

(2019) 01 RAJ CK 0365
Rajasthan High Court (Jaipur Bench)
Case No: Civil Writs No. 14506 Of 2016

Nand Lal Sanwani

APPELLANT

Vs

Union Bank Of India
And Ors

RESPONDENT

Date of Decision: Jan. 25, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227

Hon'ble Judges: Sanjeev Prakash Sharma, J

Bench: Single Bench

Advocate: Rupin K. Kala

Final Decision: Allowed

Judgement

1. By way of this writ petition the petitioner has prayed to quash and set-aside the departmental proceedings initiated vide charge sheet dated

29.12.2014, punishment order dated 28.07.2015, appellate order dated 08.10.2015 and the subsequent order passed in review petition dated 25.02.2016

whereby the petitioner on the basis of the two charges leveled against him was punished with compulsory retirement under the provision of the Union

Bank of India Officer Employee's (Discipline & Appeal) Regulations 1976 (hereinafter referred to as 'the Regulations 1976').

2. Brief facts which need to be noted are that the petitioner while working as Junior Management (Grade-I) with the Bank, was served with charge

sheet vide memorandum dated 29.12.2014 wherein allegations were levelled against the petitioner that on 14.08.2014 the petitioner entered a

fraudulent transaction of Rs. 8. 000/- by debiting sundry deposit-sundry credit Advances Department Account No. 352602850009000 and crediting

Saving Bank Account 352602010070231 in the name of Smt. Raminder Kaur Anand with transaction ID AA384218. The said transaction was

credited and entered by him. After doing the above transaction, the petitioner attempted to withdraw the amount by preparing one loose leaf No.

3784588 for withdrawal of Rs. 8000/- from account No. 352602010070231 which was entered with transaction ID AA392052 by Shri Mangi Lal

Sharma (MS292719), SWO-A Kota Main Branch. However, since the signature of the drawer did not match, the Accountant took the withdrawal

form in his custody. Thus, due to vigilant officials, the commission of fraud was averted. Further, it is submitted that the petitioner was deputed to

Navagaon Branch for recovery in terms of Regional Office, Udaipur Memorandum No. KSHEKAU;KARMIK;2444:14 dated 05.09.2014. However,

he did not comply with the instructions and remained at Regional Office, Udaipur on 06.09.2014 without prior permission of the competent authority.

He was therefore called upon to submit his explanation in this regard. In terms of Memorandum No. KSHEKAU-KARMIK:2460:14 dated

11.09.2014, the petitioner was again informed that in defence of the instructions of Regional Office, Udaipur he was putting his signature

unauthorizedly on muster roll from 06.06.2014 to 09.09.2014 and 11.09.2014. He has therefore willfully disobeyed the instructions of the superior

authority and showed utter disregard to the instructions given to him. Reply to the statement of allegation filed by the petitioner wherein he has stated

that during the period when the said alleged transaction of Rs. 8,000/- was transferred from the Sundry Credit Advances Department Account to

Saving Bank Account in the name of Raminder Kaur Anand, the status shown in his ID was entered ""which does not mean debit or credit"". If there is

such a wrong entry it could be deleted by authorized official and the same cannot be treated as credited in his account. It was also stated that he was

under treatment of a Psychologist at that time for depression and had come to Jaipur for the said treatment and had requested the Chief Manager

alongwith medical evidence for not sending him to Navagaon which was treated as defiance of instructions. It was also stated that subsequently his

medical bills for the treatment had also been sanctioned and due to his sickness he was temporarily transferred from Regional Office vide order dated

31.10.2014. It was stated that the medical facility was not available in the rural area and Navagaon was 520 kilometers away. Petitioner also pointed out that he had completed 263 files in series and there had been no departmental action ever taken against him. Enquiry Officer was appointed who conducted the enquiry and the Presiding Officer produced 15 documents and three witnesses namely Shri O.P. Gupta, Manager (Retired) Kota Main Branch, Shri Rakesh Tungariya and Shri Mangilal Sharma, who were Assistant Manager and Officer of the Kota Main Branch. It was noticed that the Defence has not examined any witnesses nor produced any witnesses in defence. The enquiry officer has relied upon the statements of Raminder Kaur Anand whose account was alleged to have been debited of Rs. 8,000/-. The Enquiry Officer taking into consideration the documents produced before it which included a statement by the account holder Raminder Kaur Anand held the petitioner guilty of charge No. 1 and also held him guilty of charge No. 2 for not obtaining instructions by Regional Office to report Navagaon Branch on deputation and unauthorizedly signed the Attendance Register from 06.09.2014 to 09.09.2014 and 11.09.2014.

3. Petitioner appearing in person submits that the letter written by Raminder Kaur Anand was exhibited by one witness Shri O.P. Gupta who is a retired Manager and Raminder Kaur Anand was never produced in evidence. The letter written by Raminder Kaur Anand that she had neither issued nor signed a loose cheque for Rs. 8,000/- dated 14.08.2014 and that she did not come to the Bank to withdraw the amount that day and the cheque and signature thereon were fraudulent, but this has not been proved as she never appeared in the enquiry. The statement was recorded behind his back.

Petitioner has also further stated that he was being harassed by the AGM and because of this reason he had been asked to go to Navagaon although he was suffering from depression. However, he joined his duty at Navagaon on 16.09.2014 where he remained on deputation on 31.10.2014 and upto 12.01.2015 on permanent basis and thus the allegation of the petitioner having clearly refused to comply with the orders were unjustified and it was only on account of illness for which he had submitted documents relating to medical treatment he could not have been punished. Petitioner has

submitted that the loose leaf withdrawal form was neither signed by him nor it is in his handwriting. He has explained about the loose leaf stating that a

boy who was found to be coming to the Bank had given the loose leaf and was not in his handwriting and allegations levelled on the petitioner

attempting to defraud the Bank was mischievous as the petitioner was having 37 years of long service behind him and was receiving salary of Rs.

67000/- per month and the allegation was only levelled to frame him for a petty sum of Rs. 8,000/- on account of prejudice of the then AGM Ashok

Dhabhai with whom the petitioner was not having good relations and there had been instances of harassment when Ashok Dhabhai was posted as

Branch Manager at Ramganj Ajmer. It has been stated that the petitioner had written several representations to the Regional Headquarters with

regard to the same and the said documents were on record with the Bank. The letter sending him to Navagaon on deputation was never received by

him and the second charge of the petitioner having disobeyed and remained willfully absent was also not made out. It is further submitted that on

account of depression he was required to attend the doctors on Sundays and he had submitted documents and medical bills which had been

reimbursed by the Bank to support his defence.

4. The respondents have filed a reply as well as the written submissions and have supported their orders submitting that charges levelled against the

petitioner having fully proved in the departmental enquiry and the petitioner was given a fully and fair opportunity to defend his case by the

Disciplinary Authority as well as by the Appellate Authority and thus the provisions of Regulations of 1976 have been fully complied with. Considering

the gravity of the charge proved against the petitioner, he has been rightly compulsory retired. Learned counsel while submitting his written

submissions has relied upon following judgments:-

Zora Singh v. J.M. Tandon & Ors. AIR 1971 Supreme Court 1537, Municipal Committee, Bahadurgarh V. Krishnan Behari And Others, AIR 1996

Supreme Court 1249, U.P. State Road Transport Corporation v. Vinod K umar (2008) 1 SCC 115, U.P. State Road Transport Corporation Vs. Suresh

Chand Sharma, (2010) 6 SCC 555 and B.C. Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749.

It is his submission that there is a limited scope available for judicial review and this Court would not appreciate the evidence which has come on

record again in writ jurisdiction as the Court is not sitting in appeal on the orders passed by the Disciplinary Authority and Appellate Authority.

Learned counsel has also relied on the judgment in Union of India And Others v. Upendra Singh (1994) 3 SCC 357, State Bank of India v.

Samarendra Kishore Endow (1994) 2 SCC 537 relying on the earlier judgment passed by the Supreme Court in AIR 1963 SC 1723 State of Andhr

Pradesh & Ors. v. S. Sree Rama Rao and has also relied upon the judgment in (2011) 4 SCC 584 State Bank of Bikaner & Jaipur v. Nem Chand

Nalwaya.

5. This case was heard by the Court on 06.10.2018 at length and the order was reserved. Learned counsel for the respondent was directed to keep

the record relating to enquiry ready for perusal, however despite of waiting for a long time record relating to the enquiry not placed for perusal. The

case was again listed in 'to be mentioned category' on 17.01.2019. Counsel appearing for the respondent stated that apart from the written submissions

which he already made he does not have any record available with him. The order was again reserved whereafter Shri Rupin Kala has produced the

file containing therein the documents relating to the original record of enquiry. Condoning the delay in producing the record, this Court thought it proper

in the interest of Justice to examine the record. In the written arguments the respondents have submitted as under:-

The Hon'ble court after hearing the matter reserved the case for pronouncement of judgment and in the meanwhile directed the respondent bank to

submit the inquiry record pertaining to the charge sheet dated 29.12.2014 issued to the petitioner. It was further directed to submit the record if any

preliminary investigation before issuing the charge sheet was conducted. In this respect it is submitted that no preliminary investigation was done

before issuances of the charge sheet but preliminary inquiry was conducted by the inquiry officer itself. So far as the annexure-R/4 letter dated

02.09.2014 submitted by Raminder Kaur Anand is concerned the same was given by her to the Manager Union Bank of India Branch Kota as she

was called by the Manager on phone to verify the forged voucher submitted by the petitioner to Shri Mangi Lal Sharma which was submitted in the inquiry as Mex-6 and was proved by the witness of the bank.

I have looked into the record and find that Exhibit MEX/10 is a letter wherein Raminder Kaur Anand has put her signature and date. The said document has not been proved by Raminder Kaur Anand.

6. The perusal of the enquiry report which is on record filed by the petitioner, it is noticed that the enquiry officer has mentioned that the C.S.O.

namely the petitioner has not pleaded guilty in the preliminary enquiry held on 28.02.2015 whereafter regular hearing of the enquiry was conducted

and the management produced only three witnesses which did not include the account holder Raminder Kaur Anand. It has also come on record that

the Debit and Credit was not done by the petitioner but the transaction has been operated on his ID. The petitioner has also alleged bias against the

General Manager pointing out several complaints made by him against the General Manager of harassment and that the initiation of an enquiry was at

the behest of the General Manager. However, the said aspect has not been proved by the petitioner during the course of enquiry. The Enquiry Officer

has however relied upon the said statements of Raminder Kaur Anand and in the analysis of the evidence he has noted as under:-

As per MEX-10, Ms. Raminder Kaur Anand has reported that she had neither issued nor signed a loose leaf No. NZ-3784588 for Rs. 8,000/- on

14.08.2014 to withdraw the amount and informed that signature appearing on loose leaf are fraudulent.

It has also noticed that the enquiry officer has recorded that the loose leaf which was presented for debit of Rs. 8,000/- was entered by Shri Mangi

Lal Sharma and not by the petitioner. However, he states that the said loose leaf was handed over to Mangi Lal Sharma by the petitioner.

7. Having considered the aforesaid submissions and the facts noticed above and after giving my thoughtful consideration of the submissions, this Court

as to what is the limited scope available for the judicial review. In State of Andhra Pradesh And Others v. S. Sree Rama Rao (supra), it has been held

as under:-

7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged

against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction

of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the

order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a

Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the

enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural

justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which

evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition

for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere

where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in

violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by

some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or;

where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion,

or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal

evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed

before the High Court in a proceeding for a writ under Art. 226 of the Constitution.

8. In *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya* (supra), the Apex Court held again as under:-

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations (Vide B.C.

Chaturvedi V. Union of India (1995) 6 SCC 749, Union of India v. G. Ganayutham (1997) 7 SCC 463, Bank of India V. Degala Suryanarayana (1999)

5 SCC 762 and High Court of Judicature at Bombay v. Shashikant S. Patil (2000) 1 SCC 416.

9. The aforesaid view was further clarified and specified in Central Industrial Security Force v. Abrar Ali, AIR 2017 (SC) 200 while following view of the earlier judgment passed in Union of India v. P. Gunasekaran reported in (2015) 2 SCC 610, the Apex Court reiterating the same view as under:-

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the inquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a) the inquiry is held by a competent authority;

(b) the inquiry is held according to the procedure prescribed in that behalf;

- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

10. The Enquiry Officer has not adhered to the principles of natural justice while conducting the enquiry. The account holder Raminder Kaur Anand

was not produced before the Enquiry Officer. Thus the fact whether there had been an attempt to withdraw an amount of Rs. 8,000/- from her

account or whether the amount of Rs. 8,000/- credited in savings bank account of Raminder Kaur Anand was at her instructions or not, cannot be said

to have been proved and a presumption could not have been drawn without giving opportunity of cross examination to the delinquent-petitioner. The

loose leaf was noticed to have been entered by another person and not the delinquent officer and the specimens signatures were not matching but no

one has come forward to connect the said loose leaf with the petitioner. Presumption has been drawn on the statement of witness that it was the petitioner who has presented the loose leaf to Mangilal Sharma. In a case relating to fraud surmises and suspicion cannot take place of proof and there must be some evidence to hold the charge of attempt to commit fraud.

11. In the case of M.V. Bijlani Vs. Union of India: (2006) 5 SCC 88, the Apex Court has held as under:-

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record.

While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

12. It is well settled principle that- "even though judicial review of administrative action must remain flexible and its dimensions are not cluster courting, court in exercise of powers of judicial review is not concerned with the correctness of findings of facts on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which can not be faulted with, for procedural irregularities or irregularities, which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered is directed not against the decision but is confined to the examination of decision-making process" {(133 EF) Chief Constable of North-West Police v. Evans - 1882(3) All ER 141}.

13. In a recent decision in Allahabad Bank & Ors. v. Krishna Narayan Tewari (2017) 2 Supreme Court Cases, 308, the Hon'ble Supreme Court has observed as follows:

7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

14. In this manner, there has been a fault in the entire decision making process and the final verdict of the Disciplinary Authority, which solely rests on the report submitted by the Enquiry Officer, can not be allowed to be sustained. The Appellate Authority also has not bothered to examine any of the submissions put up by the petitioner in his appeal. The order passed by the Appellate Authority therefore also suffers from non-application of mind

{Sher Bhadur v. Union of India & Ors.- (2002) 7 SCC 142}.

15. In the backdrop of the contentions of the petitioner which he has been taken up since initial stage, the concerned AGM was having personal

vengeance against the petitioner, the fact that the Enquiry Officer did not call upon the Account Holder for proving the charge of attempt of

withdrawing amount from the account of the account holder. This Court reaches to the conclusion that the petitioner has been held guilty without there

being any evidence. In Union of India v. Kuldeep Singh (2004) 2 SCC 590, it has been held that a person cannot be held guilty for charges where

there is no evidence to support the same.

16. In Krushnakant B. Parmar Vs. UOI (2012) 3 SCC 178, the Apex Court has held as under:-

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the

absence is willful, in the absence of such finding, the absence will not amount to misconduct.

17. The petitioner in the present writ petition has also placed on record certain additional documents in order to show the deliberate and willful

harassment being caused to him. It is stated that for 11 months prior to date of compulsory retirement he was kept without work and without a table

chair and computer. Although he was not under suspension, his bills amounting to Rs. 25,000/- submitted 8 to 9 months prior to the date of decision

was neither sanctioned nor declined. Doctor's prescription showing the petitioner suffering from acute depression and stress have also been placed on

record. Similar contentions have been raised before the Appellate Authority as well as the Reviewing Authority but the Appellate Authority has not

given any findings in this regard nor the Reviewing Authority has examined the contentions. The submissions of the petitioner that there is an

underlying element of prejudice occasioned on account of his strained relation with his Assistant General Manager cannot be overruled.

18. In light of aforesaid discussion, this Court is unable to accept the condition of the respondents that enquiry was conducted fairly and in accordance

with principles of natural justice. The decision making process itself stands vitiated.

19. Accordingly, the writ petition is allowed. The punishment order dated 28.07.2015, Appellate Order dated 08.10.2015 and Review order dated 25.02.2016 are quashed and set-aside.

20. The petitioner shall be deemed to be reinstated in service with all consequential benefits. During the pendency of the writ petition if the petitioner has received any retiral benefits, the same would be subject to adjustments from the arrears upto which he is entitled on account of his reinstatement and consequential benefits.