(2001) 05 CAL CK 0035

Calcutta High Court

Case No: F.M.A. No. 1027 of 1996

Dhruba Pada Ghosh		APPELLANT
	Vs	
Bank of Baroda and Others		RESPONDENT

Date of Decision: May 14, 2001

Citation: (2001) 2 LLJ 1524

Hon'ble Judges: Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Saktinath Mukherjee and Saptangshu Basu, for the Appellant;Soumya Ghosh and D.K. Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

Ashok Kumar Mathur, C.J.

This is an appeal directed against the order passed by a learned single Judge of this Court dated February 3, 1992, whereby the learned single Judge directed the petitioner to make a fresh appeal detailing all his grievances as taken by him before the Appellate Authority and the direction has been given that the Appellate Authority shall hear the petitioner and pass a reasoned order on merits, and it was directed that the decision is to be taken within three months from the date of communication of this order and he set aside the order of the Appellate Authority. Aggrieved against this order dated February 3, 1992 of the learned single Judge the present appeal has been filed by the appellant/petitioner.

2. Brief facts which are necessary for disposal of this appeal are: The petitioner was appointed as a "Cash Clerk" in the Bank of Baroda and was posted at his office at 8, India Exchange Place, Calcutta-1, while working as a Cash Clerk he was directed by the Regional Manager to perform the duties of Head Cashier, Category "C" in the Bank''s Lake Market Branch in addition to his normal duties of a Cash Clerk. Petitioner was given a special pay of Rs. 172/- per month. Petitioner was provided keys relating to strong room and Cash Safe, namely the keys of the Right Drawer

and Left Drawer of the Cash Safe bearing Numbers B1 SP 10490, S 10895/2, B1 35077, R 11103 and L 11052 respectively. It is also alleged that there are duplicate keys which are being kept at Bank''s Bhawanipore Branch and whenever it is necessary these duplicate keys are brought from Bhawanipore Branch. It is alleged that on April 16, 1985 due to some personal business petitioner went to office after schedule time and he found that duplicate keys of the Iron Safe, Strong Room etc. were brought from the Bhawanipore Branch on the signature of the Accountant and the Head Cashier who was on duty before the arrival of the petitioner. Thereafter on April 23, 1985 petitioner received a letter from the respondent No. 4 asking him to submit an explanation for alleged shortage of cash on April 18, 1985. Petitioner informed the respondent that there was no such shortage. Thereafter on May 6, 1985 petitioner was placed under suspension for contemplating enquiry on account of shortage of cash worth Rs. 1,00,000/- on April 18, 1985, Petitioner was served with the charge-sheet for misappropriation of the sum of Rs. 1,00,000/-. Thereafter inquiry was conducted. Ultimately the Enquiry Officer submitted a Report and found the petitioner grossly negligent in performing his duties and it was further found that he tampered with Bank''s record, committed an act prejudicial to the interest of the Bank and it is unbecoming of an employee. Thereafter petitioner was given a show-cause notice and ultimately the Disciplinary Authority passed the order of dismissal against the petitioner. Petitioner thereafter preferred an appeal before the Appellate Authority and the Appellate Authority affirmed the order passed by the Disciplinary Authority and dismissed the appeal filed by the petitioner. Aggrieved against this order the appellant-petitioner filed writ petition before this Court. The learned single Judge after considering the matter remitted (sic) this case back to the Appellate Authority for reconsideration of the matter and to pass a reasoned order in accordance with law. Aggrieved against the order passed by the learned single Judge the present appeal has been preferred.

3. Learned counsel for the appellant submits that the learned single Judge should have examined the whole case on merits and thereafter he should have decided the matter instead of directing the petitioner to approach the Appellate Authority. Therefore the order passed by the learned single Judge is not a speaking order. It is also submitted that the order passed by the Disciplinary Authority is not a speaking order and likewise the order passed by the Appellate Authority.

4. In this connection learned counsel for the appellant has invited our attention to a decision of the Apex Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , wherein it has been observed that when a procedure has been laid down by the authority then the authority must be rigorously held to its standards by which it professes its action to be judged. In the present case this case has no relevance for the simple reason that the procedure as laid down in the Bipartite Settlement it is nowhere required that the Disciplinary Authority agreeing with the Enquiry Officer is required to give a detailed reason. According to that procedure what is, required is that after the report of the Enquiry

Officer has been received finding the delinquent guilty if the disciplinary authority agrees with the finding then under Clause 19.12 an opportunity of hearing should be given to the delinquent with regard to the nature of the proposed punishment on account of charges being established against him. Therefore this judgment has no relevance. Similarly our attention was also invited to a decision of the Apex Court in the case of Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, . In this case also it was observed that whenever such administrative instructions are issued though they do not have force of law but the State Government on its own could not depart from that without rational justification. In this case as we have already mentioned above there is no such procedure by which it is laid down that the Disciplinary Authority is required to pass a speaking order when the Disciplinary Authority agrees with the finding of the Enquiry Officer. Similar view has been taken in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . Therefore these judgments are of no help.

5. In the Bipartite Settlement which has been brought to our notice there is no provision under which it makes incumbent on the authority to pass a detailed speaking order in the event of agreeing with the decision of the Enquiry Officer finding the delinquent guilty of the charges. In Bipartite Settlement what is required is that the delinquent is only entitled to a notice for proposed punishment on the basis of the charges established against him. Learned counsel for the respondent has strenuously urged before us that the Disciplinary Authority has agreed with the finding of the Enquiry Officer and they are not required to pass a detailed speaking order. Learned counsel has also emphasised on the Chapter XIX of the Bipartite Settlement as mentioned above that the delinquent is entitled to a notice for the proposed punishment. Relevant Rule reads as under:

"19.12 The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross- examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended:

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry;

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of

the bank in which he is employed;

or

(ii) at the request of the said union by a representative of the State federation or All India organisation to which such union is affiliated;

or

(iii) with the Bank''s permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension, may at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct; the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the ''gross'' type he may be merely discharged, with or without notice or on payment of a month''s pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

(d) If the representative defending the employee is an employee of the same bank at an outstation branch within the same State, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare. The class of fare to which he will be entitled would be the same as while travelling on duty. In case of any adjournment at the instance of the bank, he may be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid 50% of the halting allowance for the period he stays at the place of the enquiry for defending the employee as also for the days of the journeys which are undertaken at the bank''s cost.

(e) and enquiry need not be held if:

(i) the misconduct is such that even if proved, the bank does not intend to award the punishment of discharge or dismissal; and

(ii) the bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct; and

(iii) the employee makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice.

However, if the employee concerned requests a hearing regarding the nature of punishment, such a hearing shall be given."

6. As per the ratio laid down by the Apex Court, those who laid down the procedure, shall be slain by their procedure. Now in the present case by virtue of Bipartite Settlement to which the petitioner is also bound by such settlement and as per the procedure laid down in the aforesaid settlement the delinquent is only required to be served with a notice for the proposed punishment on account of charges being found proved by the Enquiry Officer.

7. Learned counsel for the respondent has invited our attention to a decision in Union of India (UOI) and Others Vs. K. Rajappa Menon, , wherein it is observed as under:

"Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its finding on each charge. All that the rule requires is that the record of the enquiry should be to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgment of a judicial Tribunal.

Where the disciplinary authority after giving consideration to the record of the proceedings of the departmental inquiry agreed with the findings of the Enquiry Officer that all the charges mentioned in the chargesheet have been established, it meant that he was affirming the findings on each charge and that fulfils the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way."

8. Similar view has been taken in the case of Ram Kumar Vs. State of Haryana, . In paragraph 8 thereof it has observed as under at pp. 505, 506 of LLJ :

"When the punishing authority agrees with the findings of the enquiry Officer and accepts the reasons given by him in support of such findings it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. When by the impugned order of termination of service the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him, the question of non-compliance with the principles of natural justice would not arise and it is also incorrect to say that the impugned order is not a speaking order."

9. Similarly in the case of Indian Institute of Technology, Bombay v. Union of India , it has been held as under:

"Service Law - Departmental enquiry -Final order of punishment - Speaking or reasoned order - When disciplinary authority in his order merely accepting the findings and punishment proposed along with the supporting reasons of the Enquiry Officer, the order need not furnish detailed reasons - Enquiry relating to a short question as to whether writing of certain letters by the delinquent, which he admitted, constituted misconduct or not - Report of Enquiry Officer accepted by disciplinary authority and a copy of the report sent to delinquent asking him to show cause why penalty of removal from service should not be imposed on him - Order then passed stating that after considering the report and delinquent''s reply to the show cause, it had been concluded that there was no reason to alter the decision regarding penalty of removal already taken in the circumstances, held, more detailed reasons in the order not necessary."

10. In view of the aforesaid decision of the Supreme Court it is not necessary for the disciplinary authority to give a detailed reasoned speaking order while punishing the delinquent if they agree with the findings of the Enquiry Officer''s Report. More so, in the present case the learned single Judge has only remitted the whole case back to the Appellate Authority which could have provided full opportunity to the delinquent to make all his grievances before it (Appellate Authority) and pass an appropriate order on the contention raised by the Appellate Authority. Therefore, there was no occasion for the delinquent to have approached this Court instead of approaching the Appellate Authority making out all his grievances. The learned single Judge has also set aside the order of the Appellate Authority and remitted the case back to the Appellate Authority where the delinquent could have full opportunity to make all his grievances. As per the settlement a regular appeal is maintainable, and the learned single Judge felt persuaded to dispose of the whole petition on the short ground and remitted the case back to the Appellate Authority giving a full hearing to the petitioner. Hence we are satisfied that no ground is made out to interfere in this appeal. Now it is open for the appellant to file an appeal before the Appellate Authority within one month from the date of receipt of copy of the judgment and the Appellate Authority is directed to dispose of the appeal of the appellant within two months thereafter after hearing the petitioner.

11. Hence, as a result of the above discussion we do not find any merit in the appeal and the same is disposed of in the light of the above observations.

12. No order as to costs.

Girish Chandra Gupta, J.

13. I agree.