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Court : Mumbai Nagpur

Decided On : Nov-16-2016

Judge : B.R. Gavai & V.M. Deshpande

Appeal No. : Writ Petition No. 4482 of 2005

Appellant : Narendra

Respondent : Bank of Baroda, through its Deputy Generala Manager, (Maharashtra and Goa) and Others

Advocate for Pet/Ap. : Mr. Vikram Marpakwar, Mr. Marpakwar

Judgement :

Oral Judgment: (V.M. Deshpande, J.)

1. By the present petition, the petitioner is challenging the order dated 14.01.2004 passed by the disciplinary authority imposing penalty of removal from service upon the petitioner together with the order passed by the appellate authority dated 17.03.2005 by which the appeal preferred by the petitioner came to be rejected.

2. The facts giving rise to the present petition in nutshell are as under:

FACTS

The petitioner initially was appointed as Clerk-cum-Cashier on 24.01.1975 with the Bank of Baroda. He was promoted as Officer in the year 1987. He was further promoted in the pay scale of MM-II in the year 1995. In the year 1998, the petitioner was transferred to Old Cotton Market, Akola branch of Bank of Baroda. The misconduct, which the petitioner committed, relates to this branch when he was discharging his duties in the managerial capacity with said branch. The petitioner was suspended from service on 11.07.2001. On 15.04.2002, the respondent no.1 instituted disciplinary proceedings against the petitioner under Regulation 6 of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulation, 1976 (hereinafter referred to as the Regulation for the sake of brevity). Along with the said memorandum, articles of charges and statement of allegations were also served upon the petitioner. The petitioner was directed to submit his reply in the nature of written statement of defence.

3. Articles of charges, which was served upon the petitioner are as under:

Articles of Charge

During the period Mr. N. S. Wahane, Manager, E.C.No.11175 (presently under suspension w.e.f. 11.07.2001) was working as a Manager (Credit) at our Akola Branch (Nagpur Region), he is reported to have committed certain acts, and deeds and to have omitted to do certain acts and deeds which it was his duty to do, all and each of which acts and omissions, if proved would amount to misconduct under Regulation 3 (1) and 24 of the Bank of Baroda Officer Employees (Conduct) Regulations, 1976 and also otherwise under law. He is therefore hereby charged as under:

1. He has committed serious violation of duty, breach of trust reposed on him, by the Bank and misuse of office.
2. He has knowingly and willfully violated Bank's rules and established procedures.
3. He did not discharge his duties with integrity and honesty and took such actions and committed such omissions which showed lack of probity, integrity, honesty or bonafides.

4. He adopted such steps and took such actions as were derogatory, prejudicial, detrimental or injuries to the interest of the Bank.
5. He did not take steps to ensure and protect the interest of the Bank.
6. His acts of omission and commission will result in substantial loss to the Bank.
7. He did acts unbecoming of a Bank Officer.

After receipt of the Articles of charge and statement of allegations dated 15.04.2002, the petitioner submitted his statement of defence on 25.04.2002. Mr. R. S. Vyas, Chief Manager, Sitabuldi Branch was appointed as Enquiry Officer in terms of Sub Regulation 2 of Regulation 6 of the Regulations.

4. In the enquiry proceeding, initially, the petitioner was represented by his defence representative. He continued to represent the petitioner till 08.01.2003 and on the said date, he withdrew himself from the proceedings. However, the petitioner continued to participate in the proceeding and he withdrew himself from the proceedings on 09.06.2003. Various documents were supplied to the petitioner during the course of inquiry. The bank examined its witness. The petitioner did not examine any defence witness. The Inquiry Officer-respondent no.2 vide his inquiry report dated 28.08.2003 found that most of the allegations leveled against the petitioner were proved by the bank. In the inquiry report, it is specifically mentioned by the Inquiry Officer that the petitioner, during the course of inquiry submitted certain documents, which were found to be fabricated and forged one.

5. The copy of the inquiry report was sent to the petitioner on 01.09.2003. He was also asked to submit his submission/representation if any within a period of 10 days from the receipt thereof. Accordingly, the petitioner submitted his submissions on 16.09.2003.

The disciplinary authority-respondent no.1, after having considered the nature of charges, factual allegations, statement of defence, inquiry report and submissions made by the petitioner to the inquiry officer's finding, passed the order on 14.01.2004 in exercise of the powers vested with him under the Regulation. The said order reads thus:

1) Penalty of Removal from Bank' service is imposed on Mr. N. S. Wahane with effect from the date of receipt of this order which shall not be a disqualification for future employment.

2) The period of suspension undergone by Mr. N.S. Wahane from 11.07.2001 to 07.07.2003 be treated as period not spent on duty.

3) No benefits of instruments falling due during the period of suspension shall accrue to Mr. N. S. Wahane.

Mr. Wahane may prefer an appeal, if any, in terms of Regulation 17 of the said Discipline and Appeal Regulation 1976, within 45-days from the date of receipt of this order.

The petitioner availed the opportunity of filing an appeal before appellate authority. The appellate authority, vide order dated 17.03.2005 found that there is no merit in the petitioner's appeal and, therefore, the appeal was dismissed. Hence, this writ petition.

SUBMISSIONS:

6. We have heard Mr. Vikram Marpakwar, learned counsel for the petitioner and Mr. S. N. Tapadia, holding for Mr. V. V. Bhangde, learned counsel for the bank, in extenso. Following were the submissions on behalf of the learned counsel for the petitioner to challenge the orders impugned in the present petition.

(i) The entire disciplinary proceeding stand vitiated inasmuch as no proper and appropriate opportunity was given to the petitioner to defend himself effectively in departmental proceedings and, therefore, the inquiry stands vitiated.

(ii) The opportunity was not given to the petitioner to represent himself in the disciplinary proceeding by taking the assistance of an Advocate though the said request was specifically made by the petitioner.

(iii) There was no sufficient material available before the inquiry officer to reach to the conclusion to hold the petitioner guilty of the charges leveled against him.

(iv) No show cause notice was given to the petitioner by the disciplinary authority for the proposed punishment inasmuch as the opportunity was not given to the petitioner on the point of quantum of sentence and, therefore, the order impugned is required to be set aside.

Per contra, learned counsel for the respondent-bank submitted that the bank has followed the due procedure before imposing major penalty upon the petitioner. He submitted that ample and proper opportunity was afforded and was given to the petitioner to defend himself properly in the inquiry proceeding. He submitted that right from the beginning, the attitude of the petitioner was non cooperative and has ultimately withdrawn himself on his own from the inquiry proceeding.

CONSIDERATION:

7. By now, the scope of judicial review and interference by the Court in the cases arising out of the disciplinary proceedings are well settled. Normally, when the disciplinary proceedings have been initiated and the findings of fact have been recorded in such an inquiry, they cannot be interfered with unless such findings are based on no evidence or are perverse or are such that no reasonable man would have reached to such a conclusion. Therefore, it is crystal clear that sufficiency of the material before the inquiry officer to reach to the conclusion by the inquiry officer cannot be the subject matter of judicial review. The learned counsel for the petitioner was unable to point out how the perversity has crept in, in the findings recorded by the inquiry officer. Further, he could not demonstrate on the basis of the inquiry report as well the documents filed along with the writ petition to point out that no evidence was available in the inquiry proceedings for the consideration of the inquiry officer.

Though, the learned counsel for the petitioner submitted that no show cause notice was given to him regarding quantum of punishment, the learned counsel, in the course of his argument, submitted that he is not pressing the submission and, therefore, the Court is not dilating on the said issue.

9. The learned counsel for the petitioner submitted that the opportunity was not given to him to represent himself in inquiry proceedings by an advocate.

The petitioner was governed by the Regulation of 1976. As per Regulation 4, there are two types of penalties. (i) Minor Penalties and (ii) Major penalties. Regulation 6 deals with the procedure for imposing a major penalties. Sub Regulation 7 of Regulation No.6 reads as under:

7. The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority having regard to the circumstances of the case, so permits. The Officer employee shall not take the assistance of any other officer, employee who has two pending disciplinary cases on hand, in which he has to give assistance.

From the aforesaid, it is clear that the delinquent officer can take assistance of any other officer-employee but he was not entitled to engage a legal practitioner for that purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner. Therefore, as a matter of right, the petitioner was not entitled to claim the assistance of legal practitioner.

10. On 02.06.2003, during the course of inquiry, the petitioner was present. That day, the defence representative of the petitioner was not present and, therefore, the Inquiry Officer asked about his presence. Upon that, the petitioner informed to the inquiry officer that his defence representative has withdrawn himself. Thereafter, the petitioner submitted an application that he be allowed to be defended by a lawyer. Upon that, the inquiry officer informed him that whether to permit or not presence of the lawyer, cannot be decided by him and it can be decided only by the disciplinary authority. The disciplinary authority did not permit the petitioner to be represented by a lawyer as the case is based on facts and no legal issue was involved. On the said day, the case was adjourned for 09.06.2003, so as to give the opportunity to the petitioner to appoint the other defence representative if he so desires.

11. The law that whether the delinquent has a right to get himself represented by a lawyer in the departmental proceedings is not res integra. Their Lordships of the Apex Court in **Cipla Ltd and others vs. Ripu Daman Bhanot and anr.; (1999) 4 SCC 188**, in paragraph 13, observed as under:

13. In *N. Kalindi and Ors. vs. Tata Locomotive and Engineering Company Ltd.*, AIR 1960 SC 914, it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in *Dunlop Rubber Co (India) Ltd. vs. Workmen*, 1965 (2) SCR 139, it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in *Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi*, (1993) 2 SCC 115, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in *Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl. Kamgar Union and Ors.*, (1999) 1 SCC 626, and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him.

In view of the law laid down by the Hon'ble Apex Court and in view of the fact that the Sub Regulation 7 of Regulation 6 of the Regulation specifically rules that a delinquent can be represented by an advocate only in a case where the Presenting Officer is a legal practitioner, in our considered view, the submission made by the learned counsel for the petitioner that the petitioner was seriously prejudiced for not giving any opportunity to defend himself in the departmental proceeding by the Advocate is without any substance and, therefore, the said submission is rejected.

12. Insofar as the submission on behalf of the learned counsel for the petitioner that no proper opportunity was given to him during the course of the departmental proceeding to represent himself properly and, therefore, the inquiry proceeding

stands vitiated, requires noting of certain dates.

13. After initiation of the inquiry proceeding, the petitioner was represented in the inquiry by Mr. B. S. Doifode, Project Manager (Training Centre, Pune) for and on behalf of the petitioner as defence representative. Preliminary hearing was held on 26.07.2002. Further hearings were held on 17.09.2003, 18.09.2003, 06.01.2003, 08.01.2003, 06.03.2003 and 09.06.2003.

14. The defence representative of the petitioner represented him till 08.01.2003. As on 06.01.2003, when the inquiry proceeding was conducted, in spite of the notices being served for the said date, the petitioner deliberately remained absent. However, the defence representative was present. The matter was fixed on 08.01.2003, however on the said date also, the petitioner did not attend the hearing and also his representative. Therefore, there was no course left open with the inquiry officer but to permit the management to examine its witness since the date of hearing was informed well in advance to the petitioner. The reply of the respondent no.1-Bank shows that in order to give another opportunity to the petitioner, inquiry officer fixed hearing on 02.06.2003 and 09.06.2003 so that the petitioner could cross-examine the management witness and to examine any of his defence witness.

15. The proceeding of 02.06.2003 shows, as it can be seen from page no. 78 of compilation, that the petitioner was present and defence representative was not present and he prayed for engagement of counsel. In order to give opportunity, again the inquiry was fixed on 09.06.2003. On the said date also, the petitioner was present. He chose not to bring his defence representative who tired to reiterate is prayer that permission to engage a lawyer be granted, which was already turned down.

16. Though, the witness of the management was available for the cross-examination on all these dates, the petitioner himself chose not to cross-examine either him or through any of his defence representative but tried to dilate the proceeding by forwarding a prayer for engagement of advocate which was impermissible under the Regulation and ultimately he himself on his own on 09.06.2003 withdrew himself from the inquiry. In that view of the matter, it is the

petitioner, who should blame himself. The petitioner was given opportunity to represent himself by the defence representative which opportunity he availed. Not only that, his defence representative participated in the proceedings however subsequently withdrawn himself from proceeding and though there was sufficient time available with the petitioner, he chose not to get himself represented by any other defence witness. Therefore, at this stage, it is not open for the petitioner to say that no fair and proper opportunity was given to the petitioner resulting into the breach of principle of natural justice.

17. From the various documents appended with the petition including inquiry officer's report and from the impugned order of removal from service, it is crystal clear that, the principles of natural justice were followed. The disciplinary authority even considered the submissions and representation of the petitioner regarding the finding of the inquiry officer before inflicting the major penalty. Therefore, in our view, interference by this Court at this stage, is not at all warranted.

18. In that view of the matter, following order is passed:

(i) Writ Petition No.4482/2005 is dismissed.

(ii) At this stage, Mr. Marpakwar, learned counsel for the petitioner, states that on account of pendency of the present petition, the respondent-Bank has withheld a huge amount to which the petitioner was entitled upon his removal from service.

(iii) We direct the respondent-Bank to calculate the amount to which the petitioner would be entitled in law and pay the same within a period of four weeks along with interest at the rate applicable as per the service conditions from the receipt of this judgment.

Rule is discharged. No order as to costs.

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