

(2009) 01 CAL CK 0004

Calcutta High Court

Case No: F.M.A. No. 2461 of 2004

Jagadish Prasad Awasthi

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

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**Date of Decision:** Jan. 13, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2009) 121 FLR 677 : (2009) 3 LLJ 447**Hon'ble Judges:** Prasenjit Mandal, J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Advocate:** Ashok Kumar Banerjee and Sutapa Sanyal, for the Appellant; Jaharlal Dey, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Ashim Kumar Banerjee, J.

The Judgment of the Court was delivered by:

1. Shri Jagadish Prasad Awasthi while working as the Branch Manager of Allahabad Bank faced a disciplinary proceeding, inter alia, on the charges mentioned in the charge sheet. The Bank initially issued a show cause notice to him on January 9, 1984, inter alia, asking him to show-cause why appropriate action would not be taken for the irregularities and/or indiscipline mentioned in the said show-cause notice committed during his tenure as Manager of Tejpur Branch between July 3, 1981 and May 31, 1983. The said notice was issued by one R.S. Sharma, the then Regional Manager of the Bank. The Bank, however, did not proceed further on the basis of the said show-cause notice contemporaneously. After about two years on March 25, 1986 while Shri Awasthi was working as an officer of the Bank posted at Guwahati Branch he was charge sheeted for his omission and/or commission of indiscipline and/or irregular activities while working as a Manager of the Bank at Tejpur during the period August 7, 1981 and May 31, 1983. The show-cause notice is

appearing at pages 88-90 of the paper book whereas the chargesheet is appearing at pages 91-94 thereof. On a comparative study of both the notices it would appear that some of the charges were modified whereas some were dropped in the charge sheet.

2. On a plain reading of the charge sheet it appears that the incumbent was charged for his lapses while dealing with the accounts of several constituents of the Bank. He also remained absent unauthorisedly on September 1, 1982 and September 2, 1982. It subsequently revealed that on those two days he remained absent at the branch without any appropriate authority. He, however, handed over the key to one of the staff of the Bank. As a result, the Bank could open on those two days. It, however, could not function properly on those days in absence of a Manager and/or any officer having appropriate authority to act as Manager. He proceeded on leave on June 1, 1983 by submitting a leave application and kept himself absent till January 29, 1984 although the Regional Office had informed him on November 7, 1983 that no further leave could be granted to him. He again absented himself from duty from August 15, 1984 till January 25, 1985 and such leave could not be regularised in absence of any available leave to his credit. He granted loan to various transporters without having any authority and without informing the superior authority. It later on transpired that in some of the cases he informed the superior authority at a later stage while in some cases he did not. He was also charged for removing documents from a bank file and later on returned those to the Bank. He made trunk calls involving an expenses of Rs. 1664.00 without making any corresponding entry in the Bank record.

3. Awasthi gave a detailed reply to the charge sheet appearing at pages 95-100 of the Paper Book.

4. Awasthi was afforded adequate opportunity to defend himself in the said proceeding. He, however, made complain that the list of witnesses as well as list of documents relied on by the prosecution were not contemporaneously given to him. Such allegation, however, did not find support from the records of the proceeding as would appear from the enquiry report.

5. The Enquiry Officer gave a detailed enquiry report appearing at pages 101-121 of the Paper Book. Out of eight charges six charges were found partly proved and two charges were found to be fully proved. The disciplinary authority being the Assistant General Manager, Mr. P.N. Rattan by his reasoned order dated August 25, 1987 appearing at pages 122-125 of the Paper Book imposed punishment of compulsory retirement. Awasthi preferred an appeal. The appellate authority dismissed his appeal by a reasoned order appearing at pages 149-153 of the Paper Book. Awasthi approached the learned Single Judge by filing a writ petition being C.O. No. 13398(W) of 1988. The learned Single Judge by judgment and order dated November 9, 2000 appearing at pages 217-231 of the Paper Book dismissed his writ application. Hence, this appeal.

6. Mr. Ashok Kumar Banerjee, learned Senior Counsel being ably assisted by Ms. Sutapa Sanyal, learned Counsel appearing in support of the appeal contended as follows:

(i) Alleged commission of offence was for the period of 1981-1983. The authority issued a show-cause notice in 1984 and then did not proceed any further. Hence, the subsequent charge sheet issued in 1986 was stale and could not have been proceeded with.

(ii) There had been inordinate delay in proceeding as against Awasthi and the proceeding was liable to be quashed on the said ground alone.

(iii) Awasthi had an unblemished track record until Mr. R.K. Sharma, his superior authority became a versed to him. Such situation continued when he was replaced by Mr. Rattan. The entire proceeding was thus vitiated by the element of bias and mala fide on the part of Mr. Sharma and Mr. Rattan.

(iv) The charges were so vague Awasthi could not get adequate opportunity to deal with them properly in absence of supporting documents being furnished to him contemporaneously.

(v) Assuming but not admitting that the offences were proved and the authority was entitled to impose punishment order of compulsory retirement could not be imposed as punishment.

Alternatively, the offences so committed and proved, did not deserve any major punishment of compulsory retirement which in effect had taken away nine years of service left to Awasthi.

7. In support of his contention Mr. Banerjee cited the following decisions:

(i) [Surath Chandra Chakrabarty Vs. State of West Bengal,](#)

(ii) [Sawai Singh Vs. State of Rajasthan,](#)

(iii) [State of Gujarat Vs. Umedbhai M. Patel,](#)

8. While elaborating his submissions Mr. Banerjee took us to each and every finding of the Enquiry Officer on the specific charges. Mr. Banerjee contended that at best the offences so proved could be termed as negligence or lapses on the part of Awasthi which could not attract the major punishment of compulsory retirement amounting to taking away of nine years service left to him. He contended that the punishment so awarded was shocking and disproportionate to the offences having been proved and/or partly proved.

9. On the last charge of removal of documents Mr. Banerjee contended that those two documents related to a file where the entire loan had been paid off by the borrower and alleged removal of such document could not be detrimental and/or prejudicial to the interest of the Bank.

10. On the issue of non-furnishing of documents Mr. Banerjee took us to the appeal filed by Mr. Awasthi appearing at pages 128-148 of the Paper Book to show that each and every finding of the Enquiry Officer was adequately explained by Mr. Awasthi and the appellate authority was obliged to deal with those assertion made by Mr. Awasthi in his appeal.

11. Mr. Jaharlal Dey, learned Counsel appearing for the respondent/Bank while opposing the appeal contended that the scope of judicial review was limited in a proceeding under Article 226 of the Constitution of India. Mr. Dey contended that the documents were duly supplied as found by the Enquiry Officer so recorded in the enquiry report. Each and every aspect raised by Mr. Awasthi was dealt with by the appellate authority as well as by the learned Single Judge in their respective orders. The finding of fact by the Enquiry Officer was not available for judicial review, even though the learned Single Judge dealt with each and every aspect and such decision of His Lordship did not call for any interference by the Court of Appeal.

12. In support of his contention Mr. Dey cited the following decisions:

- (i) [Bank of India and Another Vs. Degala Suryanarayana,](#)
- (ii) [R.S. Saini Vs. State of Punjab and Others,](#)
- (iii) [State of West Bengal and Others Vs. Nripendra Nath Biswas and Others,](#)

13. In reply Ms. Sanyal distinguished the decisions cited by Mr. Dey. Ms. Sanyal asserted that compulsory retirement could not be a punitive measure and on the said ground alone the order of punishment should be quashed.

14. We have considered the rival contentions. When a final order passed in a disciplinary proceedings is under challenge in an application under Article 226 the scope of judicial review is limited. The Court is only to see whether the delinquent was given sufficient opportunity to defend himself in the said proceeding and whether the authority followed the appropriate service rules and/or regulations while proceeding against him in the proceeding culminating in the final order. Mere insufficiency of reasons cannot be a subject-matter of judicial review. Similarly, the finding of the Enquiry Officer is also not open to challenge before a Writ Court if decision s based on factual matrix.

15. Let us deal with the cases cited by the parties.

(i) [Sawai Singh Vs. State of Rajasthan,](#) : In the case of Sawai Singh (supra) the Apex Court held that when the charges were vague the fact that the delinquent participated in the enquiry would not exonerate the prosecution to bring home the charges.

(ii) [State of Gujarat Vs. Umedbhai M. Patel,](#) : In the case of State of Gujarat (supra) the Apex Court held that compulsory retirement could not be imposed as a punitive

measure. In the said case the incumbent was facing a disciplinary proceeding. Before the said proceeding was completed the authority passed an order of compulsory retirement that was quashed by the Apex Court observing that such punitive measure could not be taken. In the instant case the delinquent was proceeded with departmentally and in the final order he was imposed a punishment of compulsory retirement. We are unable to find out as to how this judgment can support the case of the appellant.

(iii) [R.S. Saini Vs. State of Punjab and Others](#), : In the case of R.S. Saini (supra) the Apex Court in paragraph 19 of the said decision observed as follows :

"We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within the limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the inquiring authority cannot be faulted with on any of the grounds stated above, we are unable to agree with the appellant. For the reasons stated above, this appeal fails and is hereby dismissed. No costs."

(iv) [Bank of India and Another Vs. Degala Suryanarayana](#), : In case of Bank of India & Anr. (supra) the Apex Court observed as follows:

"Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity 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 have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India vs. H.C. Goel the Constitution Bench has held-

"The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not." "

16. In the instant case the learned Single Judge dealt with each and every charge and the assertions made by the incumbent. The learned Single Judge ultimately held that the delinquent was properly dealt with. His allegation that he was not afforded adequate opportunity could not be supported by any evidence. His Lordship held that the case made out by the incumbent was not as such that he was afforded "no opportunity", at best the incumbent could argue that he was not given any "reasonable opportunity". In this regard we may refer to page 137 of the Paper Book to quote a sentence from the appeal of the incumbent, "This has created a serious lacuna in the enquiry and there is failure of justice and I have not been afforded a reasonable opportunity." When an incumbent complained that he was not afforded reasonable opportunity such plea was to be judged with the "touchstone of prejudice" as observed by the learned Single Judge taking a cue from the Apex Court decision in the case of [State Bank of Patiala and others Vs. S.K. Sharma](#). We do not have any reason to disagree with His Lordship on that score.

17. Mr. Banerjee while distinguishing the Apex Court decision in the case of State Bank of Patiala & Ors. (supra) contended that the said decision was rendered by a two Judge-Bench which did not consider a three-Judge Bench decision in the case of Surath Chandra Chakravarty (supra). In paragraph 4 of the said judgment three Judge Bench of the Apex Court dealt with a situation where charges were vague and no statement of allegation was given to the delinquent. The Apex Court observed that whole object of furnishing the statement of allegation was to give all necessary particulars and details so that the incumbent gets a reasonable opportunity to put up his defence. Considering such back drop Their Lordships allowed the appeal of the incumbent. We are unable to find out how State of Patiala (supra) could be in conflict with Surath Chandra Chakravarty (supra) when the Apex Court observed that when there was allegation of lack of reasonable opportunity the same should be judged with the "touchstone of prejudice".

18. The problem can be viewed from another angle. If we summarise eight charges we would find as follows:

- (i) Latches and/or negligence while dealing with the constituents.
- (ii) Unauthorised absence while working as a Branch Manager.
- (iii) Removal of documents from the bank file.
- (iv) Acting without any authority and that too, without informing the Superior Authority about such act.

19. The factum of unauthorised absence is proved by Awasthi's reply to the charge sheet where he had admitted such charge. In any event we do not find any denial on that score by Awasthi. Mr. Banerjee tried to put emphasis on the fact that the Bank charged Awasthi that due to his absence the Bank could not open on September 1, 1982 and September 2, 1982. In the enquiry it was found that he gave the key to one

of the staff who could open the branch. However, the branch could not function normally in absence of a Branch Manager or any officer having any appropriate authority to officiate as such. Hence, the very fact that the Bank could not function properly on those two days could not be controverted. We cannot lose sight of the fact that Awasthi was not a mere clerk or a Class-IV staff working in the Bank. He was the head of the branch having the keys of the vault. The vault could not be opened on those two days in his absence. This is a serious lapse on the part of the incumbent. This charge itself deserves a major punishment.

20. On the issue of removal of documents we are unable to accept Mr. Banerjee's contention that those two documents were irrelevant as the borrower had already repaid the loan. Being a responsible officer he had no business to remove any document from the Bank file. We have carefully perused his reply to the charge sheet as well as his appeal. We do not find any denial on that score. What he could establish as we find from his assertion, the prosecution witnesses did not see him removing those documents. Assuming he was correct on that score the fact that the document were found missing and were later on handed over by the incumbent to the staff of the branch itself proved that he was illegally possessing those documents. This is a serious and grave charge brought against the branch head of the Bank and deserves a major punishment.

21. Hence, even leaving aside the other charges we feel that the above two charges are sufficient enough to impose major penalty. In any event, as observed by us earlier, the learned Judge despite the fact that the scope of judicial review was limited dealt with each and every aspect and came to an ultimate finding that no irregularity or illegality was committed by the Bank while conducting the disciplinary proceedings. We do not find any reason for disagreement on that score. Hence, we do not find any scope to interfere with His Lordship's well versed judgment.

22. The appeal thus fails and is hereby dismissed.

23. There would be no order as to costs.

24. Urgent Xerox certified copy would be given to the parties, if applied for.

Prasenjit MandaI, J.