

B.M. Das Vs. Chief General Manager, State Bank of India and Others

B.M. Das Vs. Chief General Manager, State Bank of India and Others

SooperKanoon Citation : sooperkanoon.com/1115660

Court : Chhattisgarh

Decided On : Apr-08-2013

Judge : Satish K. Agnihotri

Appeal No. : Writ Petition No. 3036 of 2000

Appellant : B.M. Das

Respondent : Chief General Manager, State Bank of India and Others

Judgement :

1. Challenge in this petition is to the enquiry report dated 23.03.1999 (Annexure P/3), the order of imposition of penalty by the Disciplinary Authority dated 07.05.1999 (Annexure P/5), the order of the appellate authority dated 02.09.1999 (Annexure P/7) whereby the appeal of the petitioner against the imposition of penalty (Annexure P/5) has been affirmed and the charge sheet (Annexure P/13) dated 18.08.1998.

2. The facts, in brief, as projected by the petitioner are that while the petitioner was posted as Officer, Grade III at Bhilai Branch, he was served with a charge sheet on 14.10.1992 (Annexure P/1) under provisions of Rule 50(1)(i) of the State Bank of India (Supervising Staff) Service Rules, 1975 (for short the Rules, 1975) asking the petitioner to submit his response within a period of 15 days. In response, the petitioner requested for supply of certain documents to submit his reply under the provisions of Rule No. 50(2) (iii) of the Rules, and denied the charges. During the

course of enquiry, the Enquiry Officer, the Presenting Officer and the venue of enquiry, was changed number of times. Finally, the EO submitted his report (Annexure P/3) on 23.03.1999 holding that the allegation No. 1(a) and (b) were fully proved and allegation No. 1(c) and (d) were not proved, further, the allegation No. 2 and 3 were partly proved. The petitioner submitted his objection (Annexure P/4) to the enquiry report pointing out various infirmities. Thereafter, the impugned order dated 07.05.1999 (Annexure P/5) was passed imposing penalty of reduction in the time scale of pay by four stages for a period of two years during which period the petitioner shall not earn any increment to this pay and on expiry of such period the reduction will have the effect of postponing his future increment(s) in terms of Rule No. 67 (f) of the State Bank of India Officers Service Rules (for short the Service Rules). Against the said order, the petitioner preferred an appeal on 07.05.1999 (Annexure P/4) before the appellate authority i.e. the Chief General Manager, Local Head Office, Bhopal, which was also dismissed on 02.09.1999 (Annexure P/7) affirming the order passed by the Appointing and Disciplinary Authority i.e. the General Manager (Dand PB).

3. Shri Solapurkar, learned counsel appearing for the petitioner submits that the petitioner was not afforded proper opportunity of hearing, he was not allowed to have complete cross examination of the prosecution witnesses No. 1 and 2, who are the respondents witnesses. Further, he was also not allowed to examine his defence witnesses. Shri Solapurkar further submits that the enquiry lasted for five years and the petitioner was not allowed to examine a single witness in his favour, even the objections raised by the petitioner with regard to the irregularities and lacunas in the enquiry report were not taken into consideration either by the Disciplinary Authority or the Appellate Authority. The main allegation against the petitioner was that he did not process the bank loan properly to the beneficiary, therefore, the expert officer like Mr. A.K. Pani, was required to be called into the witness box to prove that there was no mistake committed by the petitioner in the processing of bank loan. The enquiry started on the basis of the charge sheet issued in the year 1992, and thereafter, in the subsequent year i.e. in the year 1998, another charge sheet on the same allegations were issued which shows the malafide intention of the respondent authorities.

4. On the other hand, Shri Gautam Bhaduri, learned counsel appearing for the respondent No. 1 and 2 would submit that the departmental enquiry commenced on 13.10.1993 which ended on 21.11.1997. On bare perusal of Annexure P/2, it is evident that the petitioner was asked to peruse the documents, stated therein, thus, the allegation of the petitioner that he was not afforded proper opportunity of hearing or to inspect or peruse the documents, is vague. He would further submit that the Departmental Enquiry was conducted in a free and fair manner, following the principles of natural justice and the rules prescribed under the Service Rules. He would next contend that the petitioner has not proved as to what prejudice was caused, even if certain documents, as alleged by him, were not supplied to him, or procedural requirements have not been complied with.

5. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. The petitioner was served with a charge sheet on 14.10.1992 (Annexure P/1) alongwith statement of allegations and article of charges. The charges levelled against the petitioner reads as under:

1. You are charged with gross negligence. Your acts are unbecoming of a Bank official and are in contravention of Rule No. 32(4) of the State Bank of India (Supervising Staff) Service Rules.

2. Despite the fact that the loan proposal had several lacunae/shortcomings, you sanctioned the loan to the person who was entrusted with the construction work of your house with an intention to derive undue benefit from him. Thus, you have knowingly, acted in a manner unbecoming of a Bank official. Your acts are in contravention of Rule No. 32(4) of the State Bank of India (Supervising Staff) Service Rules.

3. By remaining unauthorisedly absent from your duties, you have violated the leave rule No. 40(1) of the State Bank of India (Supervising Staff) Service Rules. By violating the leave rules you have acted in a manner unbecoming of a Bank official and thereby contravened Rule No. 32(4) of the Service Rules governing your services in the Bank.

7. The petitioner has filed his detailed response on 24.11.1992 (Annexure P/2) running into several pages. The Enquiry Officer submitted detailed enquiry report alongwith the allegations of the petitioner as under:

In this connection, it is important to bring on record the submission of the defence as under:

1. The defence has been objecting to almost all the rulings of the Inquiring Authority and they participated in the Enquiry as a protest by reserving their rights and remedies against the ruling of IA.

2. It has been alleged by the defence right from the inception of the enquiry about ambiguity, prejudice, discriminative nature, victimizing nature of SAAC and violation of natural justice, lack of clarity of SAAC etc.

3. It has also been alleged that all the documents demanded by the CSO as per their list dated 19.12.1995 have not been supplied to them. Despite this they have produced 143 defence Exhibits.

4. It has also been alleged in the proceedings as well as the brief that cross examination of witnesses was not allowed by the Inquiring Authority till its completion so that the allegations could be rebutted fully and also that witnesses as per the list submitted on 19.12.1995 were not called for examination cross examination etc.

For all the above allegations the Inquiry Authority has to say that none of them are maintainable. Enough time was given to the defence for cross examination all relevant documents were made available to them.

8. The Enquiry Officer found allegation No. 1 (a), (b) No. 2, No. 3, as fully proved and found the allegation No. 1(c) and (d) as not proved. The petitioner submitted his reply to the second show cause notice (Annexure P/4) running into several pages. The Disciplinary Authority, by order dated 07.05.1999 (Annexure P/5) imposed penalty as under:

Reduction in time scale of pay by four stages for a period of two years during which period the official will not earn any increment to this pay and on expiry of such period the reduction will have the effect of postponing the future increment(s) in terms of Rule No. 67(f) of State Bank of India Officers Service Rules which I hereby do in terms of Rule No. 68 (3)(iii) *ibid*.

9. Thereagainst, the petitioner preferred an appeal (Annexure P/6) before the appellate authority i.e. the Chief General Manager, Local Head Office, Bhopal, which was also dismissed on 02.09.1999 (Annexure P/7) with detailed reasons. The petitioner was given full opportunity to peruse the documents and also granted time to examine the witnesses, which was not done. This allegation is of general nature that the petitioner was not permitted to peruse the relevant documents or supplied a copy of the documents, and as such it is not tenable. The delinquent employee can make complaint of non-supply of documents, if the documents have been relied on or inference has been drawn from the said documents, in the enquiry report, not otherwise. The petitioner has not pointed out that by non-examination of his witnesses which he did not do, any prejudice has been caused.

10. I have perused the entire enquiry report, no perversity has been found. The petitioner has also not raised any specific point with regard to allegation whereunder the findings has been recorded without evidence and reliance of the evidence was not seen or examined by the petitioner before the final recording of findings. It is a case where all the allegations of the petitioner are vague, unspecific and the petitioner has failed to establish the same with cogent reasons. It is the basic principle of departmental proceedings that if there is no prejudice caused to the petitioner in conduct of the enquiry on account of non-consideration of certain objections, it cannot be held that the enquiry was not proper or illegal. The petitioner was supplied with enquiry report and was also permitted to peruse all the documents as the list submitted by the petitioner required several documents and the petitioner has not proved before this Court that those documents were important and those documents were not shown to the petitioner, though, they were taken into consideration at the time of holding the charges proved. It is incumbent upon the petitioner to plead and prove the prejudice by non

supply of the documents. (See: State Bank of India and Others v Bidyut Kumar Mitra and Others (2011 (2) SCC 316 : AIR 2011 SC (Supp) 798)).

11. In the case on hand, the petitioner has not shown from an point of view that any injustice or prejudice has been caused to him, Thus, this Court is of the strong view that the enquiry was properly conducted and the punishment awarded to the petitioner is just and proper, warranting no interference.

12. For the reasons stated hereinabove, this petition, being devoid of merit, is dismissed. No order as to costs.

Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com