

(2001) 08 CAL CK 0052

Calcutta High Court

Case No: F.M.A. No. 231 of 1990

Ananthasubramania
Padmanabhan @ A.
Padmanabhan

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Aug. 9, 2001

Acts Referred:

- Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 - Regulation 3(1), 6(7), 14

Citation: (2002) 2 LLJ 799

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

Bench: Division Bench

Advocate: Pradip Kumar Guha, Prantosh Mukherjee and Pranab Kumar Dutta, for the Appellant; S.N. Choudhury and Mintu Kumar Goswami, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.

This appeal is directed against an order dated August 31, 1987 by which a learned single Judge of this Court dismissed the writ petition by which an enquiry report and consequential order of dismissal were challenged. Facts of the case briefly stated are as follows:

2. The writ petitioner/appellant started his career as a typist. He joined the Punjab National Bank Ltd., New Market, Calcutta Branch on March 13, 1945. On December 11, 1974 he became Manager of the Second Priority Cell at No. 3, Chittaranjan Avenue. On May 2, 1977 a show-cause notice was issued to the writ petitioner. On October 3, 1977 he was placed under suspension. On November 21, 1977 a charge-sheet was issued to him. After departmental enquiry he was dismissed from service on October 19, 1979. The

enquiry and the consequential dismissal were challenged by the writ petitioner which culminated in an order dated June 29, 1982 by which the entire disciplinary proceedings were set aside, with liberty to the Bank to issue a fresh charge-sheet if so advised. The suspension of the petitioner was directed to be deemed to continue until the Bank arrived at a decision. On October 25, 1983 a fresh charge-sheet was issued to the writ petitioner. Enquiry proceedings started which ultimately culminated in a report finding the writ petitioner guilty of some of the charges. On the basis thereof an order of dismissal dated December 31, 1985 was passed. It is this enquiry report and the order of dismissal, which is under challenge under the present writ petition.

3. The writ petitioner has challenged the enquiry proceeding and the order of dismissal principally on the following grounds:

(a) Allegations of misconduct in terms of the Regulations of 1977 have been levied against the petitioner in respect of the alleged offences which took place prior to the Regulations coming into force.

(b) The writ petitioner was not allowed to take the assistance of a legal practitioner in the enquiry proceedings.

(c) Neither copies of relevant documents were supplied nor was the petitioner granted opportunity to inspect the documents.

(d) Part of the documents, relied upon by the petitioner, were declared irrelevant and one witness was not allowed to be examined without assigning any reason whatsoever.

(e) At the conclusion of the evidence both the Presenting Officer and the writ petitioner were directed to file written submissions but no copy of the written submissions filed by the Presenting Officer was made available to the writ petitioner.

4. It appears that the learned single Judge discussed the grounds (a), (b), (c) and (e) above but did not give any finding with respect to grounds (a) and (c). The ground (d) has not been discussed at all. In respect of ground (b) the learned single Judge held, inter alia, as follows:

"Accordingly I reject this submission that natural justice has been violated by reason of not granting legal assistance to the writ petitioner and Regulation 6(7) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 have not been followed as well, in the matter of holding enquiry."

In respect of ground (e) above the learned single Judge held, inter alia, as follows:

"In dealing with the aspect of non-supply of written brief of the Presenting Officer to the writ petitioner, in my opinion, as there is no specific provision in Regulation 6.18 of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 for

supply of written brief it cannot be said that the enquiry has been vitiated for non-supply of the written brief. In my opinion, the decision reported in 76 CWN 539 (Collector of Customs v. Md. Habibul Haque) cited on behalf of the petitioner has no manner of application in the facts of the present case before us."

Aggrieved by the aforesaid findings and the consequential dismissal of the writ petition, the writ petitioner has come up in appeal.

5. We shall examine the grounds of challenge set out above one after the other.

Ground (a):

The following charges appear to have been levied against the writ petitioner:

".....

Article-I : He allowed undue/unauthorised accommodation to various parties against the interest of the Bank.

Article-II : He misconducted in terms of Regulation 3(1) of P.N.B. Officer Employees (Conduct) Regulations, 1977 as he relied on the services of middleman while making advances.

Article-III: He failed to conduct pre-sanction appraisal of the loan proposals as a result of which Bank"s huge funds are jeopardised.

Article IV: He did not exercise post-sanction control to safeguard Bank"s interest.

Article-V: He failed to submit prescribed returns to the authorities thus concealed true state of affairs of the Branch from the authorities."

6. It would appear from the aforesaid charges that the misconduct in terms of Regulations 1977 was one of the charges levied against the writ petitioner. It appears from the enquiry report that the charge with regard to alleged misconduct in terms of Rules of 1977 was not proved. The order of dismissal passed against the writ petitioner is not based on the charge of misconduct. The order of dismissal dated December 31, 1985 sets out the following charges to have been established against the writ petitioner:

-he did not conduct pre-sanction appraisal while allowing advances to various parties.

-he did not exercise post-sanction control to safeguard Bank"s interest.

-he failed to submit prescribed returns to the authorities concealed true state of the Branch from the authorities."

The writ- petitioner did not suffer any prejudice by the aforesaid charges of misconduct. Nor was the order of dismissal based upon the ground of misconduct in terms of the Regulations of 1977.

Therefore, in our view, this ground of challenge is without any substance whatsoever.

7. Ground (b)

Regulation 6(7) of P.N.B. Officers Employees (Discipline and Appeal) Regulations, 1977 provided as follows:

".....

The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary authority is a legal practitioner or the Disciplinary authority having regard to the circumstances of the case so permits."

8. In this case neither the Presenting Officer nor the Enquiry Officer was a legal practitioner. It is true that the Presenting Officer was a law graduate. That, in our view, does not make any difference. Therefore this ground also has no substance whatsoever.

9. Ground (c)

On October 25, 1983 charge-sheet was issued to the writ petitioner alleging inter alia that credit facilities were irregularly granted to a large number of constituents of the bank. The writ petitioner by his Letter dated January 17, 1984 complained that files in respect of 24 constituents, in respect of whom there were allegations of irregularity in the charge-sheet, were not made available to him for inspection on the ground that they were lying in the office of the solicitors. It appears that in the proceedings of the enquiry held on February 13, 1985 the Presenting Officer reiterated the same ground as an excuse for not offering inspection of these files. It is on record that the writ petitioner was directed that unless he filed his reply within February 15, 1984 no further extension shall be granted and the proceeding shall be continued ex parte. The petitioner thus did not get an opportunity to look into the concerned files prior to filing his reply. In this regard the petitioner's grievance appearing from his reply dated February 10, 1984 appearing at page 141 of the paper book may be noticed which is as follows:

"I regret that I have not still been provided with opportunity of inspection of many files, documents, registers etc. in respect of all the transaction"

10. His grievance in this regard would further be evident from his letter dated March 23, 1984 addressed to the bank, appearing at page 200 of the paper book, relevant portion whereof reads as follows:

"..... accordingly opportunity of inspection of all the documents prayed for by me was not allowed. In this regard I annexe hereto a copy of my letter dated January 17, 1984 addressed to the Branch copy whereof was endorsed to R.M. Calcutta who again wrote to the Branch on January 30, 1984 with copy to me asking the Branch to give top priority in the matter of allowing me inspection of relevant documents/papers. In spite thereof the documents and other records required by me for inspection were not offered for inspection. My various letters to your good self dated December 10, 1983, December 19, 1983, January 4, 1984, January 25, 1984 and February 8, 1984 will bear testimony to my statement that I was not allowed inspection of all the relevant documents. In spite of the above, you were pleased to say that no further extension would be allowed beyond February 15, 1984 and in case my reply did not reach you within the extended period, ex parte proceedings shall be initiated against me, I have mentioned in my letter dated February 10, 1984 in response to the charge-sheet dated October 25, 1983 issued to me that in view of the aforesaid reasons, I am sending the replies to the charge-sheet mainly on the basis of my memory in absence of opportunity of inspection of the relevant documents etc, without prejudice to my rights/contentions."

11. The fact that the petitioner was made to file his reply to the charge-sheet without an opportunity to inspect the relevant records is not in dispute. The question arises is it legal? Has there been any violation of the principles of natural justice in a case like this? The questions are best answered by referring to the case of [Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others](#), where Their Lordships held as follows at p. 626 of LLJ:

"On the facts and circumstances, we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge-sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice.

"..... It is stated in the letter written by the enquiry officer that inspection of documents would be permitted at the time of final hearing. That obviously is an erroneous procedure followed by the enquiry officer."

12. Ground (d)

The relevant portion of the minutes of the proceedings dated March 19, 1985 read as follows:

"Enquiry officer on going through the list of the documents considered following as irrelevant for the purpose of enquiry:

Items

1(d), 2(b), 3(c), 4(a), 5(c), 5(d), 6(b), 6(d) paid cheques 6(e), 7(f), 8(b), 9(c), 10(b), 10(c) paid cheques, 12, 13, 14, 15, 16 claim forms, 17, 18, 19(claim forms) 20, 21, 22, 24(a)(b), 27(paid cheques) 28, 36 (paid cheques) 37 (paid cheques) 38, 39(b)(f), 40, 41 (second portion) 43,44,45,46,47, 49, 50, 51(a)(b), 52(a) to (f), 53, 54, 55, 57, 59 (not available).

Out of the two witnesses, cited by the officer employee, enquiry officer felt that calling Shri S.N. Banerjee for the purpose of witness is not necessary. In case of Shri Asim Banerjee, he can be called as and when necessary."

13. We are unable to appreciate as to how could the Enquiry Officer ascertain the relevance of the documents, sought to be relied upon by the writ petitioner, just by going through the list. We are equally unable to appreciate as to how could the Enquiry Officer arrive at a decision that the evidence of Shri S.N. Banerjee was not necessary. The Enquiry Officer has refused to allow the writ petitioner to adduce both documentary and oral evidence without assigning any reason whatsoever. He could not have shut out evidence. By doing so he clearly overstepped his limit.

14. Ground (e)

It appears that after conclusion of evidence on July 17, 1985 the Enquiry Officer directed both the Presenting Officer and the writ petitioner to file their written submissions. The request of the writ petitioner for a direction upon the Presenting Officer to supply a copy of written submissions was turned down on the ground that it was not permissible under the Regulations. In pursuance of the directions of the Enquiry Officer, written submissions were filed. The writ petitioner, however, remained wholly in dark as to the contents of the written submissions made by the Presenting Officer. In this respect the relevant pleadings of the parties can be referred to which are as follows:

The writ petitioner in paragraph 7 of his supplementary affidavit dated August 8, 1986 averred inter alia as follows:

"I further state that in the course of the enquiry proceeding I was directed by the Enquiring Authority to file my statement of defence as also my written brief which I duly filed on July 10, 1985 and July 31, 1985 respectively. I specifically prayed for supplying me with a copy of the written brief submitted by the Presenting Officer in order to effectively represent my case but my such prayer was rejected by the Enquiring Authority on alleged plea that it was not permissible under the Regulations and as such I had to submit my written brief without perusing what had been stated in the written brief submitted by the Presenting Officer, copies of the statement of defence submitted by me on July 10, 1985 and the -written brief filed by me on July 31, 1985 are annexed hereto and marked with

the letters "A" and "B" respectively."

15. The Bank authority in its affidavit-in-opposition affirmed by one Sri Prasanta Kumar Guha on November 21, 1986 replied as follows:

"With reference to the allegation as made in paragraph 7 of the said supplementary affidavit, I shall crave leave to refer to the statement of defences as well as to the written arguments submitted by the petitioner to ascertain its true scope and purport. As regards the non-supply of the written submissions on behalf of the Bank, I shall crave leave to refer to the affidavit of Mr. T.N. Nagraj as a part of this affidavit. In any event the petitioner was fully aware of the charges that he was required to meet."

16. The Enquiry Officer in his affidavit dated November 21, 1986 has sought to justify his action as follows:

"With reference to paragraph 7 of the said supplementary affidavit, save and except what are matters of record I do not admit the allegations made therein. I say that the writ petitioner took inspection of all the relevant papers and documents and it was not necessary to supply him with a copy of the written brief submitted by the Presenting Officer in order to effectively represent the writ petitioner's case. The said prayer could not be allowed also for the reason that there is no provision in the Regulations applicable to the said enquiry for supplying the said copy to the writ petitioner."

17. From the aforesaid pleading there can be no doubt that the writ petitioner was kept wholly in the dark as to the contents of the written submissions made by the Presenting Officer on behalf of the Bank. The question therefore is whether there has been any infraction of the principles of natural justice in a case like this.

18. With regard to desirability and procedure for filing written notes of arguments a Division Bench of this Court in the case of [Amjad Ali Vs. Suresh Ranjan Pal and Others](#), held as follows:

"It is the duty of the learned Judge to take such notes of the arguments as he thinks fit when they are being submitted to the Court; and, if he feels that he has not fully appreciated any part of the arguments which have been submitted to him, it is open to him to call the parties before him so that any further argument may be presented in open Court in the presence of the other side. If it becomes necessary as in some exceptional cases it may become necessary, for the learned Judge either to require or to receive notes of the learned Pleader's arguments, such notes ought not to be submitted to the learned Judge by the learned Pleader on one side, without first submitting the notes to the learned Pleader on the other side. If in any case a learned Pleader desires to submit to the Court, the notes of his argument or of any further argument, which he thinks in the interest of his client ought to be put before the Court, he should submit them to the Pleader on the other side, so that the latter may have an opportunity of making any remarks or any criticism in respect thereof."

19. Omission to furnish a copy of the written notes of arguments to the writ petitioner cannot be considered to be any less prejudicial simply because it was a case of departmental enquiry. After all, object of an enquiry in a Court of law and in a departmental enquiry is, more often than not, the same and/or similar. Therefore a procedure which is considered to be unfair in a Court of law is equally unfair in a departmental enquiry. In our view, the writ petitioner did not get an opportunity to meet the case made out by the Presenting Officer on the basis of evidence led by the parties. It appears from the enquiry report that the Enquiry Officer relied upon the written notes. By way of specimen we can refer to the following passage:

"CO argued that CR placed in the CR binder during the material time. PO contended that the captioned account being a small loan, the CR prepared on such accounts are in the individual file itself and not in the CR binder. At this point, CO took the plea of non-numbering of the file and also argued that due to passage of time he cannot remember if CR had been prepared or not. Since CO had no material evidence to disprove the allegation of non-compiling of CR the charge is proved."

20. It is nobody's case that there were oral arguments at the enquiry. The arguments referred to above are obviously to be found in the written brief or the written notes of submissions.

21. We are firmly of the view that there has been gross violation of principles of natural justice. We are supported in our view by a Division Bench judgment of this Court in the case of Collector of Customs v. Md. Habibul Hague, reported in 76 CWN 539 where in an identical case a Division Bench took the following view:

"In course of argument Mr. Chakraborty, however, conceded that the hearing of argument after the closing of evidence as contemplated in Rule 14 Clause (19) of the Appeal Rules if given without notice and in absence of either side by the Enquiry Officer would contravene the rules of natural justice. If that be so, it is difficult to see how in the alternative course the arguments made by the parties of their respective cases in written brief should be made a secret. The whole object of the Rule would be frustrated if either party is kept in ignorance by the other about the case made out by such party in the written brief of arguments. Unless the delinquent servant has clear knowledge of the arguments made on behalf of prosecution it is not possible to build up an effective argument further in defending his cause and necessarily, therefore, he would be denied reasonable opportunity of hearing before facing a dismissal from his service."

"In our opinion, the requirements of rules and principles of natural justice demand that the respondent should have been served with a copy of the written brief filed by the Presenting Officer even though service of such a copy is not expressly provided in the above Rule. Failure to supply such a copy has resulted in denial of reasonable opportunity to the respondent to defend himself and thus rendered the entire disciplinary proceeding invalid."

22. For the reasons aforesaid, the enquiry report dated October 19, 1985 and the order of dismissal dated December 31, 1985, in our view, stand vitiated and are hereby set aside. We have been told that the petitioner attained superannuation on February 28, 1987. In the light of the view, which we have taken, the petitioner would be entitled to all the benefits including his wages for the entire period of suspension upto the date of his superannuation.

23. The appeal is thus allowed. There shall be no order as to costs.

Ashok Kumar Mathur, C.J.

I agree.