besides unbecoming of official behavior and serious breach of office discipline.

You are, therefore, charged with committing gross insubordination, breach of rules, office decorum, misbehavior to Senior Officer of the Bank and culpable misconduct amounting to criminal offence."

(emphasis supplied by the Court)

V. Thereafter, the petitioner filed a written reply on 16.04.2021 denying the charges. The petitioner took a stand that being a Subordinate Engineer he was directed by the

General Manager to renovate and paint the office of the General Manager by an order dated 02.03.2011 and he was directed to complete the work within thirty days.

However, the General Manager intervened with the execution of the work, thus, exceeded his jurisdiction.

It was further case that the General Manager, Mr. Manish Choudhury even before completion of the work asked the laborers to clean the floor and table.

A stand was also taken that allegations are not correct and in fact there was some altercation with the complainant General Manager.

A further stand was taken that it cannot be said to be insubordination inasmuch as without completion of the work, the petitioner could not have directed the laborers to clean the dust etc. and the General Manager without verification whether cleaning is completed or not has instructed the labourers to clean the floor and table.

5. Mr. Kataki, learned Counsel for the petitioner argues:

I. Though departmental proceedings were held on 17.08.2011, 16.09.2011 and 04.11.2011, the enquiry was conducted most arbitrarily and in a high handed manner and in violation of the principle of natural justice.

II. The presenting officer was not allowed to cross-examine the witnesses of the bank instead the enquiry officer himself cross-examined the presenting officer of the bank and witnesses produced by him to bring on record the false allegation leveled against the petitioner. However, as the presenting officer was not allowed to be cross examined by the petitioner, though the said officer was examined as witness by the Enquiry officer. Thus, according to the petitioner, the enquiry officer acted in a bias and a partisan manner.

III. The enquiry officer did not record the entire statement made by the petitioner and only recorded those parts of the statements, which suits and favour the case of the management of the bank.

IV. The General Manager, Accounts and Audit Branch on the basis of whose complaint the enquiry was initiated was not even examined. No medical evidence was produced in support of the alleged physical assault by the petitioner upon the said General Manager.

V. It is also alleged that no witnesses were produced to prove the documents, rather the presenting officer himself exhibited the documents and therefore, such procedure is a nullity.

VI. The entire decision is perverse in as much as neither the alleged victim of physical assault was examined nor any eye witness was examined and the witnesses examined in the domestic enquiry deposed that General Manager told them that the petitioner assaulted the General Manager. However, they were not eyewitnesses. Therefore, when the basic allegation of physical assault is not proved, the petitioner could not have imposed the penalty upon him.

VII. The petitioner was neither served with enquiry report nor any second show cause notice was served upon him by the respondent asking him to show cause as to why the punishment proposed should not be inflicted upon the petitioner.

VIII. Accordingly, the action of the respondents inflicting the punishment is arbitrary, illegal, unfair, unreasonable and violative of Article 14 and 21 of the Constitution of India.

6. The respondent bank has resisted the writ petition by filing an affidavit-in-opposition. The record pertaining to the departmental proceeding has also been produced.

7. The respondents denied the allegations made by the writ petitioner and specifically asserted that the petitioner was allowed to cross-examine the presenting officer as well as witnesses during the enquiry process on 17.08.2011, 16.09.2011 and 04.11.2011. It was further asserted that the documents and exhibits were proved through the witnesses.

8. Regarding non-supply of the enquiry report and non-issuance of 2nd show cause notice, the respondents has not specifically denied such averments. However, a statement has been made that the respondents followed the rule in regards to supply of enquiry report. However, no specific averments have been made that the enquiry report was furnished to the petitioner or that a second show cause notice was issued to the petitioner and nothing has also been brought on record to show that under the Staff Rules there is no requirement of furnishing of the enquiry report and there is no requirement for issuance of second show cause notice under the Bank Staff Rules.

9. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Meticulously perused the pleadings of the parties as well as the records of the departmental proceeding.

10. There is no dispute as regards filing of complaint alleging physical assault by the petitioner upon the General Manager, Account and Audit branch of the bank. There is also no dispute as regards issuance of the 1st show cause notice, the issuance of charge memo and statement of imputation and appointment of Enquiry Officer and conduct of the departmental proceeding by the Enquiry Officer.

11. Law is by now well settled that the Constitutional Court while exercising its jurisdiction of judicial review under Article 226 of the Constitution of India would not generally interfere with the finding of fact arrived at in the departmental proceeding except in cases of mala-fide. The Court may also interfere with the decision, when it is perverse i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could arrive at those findings. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

12. The Constitutional Court can also exercise power of judicial review when there is violation of procedure mandated for conduct of such departmental proceedings resulting in violation of the principle of natural justice. It is correct that the power of judicial review is meant to ensure that individuals receive fair treatment, however, such power of judicial review is not to judge the conclusion arrived at by the authority and to verify whether the same is correct or not.

13. Thus, the power of judicial review in the matters of disciplinary authority is circumscribed by limit of correcting error of law or procedural error leading to manifest injustice or violation of principle of natural justice and it is not akin to adjudication of a case on merit as an appellate authority inasmuch as the disciplinary authority is the sole judge of fact. Judicial review by the Constitutional Court is an evaluation of the decision making process and not the merit of the decision itself. It is to look into and ensure fairness in treatment and not to ensure fairness in conclusion.

14. It is also well settled that strict rules of evidence are not applicable in a departmental proceeding. However, the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee.

15. It is equally well settled that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry/ proceeding.

16. In the case in hand, the charge-sheet was served upon the petitioner alleging assault upon a Senior i.e. the General Manager, Accounts and Audit Branch and such proceeding was initiated on the basis of a complaint filed by the victim General Manager and such conduct, on the part of the petitioner was treated as unruly and indecent behavior, unbecoming of official behavior and serious breach of official discipline resulting in gross insubordination, breach of rules, office decorum, misbehavior to senior officer etc.

17. Admittedly, the complainant on the basis of whose complaint, the entire proceeding was initiated and aforesaid charge was framed, was not even examined to

substantiate such allegation. The witnesses also deposed that the assault was reported by the General Manager to them. That being the position, it can safely be concluded that there is no evidence to support the foundation of the charge i.e. the physical assault.

18. It is seen from the enquiry report and enquiry proceeding that the documents were exhibited and produced by the P.O. himself. No witness was examined to prove the said document. The complaint filed by the General Manager was also exhibited by the presenting officer. The complaint filed by the General Manager is the fundamental document on the basis of which the departmental proceeding was initiated. Such a document was produced by the P.O. during enquiry proceedings and above all the complainant himself was not even examined not to say that such a complaint was proved. Though a strict rule of evidence is not applicable in a departmental proceeding, however the basic minimum of proof of such document or the allegation is required, more particularly in a case, where the allegation is based on assault of a Senior officer. Thus, there is neither any direct evidence of the complainant to reach the conclusion of assault nor there was any indirect evidence.

19. If the evidences of the witnesses are considered on its face value, none of the witnesses has stated to have seen the assault. Such evidence, while acting reasonably and looking at it objectively, cannot lead to a conclusion that has been arrived at by the authorities inasmuch as no evidence of assault has been brought on record except that the complainant was produced by the P.O. during enquiry. Therefore, such a finding is nothing but a perverse finding.

20. Yet another aspect of the matter is that the procedure adopted in the departmental proceeding cannot also be said to be a fair proceeding inasmuch as the proceeding of the enquiry clearly reveals that statement of delinquent was recorded before the examination of the witnesses in support of the charge and such course of action of disciplinary proceeding cannot be treated as fair, more particularly for the reason that the delinquent was compelled to disclose his defence before examination of the management witnesses and their cross-examination.

21. In view of the aforesaid, this court is of the unhesitant view that the employer has not only failed to adopt due procedure but the finding arrived at by the Enquiry Officer is based on no evidence. Accordingly, the punishment inflicted upon the petitioner is hereby set aside. The petitioner be given all consequential benefits.

22. As this matter is pending since 2012 and the petitioner and the complainant had in the meantime retired from the service and the complainant himself had not come forward to depose in the departmental proceeding, this court thinks it fit not to give a liberty to the respondent bank to initiate de-novo proceedings.

23. Records be returned back to Mr. JK Goswami, learned standing counsel, Assam Co-operative Bank Limited.