(2013) 09 CAL CK 0049

Calcutta High Court

Case No: Writ Petition No. 3096 (W) of 2008

Pranab Kumar Bhuyan	APPELLANT
Vs	
United Bank of India and Others	RESPONDENT

Date of Decision: Sept. 19, 2013

Citation: (2013) 4 CALLT 428 : (2014) 140 FLR 19 : (2014) LLR 249

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Kashi Kanta Moitra and Mr. Arup Kumar Lahiri, for the Appellant; R.N. Majumder, for the Respondent

Judgement

Sambuddha Chakrabarti, J.

The petitioner has challenged two orders annexed to the writ petition as annexures P-7 and P-9 respectively and has prayed for a writ in the nature of Mandamus commanding the respondents to cancel, withdraw and rescind the said two orders and cancel the charge-sheet and the report of the enquiring authority and for other relief''s. The case of the petitioner inter alia is that he joined the United Bank of India, the respondent No. 1 herein, in the year 1977. Subsequently he was promoted to the senior management cadre and was posted at various places commensurate with his status and designation. While functioning as the Deputy General Manager and Chief Regional Manager of the North India of the respondent Bank the petitioner was placed under suspension on and with effect from March 10, 2006. Subsequently, a charge sheet was issued to which the petitioner had given a reply.

2. This was followed by a departmental enquiry. The enquiry officer submitted his report to the disciplinary authority and the disciplinary authority in turn had furnished a copy of the said report to the petitioner on February 21, 2007. The petitioner had given his observations on this report criticizing the enquiring authority''s finding holding the petitioner guilty of the charges.

3. On August 18, 2007 the respondent No. 2 herein had issued an order dismissing the petitioner from employment. The petitioner thereafter filed a departmental appeal and by order dated November 21, 2007 the appellate authority dismissed the appeal affirming the order passed by the disciplinary authority. By this writ petition the petitioner has challenged the order of both the disciplinary as well as the appellate authority.

4. The principal point of challenge thrown by the petitioner is that the charges are not maintainable and the allegations have been brought in with a closed mind. The petitioner has assailed the allegations against him that there was lack of supervision on his part. Relying on a decision of this Court the petitioner has argued that lack of supervision by itself cannot be a misconduct. A more pointed attack of the petitioner is that although he was charged with lack of supervision regarding two branches, the managers of those branches were cited as witnesses and their deposition was relied upon both by the disciplinary as well as by the appellate authority. This was done overruling the petitioner''s objection about the admissibility of their evidence.

5. According to the petitioner the authorities had misplaced the onus on the petitioner to disprove the charges brought against him. And while forwarding a copy of the report to the petitioner the authority did not mention the proposed punishment to him and thereby have violated the principles of natural justice.

6. The petitioner has further challenged the enquiry report as not being a reasoned one and without any finding that he was guilty of the charges brought against him. In fact a very fundamental point of the petitioner is that the charges on the face of it did not constitute any misconduct.

7. The respondents had sought to justify their acts on the ground that the petitioner during his tenure as the Deputy General Manager and Chief Regional Manager of the concerned Bank committed certain grave mistakes for which he had been issued a charge-sheet. The substance of the charge against the petitioner was that he had failed to take all possible steps to ensure and protect the interest of the respondent Bank and acted in derogation of Regulation 3(1) and 3(3) read with Regulation 24 of ''United Bank of India Officer Employees'' (Conduct) Regulations, 1976 (the Regulations, for short) in that the petitioner had committed acts of several irregularities. In their affidavit-in-opposition the respondents have given a list of the acts alleged to have been committed by him. After considering all the material facts and the findings of the enquiring authority the disciplinary authority concurred in the finding of the enquiring authority and considering the gravity of the misconduct committed by the petitioner decided to impose major penalty of ''dismissal'' which shall ordinarily be ''a disqualification for future employment''. The appellate authority also by a reasoned order confirmed the punishment imposed by the disciplinary authority.

8. The question that principally cropped up for consideration was whether the petitioner was given sufficient opportunity to defend himself and whether there has been any violation of the principles of natural justice in the conduct of the disciplinary proceeding.

9. The order of the disciplinary authority is quite a detailed one and the order of the appellate authority is also specific and detailed. The appellate authority had discussed the factual context of the case, the findings of the enquiring authority, the submissions made by the writ petitioner as well as the points taken in the appeal and has discussed each one of them by giving its independent observations. It is a settled principle of law that the writ Court cannot sit in appeal over the factual finding arrived at by the disciplinary authority or the appellate authority. This is all the more so when there is a concurrent finding of fact between the appellate authority as well as the disciplinary authority. In the case of Lalit Popli Vs. Canara Bank and Others, the Supreme Court reiterated the principles of limited scope of judicial review and held that:

While exercising jurisdiction under Article 226 of the Constitution of India the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

10. Therefore, the findings of the authorities cannot be questioned by the petitioner unless the same suffers from perversity or comes within the well-defined parameters of judicial interference in a case of departmental enquiry followed by a punishment by the disciplinary authority.

11. The petitioner further complains that the charge-sheet reveals a closed mind as it was alleged against him that he had failed to maintain adequate control, supervision and monitoring on the growth of the advance and sanction of loans. It was further alleged that on account of the lapses and irregularities committed by the petitioner the Bank had been exposed to a huge financial loss. Mr. Moitra, learned Senior Counsel for the petitioner had submitted that this will at once make it clear that the disciplinary authority had proceeded with a closed mind and this vitiated the entire proceeding. In support of his contention the petitioner has relied on the case of In Re: Subrata Bhattacharya v. Bharat Process & Mechanical Engineers and Others, reported in (1984) 2 CHN 185. In that case the petitioner who was an employee of a company was served with a charge sheet the propriety of which was challenged in the writ petition contending that the same was issued with a closed mind as the authorities themselves had come to a finding about the guilt of the petitioner and the charge-sheet only recorded the same. In that case the charge-sheet after reciting the facts alleged against the petitioner recorded.

By your above mentioned acts and commission you have committed fraud, dishonesty, cheating, breach of trust and misappropriation of Company''s money.

12. A learned single judge of this Court considering the language used in the charge-sheet held that the officer issuing the same had a closed mind at the stage of even framing the charge. The insertion of the paragraph quoted above, the learned single judge held:

.....unmistakably goes to show the state of mind prevalent at the time of the issuance of the charge sheet..... The language used in the chargesheet cannot simpliciter be termed to be unhappily worded. It shows a state of mind, which is opposed to justice, equity and/airplay.

13. And the Court quashed the charge-sheet.

14. It cannot be gainsaid that there is sufficient similarity in the language employed in the two charge-sheets, the that referred to in the judgment relied on as well as in the present case. From this the argument of the petitioner that from the beginning the authorities had proceeded with a closed mind may not be out of place.

15. But that would have been a valid submission if initiated at the stage of issuing the charge-sheet. But where after the enquiry is over and after the evidence was led the enquiry officer has come to a finding of fact, the alleged mind of the employer should not be considered as a factor rendering the charge-sheet liable to be quashed. So, therefore, the mind said to be reflected through the language employed in the charge-sheet should not be treated as an element vitiating the entire disciplinary proceeding. The report of the enquiry officer is a very detailed one. He has dealt with the allegations against the petitioner, considered the documentary and oral statements, analyzed the evidence and has come to a finding. Each and every charge, the defence case along with the prosecution arguments have been separately dealt with before he arrived at his finding on the same and came to the conclusion that the petitioner was negligent in monitoring the advance portfolio particularly of a certain branch and did not apply his prudence and diligence in following up the irregularities and advances. It was also mentioned that as head of the region he could not control the sanction of irregular loans from both the branches and all the eight accounts of the two branches mentioned therein have turned NPA and for the lapses on the part of the petitioner the Bank was exposed to a likely financial loss of Rs. 33.18 crores as on March 31, 2006 along with interest thereon.

16. The disciplinary authority after considering the petitioner''s representation and submissions on the enquiry report by an order dated August 18, 2007 by a detailed consideration of the charges against the petitioner as well as the defence made by him imposed "major penalty of dismissal which shall ordinarily be a disqualification for future employment" in terms of the relevant rules of the bank''s regulation.

17. The petitioner filed an appeal from the said order of the disciplinary authority to the appellate authority and the Chairman and Managing Director as the appellate authority again by a very detailed order rejected the said appeal.

18. Mr. Kashi Kanta Moitra, the learned Senior Counsel for the petitioner, has argued that two other persons who were charged with having committed irregular activities in their respective branches of the bank were proceeded departmentally and actions were taken against them. According to him since the charge against the petitioner related to lack of supervision regarding the functioning of those two branches these two employees should not have been cited as a witness on behalf of the prosecution and their evidence was not to be admitted. In this context the petitioner has relied on the case of Nathuram Toppo v. The State of West Bengal and Ors., reported in (2008) 2 CLJ (Cal) 858 for a proposition that where an enquiry officer makes an accomplice a trustworthy person for recording misconduct of the petitioner the same is beyond all rules of natural justice. The Division Bench had observed in that case that statement of an accused u/s 164 of the Code of Criminal Procedure can only be relied on as against him and cannot be relied on for the purpose of recording the guilt against the third party.

19. This judgment, however, has no application to the facts of this case. In the case of Nathuram Toppo (supra) the charge against him was that he was a member of the armed forces and had visited a brothel in his uniform along with his driver who was the accomplice and sole eye witness. The Court had taken exception because the statement of the accomplice was recorded and taken into consideration. It must be remembered that in the case of Nathuram Toppo (supra) the entire case rested on evidence of the said accomplice. But here apart from these two witnesses Sri Manish Kumar Roy also figured as a management witness and a host of documents were produced by both the sides in support of their respective cases. The finding of the enquiry officer was not based on their evidence alone.

20. Although section 114(b) of the Evidence Act says that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. But section 133 of the same Act makes him of competent witness against an accused. Even an uncorroborated testimony of the accused can be the foundation of his conviction. The effect of both the provisions seems to be that the evidence of an accomplice as a participant of the offence, raises presumption about the unacceptability of such evidence sans corroboration by an independent witness or documents. In the case of Haroon Haji Abdulla Vs. State of Maharashtra, , the Supreme Court characterised the cautionary provision of section 114(b) of the Evidence Act incorporating a rule of prudence and observed that this rule is so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law. But a departmental proceeding is not a criminal case per se. That apart, an enquiry officer not being a Court the rules of evidence or the Evidence Act as such does not strictly apply to a departmental proceeding. And even

if they did apply, the proceeding against the petitioner cannot be said to have been rendered bad merely because letting in the evidence of two witnesses, when there are other evidence, particularly host of documentary evidence, are not on record and when the enquiry officer has relied on them.

21. The petitioner had also raised this point before the appellate authority and the appellate authority had disagreed with this contention of the petitioner by holding that perusal of the exhibits produced at the enquiry led the appellate authority to concur with the findings of the enquiry officer and the observations of the disciplinary authority. It has also very specifically been observed by the appellate authority that the disciplinary proceedings instituted against those witnesses were being proceeded with separately and their depositions in this enquiry did not fetch any benefit to them. As such this contention of the petitioner that by citing two witnesses the entire disciplinary proceeding has been a vitiated is not an acceptable one.

22. The petitioner has drawn my attention to a judgment in the case of Samir Gati Roy v. United Bank of India & Ors. dated August 28, 2001 (W.P. No. 2486 of 1997) wherein a learned single Judge of this Court referred to a division bench judgment of this Court in Dipankar Sengupta v. United Bank of India & Ors. for a proposition that procedural or supervisory lapse may not by itself be an act of misconduct and that the charge of negligence and/or failure in dedication do not amount to misconduct.

23. It is undoubtedly true that mere negligence may not be an act of misconduct in some cases. But its blind application to all cases is not permissible. The Supreme Court, however, declined to apply it to a bank employee. In the case of Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, the Supreme Court had held that the employees and officers of a bank are not merely trustees of society but owe duty to the society for effectuation of socio-economic empowerment. If they derelict in the performance of their duty it impinges upon the enforcement of the constitutional philosophy, object and the goal under the rule of law. The Supreme Court held:

The banking business and services are vitally affected by catastrophic corruption. The disciplinary measure should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public officers including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary actions to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system.....Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary

action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.

24. Thus, applying the principle enunciated by the Supreme Court that lack of supervision on the part of the petitioner is also to be characterized as an act of misconduct in this context inasmuch as this lack of supervision has resulted in the loss of several crores of rupees of the bank and this tends to defeat and destroy the constitutional mandate leading to destruction of the banking system.

25. Again in the case o State Bank of India and others Vs. T.J. Paul, a bank officer was charged to have sanctioned without observing the lending norms and his actions amounted to serious misconduct which involved financial loss and violations of the prescriptions of the head office. The Supreme Court had held that the doing of any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss is gross misconduct. The Court held that likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct.

26. The petitioner states that before an employee can be held guilty of misconduct it is necessary for the disciplinary authority to arrive at a finding that the delinquent was guilty of an unlawful behaviour in relation to discharge of his duties in service. For this proposition the petitioner has relied on the case of Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, wherein in has been further held that an error of judgment per se is not a misconduct and a negligent similiciter also would not be a misconduct. Again the petitioner has referred to the case of M.M. Malhotra Vs. Union of India (UOI) and Others, wherein the Supreme Court had held that misconduct is comprised of positive acts and not merely neglects or failure. The Supreme Court referred to the definition of the word as given in Ballentine''s Law Dictionary that misconduct is "a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness." Relying on this judgment the petitioner has submitted that the charge suffers from a misconception of what constitutes misconduct and that the charges on their face value do not constitute any misconduct.

27. In this connection the petitioner has taken a slightly contradictory stand. In one breath he once says that the charges do not constitute any misconduct and in the other there is an assertion that contrary to the allegations whenever necessary he took appropriate steps to the best interest of the bank and, therefore, no misconduct was committed by him. If the charges did not disclose any misconduct there was no need for him to say that he did not commit the same.

28. It has now been accepted that the host of activities going against the interest of public service are myriad in nature and defy and effect of exhaustive enumeration. Keeping this in mind, the Supreme Court in the case of M.M. Malhotra Vs. Union of

India (UOI) and Others, held, "But at the same time though in case of precise definition, the word ''misconduct'' on reflection receiving its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the stature and the public purpose it seeks to serve."

29. More recently the Supreme Court in the case of Ravi Yashwant Bhoir (supra) had occasion to deal with the different facets and ramifications of misconduct. In that case also the Supreme Court had accepted that misconduct has to be understood as the transgression some established and definite rule of action and a forbidden act. But it also held that it may be synonymous as misdemeanor in propriety and mismanagement. The Supreme Court had clearly held that this expression has to be understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Yet another dimension to the interpretation of various facets of the misconduct has been added by holding that misconduct is to be measured in terms of the nature of misconduct and should be viewed with the consequence of it as to whether it has been detrimental to the public interest. The action, the Supreme Court held, which is detrimental to the prestige of the institution may also amount to a misconduct, "when the office-bearers is expected to act with absolute integrity and honesty in handling the work, any misappropriation even temporary, of the funds, etc. constitutes a serious misconduct inviting severe punishment." While reiterating the settled principle of law that mere error of judgment does not generally amount to misconduct, the Supreme Court even went a step further to hold that in exceptional circumstances not working diligently may also be an act of misconduct and in a particular case negligence and carelessness may also be a misconduct.

30. Thus, the submission of the petitioner must entirely fall through. Even if it is his case that mere negligence is not an act of misconduct in view of what the Supreme Court has said negligence have also been brought within the sweep of misconduct. That apart what has been charged against the petitioner is a serious dereliction of duty resulting in the financial loss of the bank as well as the loss of its prestige and the acts or for that matter their omission must be deemed to be a major misconduct and on this point I find no reason to disagree with the findings arrived at by the authorities.

31. Again relying on the case of Council of the Council of the Institute of Chartered Accountants of India Vs. Somnath Basu, , the petitioner argued that the charge of misconduct arises from ill motive and any negligence in performance of duties or errors of judgment in discharging such duties cannot constitute misconduct unless ill motive in the aforesaid acts are established. In view of the persistent view of the

Supreme Court expressed in several judgments on the expanded parameters of misconduct the findings arrived at by the respondents authorities do not appear to be judicially interdictable.

32. In such view of it the submission of the petitioner that his acts may at most be described as a supervisory lapse and not an act of misconduct is not a sustainable one. Mr. Moitra, further submitted that both the disciplinary as well as the enquiry authority proceeded on the footing that the onus to disprove lay on the petitioner. According to the petitioner this is contrary to law as the onus is always on the disciplinary authority to prove the charge. This submission does not appear to be a relevant one in view of the enquiry officer''s report or the disciplinary authority''s findings. The authorities had accepted that on the basis of the evidence led the charges against the petitioner had been proved and did not proceed to punish the petitioner on the hypothetical factor on his inability to prove himself innocent.

33. The petitioner has taken a further point that the disciplinary authority while sending a copy of the enquiry officer''s report did not communicate to him the tentative findings or the proposed punishment. According to him this had caused the violation of the principles of natural justice inasmuch as the petitioner''s right to know the tentative findings of the disciplinary authority was violated and this made it impossible for the petitioner to give effective comment upon the report of the enquiry officer.

34. The petitioner filed his detailed submissions on the enquiry report against the findings of the enquiry officer under each charge and he had never mentioned this point in his submissions that without the proposed punishment he was finding it difficult to give his observations on the findings of the enquiry officer.

35. The next point to check by the petitioner is with regard to the finding of the enquiry authority. The petitioner has characterized the enquiry report as unreasoned and the enquiry authority has not stated how the materials collected at the enquiry had any nexus with the allegations made in the charge sheet. In this connection the petitioner has referred to the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, wherein the Supreme Court has held that even in administrative matters the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. Absence of reasons may render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Another rationale, the Supreme Court held, is that the affected party can know why the decision has gone against him.

36. This is a settled principle of law. The question is whether there is any scope to apply the principle to this particular case, irrespective of the factual foundation for the same. It has already been mentioned that the findings of the enquiry officer is based on the evidence, both oral and documentary. The enquiry officer has taken

note of the arguments advanced by the respective parties and the findings against each charge have been arrived at after considering the documents and the evidence on record. The discussion on the charges is cogent and does not appear to be without reasons. The findings are not perverse and the sequence of events mentioned in the enquiry report has been properly maintained.

37. Moreover, the findings of the disciplinary authority as well as the appellate authority are also detailed and do not suffer from the vice of being an unreasoned one. The grievances of the petitioner on this Court, therefore, is not sustainable.

38. Referring to the disciplinary proceeding and the charge sheet the petitioner submitted that the charges leveled against him were that he failed to monitor the credit affairs of a particular branch of the respondent bank. According to him he had taken certain steps but which were not effective or timely. From this the petitioner sought to argue that the question of misconduct cannot arise and that the loan sanctioning power of the concerned managers was restored only for the interest of the said branch and this may at most be described as an error of judgment. It has already been noted that the allegations against the petitioner really answer the ambit of misconduct and what he would like to describe as a ineffective step taken by him the respondents in the facts of this case considered the same to be a misconduct.

39. Lastly, the petitioner has argued that the management witnesses did not prove the contents of the documents; but merely tendered them. The petitioner has relied on the case of Roop Singh Negi Vs. Punjab National Bank and Others, wherein the Supreme Court had held that in the context of that case what the management witnesses merely tendered the documents and did not prove the contents thereof and no witness was examined to prove the said documents. The management witnesses merely tendered those documents. It was further held that a departmental proceeding is a quasi judicial proceeding and the enquiry officer performs a quasi judicial function. Therefore, the case against the petitioner was required to be proved.

40. The observations by the Supreme Court in the case of Roop Singh Negi (supra) were made I a different context. In that case evidence were collected during investigation by the investigating officer and in that context it was held that these could not be treated to be evidence in the disciplinary proceeding as no witness was examined to prove the said documents. On the other hand the documents relied on at the disciplinary proceeding were all documents which arose out of the transaction alleged. More importantly, the petitioner has ho where stated that at the time of admitting them in to evidence he had raised any objection about their admissibility. The petitioner has also not taken this point as a ground of challenge in the writ petition. In the case of P.C. Purushothama Reddiar Vs. S. Perumal, the Supreme Court held that the reports were marked without any objection. Hence it was not open to the respondents to object their admissibility.

41. Moreover the grounds on which the petitioner has sought to assail the enquiry proceeding and the finding of the appellate authority do not appear to be sufficient for interference by a writ Court. Reference may be made to the case of Sub-Divisional Officer, Konch Vs. Maharaj Singh, wherein the Supreme Court has very specifically held that the jurisdiction of the High Court under Article 226 of the Constitution of India is not an appellate one and as such the Court would not be justified in re-appreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiry authority. Thus the question of re-appreciation of evidence adduced at the disciplinary proceeding cannot be undertaken by the High Court in view of the persistent view expressed by the Supreme Court in a large number of judgments.

42. The settled and well established criterion on which the findings of the disciplinary authority and the appellate authority may be interfered with have not been satisfied in the instant case. It cannot be said that in the present case the authority concerned had arrived at a perverse finding or the finding was so bad as not to satisfy the conscience of any prudent man. I find no reason to interfere with the findings arrived at by the Court.

43. Thus, all the points raised by the petitioner must fail. There is no merit in the writ petition. The writ petition is dismissed.

44. Interim orders, if any, stands vacated. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.