(2008) 08 CAL CK 0068

Calcutta High Court

Case No: Writ Petition No. 12410 (W) of 2005

Sri Dilip Kumar Sarkar		APPELLANT
	Vs	
United Bank of India and Others		RESPONDENT

Date of Decision: Aug. 7, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 2

Citation: (2008) 4 CALLT 241

Hon'ble Judges: Sailendra Prasad Talukdar, J

Bench: Single Bench

Advocate: Asish Sanyal and Anima Chakraborty, for the Appellant;R.N. Majumdar, Goutam Chakraborty and Suman Sengupta, for the Respondent

Judgement

Sailendra Prasad Talukdar, J.

The instant application under Article 226 of the Constitution is directed against the order dated 19.5.2005 passed by the Deputy General Manager & C.R.M., Appellate Authority, United Bank of India. The petitioner, by filing such application, also sought for quashing of the order of dismissal dated 15.3.2005 passed by the Assistant Manager & Disciplinary Authority, United Bank of India.

2. The backdrop of the present case may briefly be stated as follows:

Petitioner was appointed as cash clerk in the U.B.I., Kolay Market Branch on 16th May, 1973. After more than 30 years, certain complaints were lodged i.e. on 29.10.2003 resulting in the authority''s issuance of an order of suspension dated 1.11.2003. Charge sheet was thereafter issued on 25th March, 2004. The petitioner submitted his reply on 30th April, 2004. Enquiry proceedings commenced on 21st May, 2004. It was on 3rd of March, 2005 that the petitioner was intimated about the proposed punishment of dismissal from service. He was requested to appear on 14th March, 2005 before the disciplinary authority. Then on 15.3.2005, the order of

dismissal was issued and thus, the petitioner was dismissed from service with immediate effect. On 24th March, 2005, he challenged the order of dismissal by preferring an appeal. He appeared before the said authority on 29th April, 2005. The appellate authority by its order dated 19th May, 2005 affirmed the order of dismissal dated 15.3.2005 as made by the disciplinary authority. The petitioner thereafter filed the instant application seeking necessary redress.

3. The respondent/bank, by filing Affidavit-in-Opposition, denied the material allegations made in the writ application. It was claimed that the petitioner being an Award staff is admittedly a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and as such, he has an efficacious alternative remedy before a Forum under the provisions of Industrial Disputes Act, 1947. Thus, maintainability of the writ application was challenged. It was further claimed that adjudication of the controversy raised in the application involves analysis of the disputed question of facts which, a writ Court is not likely to entertain. It was specifically claimed that during his service at Sealdah Branch of the respondent/bank, the petitioner allegedly committed certain gross misconduct within the meaning of Clause 5(j) of the Memorandum of Settlement dated 10th April, 2002. The petitioner gave reply to the charge sheet by letter dated 30th April, 2004. Since it was not considered to be satisfactory, a departmental enquiry was initiated against the petitioner on the basis of the charge sheet dated 25th March, 2004. The petitioner duly participated in the said enquiry and was afforded reasonable opportunity to defend himself. Such enquiry was held in due compliance with the principles of natural justice. The petitioner was duly represented by his representative Sri Amalendu Haider, Cash-cum-General Clerk, New Market Branch of the respondent/bank and Vice-President, National Executive, UBIFC. He was allowed to cross-examine the witnesses who adduced evidence on behalf of the management and was further given opportunity to produce his own witnesses. The Enquiry Officer thereafter submitted his report to the disciplinary authority on 12th July, 2004 thereby holding that all the charges as levelled against the petitioner were proved or partially proved. The petitioner was thereafter served with a copy of such report and was invited to make his submission on the same. Such service could be effected through the Superintendent of Presidency Correctional Home, Alipore on 20th August, 2004 during his remand to the Correctional Home.

4. The petitioner was released on 14th October, 2004, but did not choose to furnish his submission on the enquiry report. The authority concerned by subsequent letter dated 17th November, 2004 offered further opportunity to the petitioner. The petitioner on 23rd November, 2004 responded to the same. After taking into consideration all relevant facts and materials, the disciplinary authority issued second show cause notice. It was tentatively decided by the disciplinary authority to impose the major penalty of dismissal upon the petitioner. But the authority before taking a final decision gave an opportunity to the petitioner of being heard personally in terms of Clause 12(a) of the Memorandum of Settlement dated 10th

April, 2002. Petitioner was given a personal hearing on 14.3.2005. The said authority after due consideration of all relevant aspects imposed the penalty of dismissal without notice''. The petitioner preferred an appeal against the said punishment of dismissal on 24th March, 2005. By letter dated 22nd April, 2005, the petitioner was given an opportunity of such personal hearing and accordingly, he appeared before the appellate authority on 29th April, 2005. The said authority by passing a reasoned order dated 19.5.2005 confirmed the punishment of dismissal without notice'' that was imposed by the disciplinary authority. On behalf of the respondent/bank, it was repeatedly claimed that the entire disciplinary enquiry was conducted in due compliance with the relevant rules and following the principles of natural justice. As a result of such misconduct on the part of the writ petitioner, the respondent/bank had been exposed to a financial loss to the extent of Rs. 5.54 lakhs. It was categorically denied that the punishment inflicted on the writ petitioner was, by any means, disproportionate to the charges.

5. Mr. Sanyal, as learned Counsel for the writ petitioner, while referring to the backdrop of the present case, first submitted that the writ petitioner is the unfortunate victim of biased and vindictive attitude of the respondent authority as reflected from the initiation of the disciplinary proceeding against him and the manner in which the same had been dealt with. Inviting attention of the Court to the complaint dated 29th October, 2003, it was submitted by Mr. Sanyal that the incident allegedly took place as far back as on 22nd of November, 2002. The fact that the complainant was not examined, was first brought to the notice of this Court. It was submitted that there could be no occasion for the respondent bank to suffer any loss.

6. The order passed by the appellate authority being annexure-''P-13'' at page 85 was assailed by Mr. Sanyal on the ground that there was no sufficient evidence, if any at all, which could justify the finding of guilt and there had been total non-appreciation of the materials. Mr. Sanyal submitted that the order of dismissal from service is shockingly disproportionate to the charge against the writ petitioner.

7. On the other hand, Mr. Majumdar, appearing as learned Counsel for the respondent bank, first sought to challenge the maintainability of the present writ proceeding by submitting that the writ petitioner being a workman, he should have approached the Industrial Tribunal for redressal of his grievances. Mr. Majumdar submitted that the petitioner chose a wrong forum by approaching this writ Court. Another limb of argument of Mr. Majumdar was that the Writ Court cannot re-appreciate the evidence. It is to confine itself within the self-imposed restriction. Adequacy or sufficiency of evidence cannot be dealt with by this Court. In absence of any perversity in the decision-making process, the writ Court should not ordinarily interfere. It was further submitted on behalf of the respondent bank that the punishment of dismissal, in the facts and circumstances of the present case, cannot be said to be disproportionate at all since a different level of conduct is expected

from the officers and employees of a bank.

8. In the case of State of Haryana and Another Vs. Rattan Singh, , the Apex Court held that "in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act."

9. It was further held that the sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record."

10. Deriving inspiration from the decision in the case of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), , it was submitted by Mr. Sanyal that it is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case.

11. It was then submitted by Mr. Sanyal that mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, is held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished is found to apply as much as it applies to regular criminal trials. "No evidence" does not signify total dearth of evidence, evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. The learned single Bench of the Gujarat High Court in the said case held that "in the ultimate analysis, the test which must be applied is whether there is same material capable of having any evidential value. If not, the case must be held to fall within the mischief of the rule of no evidence." (Ref. Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and Others,).

12. Mr. Sanyal, in course of his argument, dealt with the scope and extent of judicial review. He submitted that it cannot be put in a straight jacket formula. It may vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative.

13. In the case of State of U.P. and Another Vs. Johri Mal, , the Apex Court held as follows:

The limited scope of judicial review succinctly put are: (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of the administrative

bodies; (ii) A petition for a judicial review would lie only on certain well defined grounds; (iii) An order passed by an administrative authority exercising discretion vested in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal; (iv) Mere wrong decision without anything more is not enough to attract the power of judicial review, the supervisory jurisdiction conferred on a Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice; (v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies".

14. In the said case it was held that "to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker."

15. In the case of Indian Airlines Ltd. Vs. Prabha D. Kanan, , the Apex Court observed that although there is no provision for appeal, but even in a judicial review, the Court may require the employer to produce the records, on a perusal whereof the Court may come to a finding as to whether an order passed by the Board of Directors was bona fide or not. A judicial review of such an order would be maintainable wherein the Court would not confine its jurisdiction only to the known decisions laid down therefore, viz. illegality, irrationality and procedural impropriety. It has to delve deeper into the matter. It would require a deeper scrutiny.

16. On behalf of the petitioner, the decision in the case of Sher Bahadur Vs. Union of India (UOI) and Others, was referred to. This was in the context of the submission that mere statement by enquiry officer in his report that "in view of oral, documentary and circumstantial evidence as adduced in enquiry" will not satisfy the rule of sufficiency of evidence.

17. Mr. Majumdar, appearing as learned Counsel for the respondent authority, first raised dispute in regard to maintainability of the application under Article 226 of the Constitution. It was submitted that the writ petitioner is a workman and there is no reason as to why he should not approach the Tribunal for redressal of his grievances. Deriving support from the decision in the case of Mohini K. Vs. General Manager, Syndicate Bank, Manipal and Others, it was submitted that the remedy provided by the Industrial Dispute Act, 1947 is more comprehensive than Article 226 of the Constitution. Mere fact that the bank is amenable to writ jurisdiction does not mean it should be exercised regardless of availability of alternative remedy.

18. Reference was further made to the decision in the case of Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, , while submitting that the principles of natural justice should not be unduly stretched. The Apex Court in the said case observed that "it is no point laying stress on the principles of natural

justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; the Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; the Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in a just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice...."

19. Attention of the Court was invited to the decision in the case of Union Bank of India Vs. Vishwa Mohan, . This was in the context of the fact that a copy of the report was not supplied before imposition of penalty by the disciplinary authority. It was held that such non-supply of the report may not be enough of justification for assailing the disciplinary proceeding on the ground that the enquiry is vitiated, unless it is shown that prejudice was caused as a result thereof.

20. In the case of J.D. Jain Vs. Management of State Bank of India and another, , it was held that no rule of law enjoins that a, complaint has to be in writing.

21. In the case of Canara Bank Vs. V.K. Awasthy, , the Apex Court held that the principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

22. As observed, concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules famed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous.

23. Over the years by a process of Judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including

therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country, but is shared in common by all men. The first rule is that "no man shall be a judge in his own cause". And, the second rule is "audi alteram partem" i.e. "hear the other side". Deriving inspiration from the decision in the case of Canara Bank (supra), it was submitted by Mr. Majumdar on behalf of the respondent bank that there had been no failure of justice so as to justify interference by this Court.

24. So far the maintainability of the present application is concerned, this Court is of the view that a writ jurisdiction can be extended so as to take care of any act of justice. It may be that by self-imposed restrictions, this Court sometime refuses to entertain an application on the ground of availability of alternative remedy. But it is one thing that an application does not deserve to be entertained and it is another thing that it is not maintainable. Having regard to the grievances ventilated in the present application and the issues raised herein, this Court does not consider that approaching the Tribunal could be a better alternative for the petitioner. There are allegations of violations of the principles of natural justice. The application could be better taken care of by this Court in exercise of its writ jurisdiction.

25. Mr. Asis Sanyal on behalf of the writ petitioner further contended that the punishment inflicted on the writ petitioner is shockingly disproportionate. In this context, reference was made to the decision in the case of V. Ramana Vs. A.P.S.R.T.C. and Others, . The Apex Court in the said case held that in a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

26. Though Mr. Majumdar referred to the decision in the case of Mithilesh Singh Vs. Union of India (UOI) and Others, , in this context, it does not appear that there had been any view expressed therein, which is in antagonistic contradiction to the principle just referred to earlier. Though the scope of judicial review is limited, if the punishment appears to be shockingly disproportionate, the Court can very well interfere.

27. Lord Hailsham, the Lord Chancellor, said as to the remedy of judicial review:

This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the Courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a

proper manner.

28. Since the range of authorities, and the circumstances of the use of their power, are almost infinitely various, it is of course unwise to lay down rules for the application of the remedy which appear to be of universal validity in every type of case. But it is important to remember in every case that the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the Court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law."

(Ref. Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 1155).

29. Professor Wade in his treaties on Administrative Law stated:

The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law.

The principles, which are ordinarily required to be followed are:

1. The duty to inquire fairly and impartially;

2. The duty to decide in accordance with the law;

3. The duty to exercise a discretion reasonably;

4. The duty to come to a reasonable decision;

5. Reasonable; and

6. The duty to hold the balance fairly.

30. It order to appreciate the role of the Writ Court in its proper perspective, borrowing from the passage in Professor Wade''s, ''Administrative Law", it may be observed:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended.

31. It is, perhaps, needless to mention that ''not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable''.

The Court will only interfere with the decision of a public authority if it is outside the band of reasonableness.

32. Here in the present case, it cannot be said by any stretch of imagination that non-examination of the complainant could cause any prejudice whatsoever to the writ petitioner. Credibility of testimony, oral or circumstantial, depends on judicial evaluation of the totality, not isolated scrutiny. In a criminal trial, the Court though proceeds on the presumption of innocence with the burden of proof resting on the prosecution, it is required to be proof beyond reasonable doubt. But in the present case, the standard of proof is significantly different and the authority is required to proceed on preponderance of probability. It may, however, be mentioned that proof beyond reasonable doubt is the guideline, not a fetish. There may be instances where truth may suffer from infirmity, when projected through human process.

33. As discussed earlier, it is not for this Court to re-evaluate the materials on record in order to assess and measure with coffee spoon the quality of the evidence and materials. The Court is essentially concerned about the decision making process. After careful consideration of the entire facts and circumstances, this Court finds it difficult to appreciate the grievances ventilated by Mr. Sanyal on behalf of the writ petitioner. There is nothing worth mentioning so as to hold that there had been any violation of the principles of natural justice.

34. But in tune with the submission made on behalf of the writ petitioner, I think there is scope for fresh consideration of the punishment, which had been inflicted on the writ petitioner. In such view of the matter, the present application being W.P. No. 12410(W) of 2005 be disposed of with the following directions:

The writ petitioner must submit a fresh representation before the Appellate Authority with a prayer for reconsideration of the order of punishment. This must be done within a period of four weeks from this date. The said authority, upon receipt of the same, must consider the matter afresh and pass appropriate order in accordance with the rules and preferably, after giving the writ petitioner an opportunity of hearing. The entire process must be completed within a period of eight weeks from the date of receipt of the representation. Action to be so taken or order to be so passed must be duly communicated to the writ petitioner within a further period of two weeks. There is no further interference except to the extent as indicated herein.

35. There is no order as to costs.

36. Urgent xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.