HIGH COURT OF GUJARAT

LALITKUMAR R PARMAR
Versus
UNION BANK OF INDIA AND ANR

Date of Decision: 15 December 1995

Citation: 1995 LawSuit(Guj) 479

Hon'ble Judges: M S Parikh

Eq. Citations: **1996 1 GLH 306**, 1997 3 LLJ 395, 1996 LabIC 1943

Subject: Constitution

Acts Referred:
Constitution Of India Art 226

Final Decision: Petition dismissed

Advocates: K M Patel, R C Jani

Cases Referred in (+): **8**

M. S. Parikh, J.

[1] The petitioner herein has brought under challenge in this petition under Article 226 of the Constitution of India his dismissal from the service of the respondent-Bank and has prayed for quashing and setting aside the impugned order of dismissal dated June 28, 1990 passed by the Disciplinary Authority on the ground that the petitioner failed to discharge his duties with utmost honesty, integrity and devotion and diligence acted in a manner unbecoming of a Bank Officer and failed to take all possible steps to ensure and protect the interest of the Bank.

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[6] The petitioner had taken the matter in Departmental Appeal before the Appellate Authority, but the Appellate Authority has as per its decision dated October 6, 1990 - Annexure-D dismissed the petitioner's appeal. The petitioner thereupon filed representation for review and the concerned authority rejected the Review Application as per order Annexure-F.

[7] The result is that the petitioner is before this Court challenging the dismissal order as aforesaid.

I have heard the learned Advocate appearing for the petitioner as also for the respondents. Following points have been canvassed for substantiating the challenge to i the dismissal of the petitioner from respondents' service.

(i) The Disciplinary Authority has passed the order of penalty without giving second show-cause notice and, therefore, rules of natural justice are violated. It is in this connection that the petitioner has not been able to show from the Rules or Regulations of the respondent-Bank that there is any provision therein which would require second show-cause notice to be issued by the Disciplinary Authority. In this connection it has been firmly asserted by the respondents that there is no requirement to issue show-cause notice against proposed penalty in the Union Bank Officers' Regulations, 1976. Reference has been made to Regulation No. 7 which indicates the procedure regarding the Disciplinary Authority dealing with tfie report of the Inquiry Authority. Accordingly if he requires the matter to he remitted he had to pass an appropriate order for remitting the matter to the Inquiry Authority by setting out his reasons. Where he agrees with the report of the Inquiry Authority and he is of the opinion any of the penalty is/are to be imposed against the delinquent employee he may make order of imposition of penalty. In case he does not agree with the Inquiry Officer's report, he may pass an appropriate order by recording his reasons for such disagreement and by recording his own findings. When the Disciplinary Authority is of the opinion that no penalty is called for, he may pass appropriate order exonerating the concerned employee. Therefore, there is no provision in the Regulations which would indicate a second show-cause notice being issued before passing order of penalty. It is in this connection that reference has been made to a decision of the Hon'ble Supreme Court in the case of Secretary, Central Board of Excise and Customs and Ors. v. K. S. Mahalingam, 1987 AIR(SC) 1919. Relevant observations may be noted from paras 8 and 9 :

"8. It is, therefore, clear that the respondent cannot claim a second opportunity to show cause against the punishment either under Article 311(2) of the Constitution or under R. 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

9. The question was also considered by a five-Judge Bench of this Court in Union of India v. Tulsi Ram Patel, 1985 2 LLJ 206 In that case, it has been observed per majority that the only right to make a representation on the proposed penalty which was to be found in Clause (2) of Article 311 of the Constitution prior to the amendment having been taken, by the Constitution (Forty-second Amendment) Act, there is no provision of law under which a Government servant can claim this right."

Reference has also been made to one more decision in the case of A.C.C. LTD. v. T. C. Shrivastava, 1984 2 LLJ 105. Following observations appearing at pp. 109, 1 10 may be noted :

"It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity ..."

Thus, when the Regulations of the respondent-Bank do not provide for second opportunity being given to the petitioner before imposition of penalty, it cannot be said that the Rules of natural justice are violated.

(ii) The second point of challenge to the dismissal order is with regard to non-supply of the copy of the Inquiry Officer's report. Even this point is now concluded by the decision of the Apex court in the case of Managing Director, ECIL v. B. Karunakar, 1994 1 LLJ 162. Following observations would assume importance so as to meet with the point raised by the petitioner :

"It is, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan'scase (1991-I-LLJ-29), the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the sarm view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan's case , and the view taken by this Court in the earlier cases and the reliance placed on K. C. Asthana's case (1988-II-LLJ-219) (SC) to contend that a contrary view was taken there was not well merited. It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in Premnath K. Sharma's case 1988 (2) ASLJ 449 and of the Gujarat High Court in H. G. Patel's case 1985 (2) 26 Guj LR 1385 and of

the other Courts and Tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan's case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in Courts/Tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case . This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by High Courts or by this Court in R. K. Vashist's case 1993 Supp. (1) SCC 431.

The need to make the law laid down in Mohd. Ramzan Khan's case prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in Courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not therefore, require that the orders of punishments passed prior to the decision in Mohd. Ramzan Khan's case should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

It can be seen from the above observations that cut-off date is November 20, 1990 on which date Mohd. Ramzan Khan's case was decided and in the present case the dismissal order against the petitioner has been passed on June 28, 1990. Hence, the petitioner cannot get the benefit of the above view. Hence the petitioner cannot succeed on this point.

(iii) The next point urged before this Court on behalf of the petitioner is that the impugned dismissal rendered by Disciplinary Authority is unreasoned and is vitiated by non-application of mind. It may be noted that the Inquiry Officer has given his

report of inquiry with detailed reasons and after discussing the evidence recorded. The Inquiry Officer's report was before the Disciplinary Authority. It appears on the face of the order passed by the Disciplinary Authority that the Disciplinary Audiority has gone through the report of the Inquiry Officer as also the materials on which the Inquiry Officer has relied. Not only that but the Disciplinary Authority has also applied his mind on the question of penalty by using the words "gravity of charges". It is in this connection that following observations of the Apex Court in the case of State of Punjab v. Ram Singh, 1993 1 LLJ 218 (at P.220) may carefully be noted :

"The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of, but is quality, insidious effect and gravity of situation that ensues from the offending "act". The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the ruleas gravest act of misconduct".

[8] On behalf of the petitioner reliance has been placed on a decision of the Hon'ble Supreme Court in the case of Mahabir Prasad v. State of U. P., 1970 AIR(SC) 1302. There the order cancelling licence under the U. P. Sugar Dealer's Licensing Order (1962), Clause 7 was in question. Finding the nature of the inquiry being quasi-judicial, it was led that the order passed in that respect must he a speaking order and merely giving opportunity of hearing to Licensee would not be sufficient. The authorities in that case had disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. In the present case, not only the charges were levelled against the petitioner and not only opportunities were given to the petitioner to defend him in inquiry proceedings, the Inquiry Officer had passed well reasoned order dealing with the whole evidence adduced before him and also considering the defence version. The Disciplinary Authority agreeing with the reasons given by the Inquiry Officer and the evidence adduced before him concurred with the findings of the Inquiry Officer. Hence, it cannot be said that the Disciplinary Authority has not passed a speaking order. The facts before the Supreme Court are quite different from the facts

of this case. In the present case the Disciplinary Authority has acted with all awareness. The Inquiry Officer has also applied his mind to all the facets of the evidence adduced before him. Hence, it can hardly be said that the order of dismissal is not a speaking order or not a reasoned order.

[9] The next is the decision of the Apex Court in the case of Anil Kumar v. Presiding Officer, 1985 AIR(SC) 1121. In that case the Inquiry Officer did not apply his mind to the evidence and did not render a reasoned report. In the present case, the Inquiry Officer has dealt with the evidence, has applied his mind to the same and has given a reasoned report. Therefore, the decision in Anil Kunwr's case would be of no help to the petitioner.

[10] All said and done, there is one important facet of the proceedings which the petitioner had faced. Over and above the fact that the petitioner was delinquent of having not followed the banking practice and procedure in the matter of granting of advances, he had been guilty of accepting illegal gratification and deriving monetary benefit from the official transactions of advancing loans and advances to the agriculturists. Apart from the evidence, which was placed on record before the Inquiry Officer, there was a confessional statement of the petitioner given by him in writing before the Vigilance Officer and in this confessional statement the petitioner had admitted that all the corruption charges levelled against him were not true but some of them were true inasmuch as he had received amount of Rs. 12,000/- for passing the loans. He has also named the persons from whom he had received the amount. It is important to note that he has not retracted from this confessional statement at any point of time and this statement was tendered in evidence of the Deputy Manager (Vigilance), who has been examined before the Inquiry Officer. Not only that, the Branch Manager of the Khanpur Branch of the Bank, who had witnessed the aforesaid statement (Mr. Arekar) has also been examined before the Inquiry Officer and in the evidence of both the witnesses the aforesaid confessional statement has been proved. It is in this connection that reliance has been placed upon a decision of a Division Bench of this Court in the case of Jansukhlal Chhaganlal Nagori v. Regional Manger, Union Bank of India and Anr., Letters Patent Appeal No. 112 of 1990 in Special Civil Application No. 3052 of 1988 (Coram : B. N. Kirpal, CJ as His Lordship then was and S. D. Dave, J) where the Bench had observed as under :

> "As held by the Supreme Court in a later decision in State of Haryana and Anr. v. Rattan Singh, 1982 1 LLJ 46 in a domestic enquiry, the strict and sophisticated rules of evidence under the Evidence Act may not apply. All the materials which are logically probative for a prudent mind are permissible. In Rattan Singh's case, a bus conductor had been charge sheeted for not collecting fares from certain passengers. A Flying Squad had examined those passengers, but their statements

were not recorded and in the disciplinary proceedings, those passengers were not produced. But, evidence of the members of the Flying Squad was recorded. It has been contended before the Supreme Court that in the absence of statements of the passengers, no charge could be held to be proved against the Officer concerned. Rejecting this contention, the Supreme Court observed as follows :

... The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as man of understanding and worldly wisdom, will accept. Viewed in this way, 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. We find in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which as relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground ..."

In the present case, we find that the statements of the customers were placed on record; they were accepted and the appellant, on the other hand, did not produce any evidence.

It is an admitted fact that the two middlemen, through whom the loans were granted to 23 borrowers, were not local residents of the village in which the branch of the Bank was situated, of which the appellant was the Manager. The two middlemen were residents of another village more than 40 kms. away, where the appellant had originally been posted. Some of the persons to whom loans were granted, were residents of villages situated at a distance ranging between 30 and 100 kms. from Dewa. In all, 23 borrowers were introduced by these two middleman and none of the borrowers repaid the full money. Admittedly, in some cases at least, even the margin money was not there. Therefore, the banking norms were clearly flouted. The Enquiry Officer has rejected the retraction of the confession, and in our opinion, rightly so. The appellant first admitted his guilt in the letter written by him on May 27, 1984. The second letter again admitting guilt, was written on September 12, 1984. If the contention of the appellant was correct that he had been compelled to write the said letter, then, he ought to have withdrawn the same soon after the writing of the first letter on May 27, 1984 itself. The appellant chose to resile ftom the statements made by him in the said letters only when Articles of charges had been served on him. Under these circumstances, the Enquiry Officer rightly came to the conclusion that his letter of retraction cannot be accepted and that the confession was voluntary.

[11] Having gone through the Inquiry Officer's report at length and having also gone through the evidence read by Mr. Jani, learned Advocate for the petitioner as also the evidence considered by the Inquiry Officer, I am of the opinion that there is no error committed by the concerned authorities in reaching the conclusion of guilt against the petitioner. The penalty imposed by the Disciplinary Authority can in no manner be said to be disproportionate to the gravity of charges established against the petitioner. In the facts of the case, therefore, no indulgence can be shown in this petition. Following order is, therefore, passed :

[12] In the result, petition is dismissed. Rule is discharged with no order as to cost.