

(1980) 02 DEL CK 0055

Delhi High Court

Case No: Letter Patent Appeal No. 136 of 1977

A.R. Josri

APPELLANT

Vs

The State Bank of India, New
Delhi

RESPONDENT

Date of Decision: Feb. 4, 1980

Citation: (1980) 17 DLT 518

Hon'ble Judges: Prakash Narain, J; B.N. Kirpal, J

Bench: Division Bench

Advocate: B.D. Sharma, S.R. Srivastava, Surya Kant and R.P. Kapur, for the Appellant;

Judgement

Prakash Narain, J.

(1) The main question which arises for determination is whether employees of the State Bank of India entitled to involve the principles of natural justice and claim that reasonable opportunity should be granted to them before their services are terminated by way of punishment. A subsidiary question that arises is the interpretation to be put on the relevant rules in this case known as the State Bank of India (Sub Accountants and Head Cashiers) Service Rules.

(2) The appellant was employed by the erstwhile Imperial Bank of India as a Cashier and Teller on December 24, 1951. He was confirmed in that post with effect from January 1, 1953. The State Bank of India Act, 1955 was passed by the Parliament with intent. inter alia, to transfer to the State Bank of India the undertaking of the Imperial Bank of India. The services of the existing officers and employees of the Imperial Bank of India stood transferred to the State Bank of India. That is how the appellant became an employee of the State Bank of India.

(3) The appellant was promoted to the post of Head Cashier and posted to Dalhousie in August, 1963. In 1967 the Bank authorities found that the appellant had permitted drawings without adequate stock to two firms. In other words, there was not sufficient security ensured by the appellant for granting drawing facilities to the

said parties. According to the Bank the appellant thus acted beyond the scope of his authority. Accordingly, the appellant was placed under suspension on March 27, 1967. A charge-sheet was served on him on June 10, 1977. The appellant sought particulars of grounds which formed the basis of the charges preferred against him by a letter dated June 22, 1967. He also asked for some documents, including the investigation report leading to the framing of the charges. The Bank authorities supplied particulars of the charges to the appellant on September 8, 1967 but refused to supply the investigation report on the ground that the same will be made available to him after the Local Board had considered it to be a fit case for imposing the penalty of "requiring the employees to resign" or "dismissal" as provided in Rule 39, clauses (e) and (f) of the relevant Service Rules. The appellant thereupon submitted his reply to the charges on September 19, 1967. He made a request that he may be allowed to be personally present at any enquiry that may be held and cross-examine witnesses that may be produced to substantiate the charges. He also asked for an opportunity to produce defense witnesses. The request of the appellant was turned down by the Bank authorities on September 29, 1967. He was, however, afforded an opportunity of being heard in person. This opportunity was granted to him on November 29, 1967. On April 12, 1968 the Bank authorities informed the appellant that it was proposed to inflict the punishment of dismissal on him under Rule 39(f) of the relevant rules. At that point of time a copy of the report dated March 5, 1967, submitted by the Investigating Officer, Shri M. N. Muttu, together with depositions of witnesses examined by the Investigating Officer was furnished to the appellant. The appellant submitted his reply to the show cause notice on May 9, 1968. On September 6, 1968 he was dismissed from service.

(4) The appellant thereupon filed Civil Writ Petition No. 838 of 1968 in this court praying that the order of dismissal from service be quashed. He contended that the Impugned order dated September 6, 1968 was not only passed in violation of the principles of natural justice but in violation of the relevant service rules.

(5) The learned Single Judge came to the conclusion that the appellant was bound by the terms and conditions of the relevant service rules. He negatived the submissions that the investigation held behind the back of the appellant and relied upon by the Bank authorities impugned upon the principles of natural justice. In his very illuminating judgment, Avadh Behari, J. has discussed the concept of "private" and "public" employment. After noticing the scope of contract of employment at Common Law and tracing its history from the Roman institution of pater families, he has gone on to discuss the incidents of public employment. He observed that the principles of Public and Administrative Law have eroded the traditional private Law concept of master and servant a great deal in modern times and referred to a large number of judgments delivered in India and in England to come to the conclusion that the concept of natural justice may be available in public employment though it is not available in private employment. The learned Judge did not feel that he was, in any way, bound to apply the principles of natural justice in the case of the appellant

despite the decision of the Supreme Court in [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](#), . He rather referred to a Bench decision of this court in Ved Prakash Malhotra v. State Bank of India LL.R. (1974) I Del 660(2). The learned Judge also came to the conclusion that the relevant service rules have not been breached accordingly , taking the view that the appellant was not in public employment or one under a statute, he held that the appellant had no right to canvas violation of the rules of natural justice.

(6) As noticed earlier, the State Bank of India was constituted by the State Bank of India Act, 1955. It is thus a statutory body. It has framed various rules pertaining to service of various kinds of officers and employees. The relevant rules in the present case are Rules 39, 40 and 42 of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules. Section 43 of the Act gives the power to State Bank to appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service. It is in the exercise of this power that the aforesaid rules have been framed. The question that arises for consideration is whether these rules can be enforced in writ jurisdiction and whether the appellant's employment is in the nature of public employment and he can invoke the principles of natural justice. The real point in issue is, to put it in the words of the learned Single Judge,

" Is it a pure master and servant case or a case of statutory employment ?"

(7) The learned Single Judge on the basis of the decision of the Supreme Court in [Calcutta Dock Labour Board Vs. Jaffar Imam and Others](#), and other cases has come to the conclusion that the principles of natural justice would be attracted in the case of employment by a statutory body or authority. In other words, as our learned brother put it, "It is in statutory employment that the rules of natural justice have a part to play." It is only because he found that the appellant's employment was not statutory that he applied the ordinary principles of master and servant to his case. In our opinion, the learned Judge went wrong here. The appellant was an erstwhile employee of the Imperial Bank of India and, as a reading of Section 7 of the Act itself shows, he became an employee of the State Bank of India. The power to employ officers and others exercisable by the State Bank of India is a statutory power. In terms, wherefore, the appellant's employment was a statutory employment. The rule enunciated in the aforementioned decision of the Supreme Court or in Vine v. National Dock Labour Board (1957) A.C. 488 (4), is, Therefore, fully attracted. Where the learned Judge, in our respectful opinion, went wrong was to say that when the Act gives the power to the State Bank to determine the terms and conditions of appointment and service the common law doctrine is imported into the statute by providing that the Bank shall have freedom of action in the matter of employment

of officers. In our view the learned Judge also did not correctly read the rule enunciated by the Supreme Court in Sukhdev Singh's case (supra). Reference to the Bench decision of this court in Ved Prakash Malhotra v. State Bank of India 1974 (1) Del 660 was not relevant in view of the clear pronouncement of the Supreme Court in Sukhdev Singh's case. We, Therefore, hold that the appellant was entitled to invoke the principles of natural justice as the manner in which disciplinary proceedings were conducted against him left much to be desired. He was not given documents at the appropriate stage. Witnesses were examined behind his back. He was not allowed to cross-examine those witnesses. He was not allowed to produce witnesses in defense. A statutory authority cannot be allowed to act in that manner.

(8) With regard to the rules on which learned Single Judge had relied, we are of the view that even those rules have not been followed. It is well-settled that a statutory authority, once it frames the rules and regulations is as much bound by the same as the employees who subscribe to the rules. Rule 39 sets out the penalties that may be imposed on an employee of the Bank for acts of misconduct specified in the said rule. Rule 40 lays down that where the Managing Director in the case of an employee serving in or under the Central Office or the Secretary and Treasurer in the case of an employee serving in a circle is satisfied that there is a prima facie case for proceeding against an employee, he may investigate the case himself or appoint the Chief Inspector or the Deputy Secretary and Treasurer or any other official to investigate the case and submit an independent report thereon in writing. Investigation here must be regarded as investigation in consonance with the rules of natural justice. Investigation cannot be held to be valid investigation if done behind the back of an employee. Sub-rule (2) of Rule 40(2) gives the procedure to be followed. A reading of the various sub-rules shows that what is contemplated is a fair opportunity to be given to the official charged with misconduct. We cannot read the rules, the way the learned Single Judge has done, as giving an absolute power to the State Bank to hold investigation behind the back of an employee. Therefore, we feel that even the rules have not been complied with.

(9) The result is that we accept the appeal and quash the impugned order of dismissal. It will, however, be open to the State Bank to hold a fresh investigation in accordance with the view expressed by us and then pass such order as it may deem fit in accordance with law. The appellant will be entitled to his costs. Counsel's fee Rs. 550.