

Binay Kumar Chaudhary Vs. the Bank of India and ors.

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Court : Patna

Decided On : Jan-15-2007

Judge : J.N. Singh, J.

Acts : Evidence Act; Civil Services (Classification, Control and Appeal) Rules, 1930 - Rules 4, 4(1), 5 and 55; [Constitution of India](#) - Articles 32 and 226

Appeal No. : C.W.J.C. No. 1750 of 2004

Appellant : Binay Kumar Chaudhary

Respondent : The Bank of India and ors.

Advocate for Def. : Shivaji Pandey, Adv.

Advocate for Pet/Ap. : S.N. Jha, Sr. Adv. and Asim Jha, Adv.

Judgement :

J.N. Singh, J.

1. In this writ application petitioner has challenged the order of punishment dated 22.9.2003, as contained in Annexure-9 as well as order of the appellate authority dated 30.12.2003, as contained in Annexure-11. By the punishment order petitioner has been removed from service with superannuation benefits and without disqualification for future employment. The appellate authority has affirmed the order of punishment and dismissed the appeal of the petitioner.

2. The case of the petitioner in a nutshell is that he was Staff Clerk-cum-Cashier with the Respondent-Bank. Petitioner was served with show cause notice on 7.9.2002, as contained in Annexure-1, in which two allegations were levelled against him. The allegations against him were as follows:

(i) On 24.9.2001 petitioner received excess amount of Rs. 1,000/- and after three months he returned the same on 20.12.2001 to the customer upon receipt of the complaint by one Janardan Sah.

(ii) On 8.12.2001 while working as paying cashier petitioner entered twice in the Payment Book Rs. 3000/- and Rs. 1000/-respectively and at the end of the day he deposited cash balance with Rs. 4000/-less. On balancing cash when this was detected petitioner tendered loose cheque of Rs. 4000/-.

3. Petitioner submitted his explanation on 13.9.2002, as contained in Annexure-2, denying the allegations and claiming them to be false and baseless. With regard to the first allegation, he claimed that to hush up the matter he was pressurised by the Branch Manager and others to pay Rs. 1000/- to the customer Janardan Sah although he was not at fault and he had not received Rs. 1000/- extra from said Janardan Sah. With regard to second allegation, petitioner claimed that he had paid the amount twice to Sri B.B. Rajwar, Acting Incharge of the Bank but as Mr. Rajwar denied this fact, he deposited the sum of Rs. 4000/- from his own pocket.

4. Not satisfied with the explanation submitted by the petitioner, the authorities of the Bank decided to initiate departmental proceeding against the petitioner and charge sheet was issued to him on 11.12.2002, as contained in Annexure-3 to the writ application. Thereafter by Annexure-4 dated 26.2.2003 one M.C. Hansdah was appointed enquiry officer and one T.K. Das was appointed as presenting officer. Petitioner was supplied with the list of documents and list of witnesses and 24.3.2003 was fixed as the date for commencement of enquiry. Thereafter enquiry proceeded in which petitioner submitted his defence. After conclusion of enquiry, enquiry officer submitted his report, as contained in Annexure-6. Thereafter, petitioner was issued second show cause notice vide Annexure-7 against proposed punishment of removal from service. By Annexure-8, petitioner was given opportunity of personal hearing by the disciplinary authority in which

petitioner appeared and explained his stand. After conclusion of enquiry and personal hearing given to the petitioner, the disciplinary authority finally passed order, as contained in Annexure-9 inflicting punishment on the petitioner of removal from service with superannuation benefits and without disqualification for future employment.

5. Thereafter, petitioner filed appeal before the appellate authority, as contained in Annexure-10, in which apart from reiterating his defence made out during enquiry he also claimed that the punishment was excessive. After consideration of the appeal, the appellate authority passed its order vide Annexure-11 and upheld the punishment imposed upon the petitioner by the disciplinary authority.

6. Dr. S.N. Jha, learned senior counsel appearing for the petitioner during the course of arguments submitted that the complainant Janardan Sah was not examined as a witness during enquiry and the original complaint was not brought on record and only xerox copy of the complaint was produced. He further submitted that Mr. B.B. Rajwar was although summoned twice but he did not appear in the enquiry and did not depose. He further submitted that as per Bank Rules any shortage of the cash in the day had to be reimbursed by the concerned Cashier from his own pocket and the matter had to be reported to the Head Office on the same day. He submitted that this is an usual practice in the Bank and it does not come within the category of misconduct. However, shortage of cash which was made good by the petitioner was reported to the Head Office after eight months in violation of the Rules. He further submitted that the petitioner was not proceeded against for any specific misconduct as defined in the Rules of the Bank and as such entire proceeding was vitiated. He also submitted that no financial loss was caused to the Bank and therefore Bank had not suffered in the matter.

7. A counter affidavit has been filed on behalf of the respondents in which the punishment order as well as appellate order has been supported as justified and legal. Learned Counsel for the respondents during the course of arguments in reply submitted that non-examination of the complainant was not strict rule of law in the departmental proceedings as the principle of Evidence Act does not apply to the departmental proceedings. He further submitted that although Mr. B.B. Rajwar

was summoned twice but he did not appear in the proceeding. However, report of Mr. B.B. Rajwar was on record. So far as second charge is concerned, there were enough documentary evidence on record to show that the petitioner had deposited Rs. 4000/- short on the day as the closing balance and he had entered vouchers of Rs. 3000/- and Rs. 1000/- of Mr. B.B. Rajwar twice. When the matter was detected, petitioner was called and confronted with the same upon which he made good of Rs. 4000/- shortage by issuing cheque of his O.D. Account.

8. Learned Counsel for the respondents further submitted that so far as excess amount of Rs. 1000/- of the customer Janardan Sah is concerned, the complaint of Janardan Sah, as contained in Annexure-5/1, would show that he had requested petitioner earlier also for refund of the amount which the petitioner had refused. However, when the complaint was received by the Manager of the Bank and the petitioner was confronted with the same, he paid back the amount to said Janardan Sah through cheque of his S.B. Account. Two acts of the petitioner and refund of the amount on both occasions on being confronted and withholding of the amount illegally by the petitioner amply goes to prove that his conduct was such that it was prejudicial to the interest of the Bank and/or likely to involve the Bank in serious loss.

9. Learned Counsel for the respondents further submitted that the actual loss of the Bank was not essential in the case as employees of the Bank dealing with the cash were required to be men of high integrity and honesty as dealing with the cash requires complete perfection in the work which involve the reputation and credibility of the Bank. Learned Counsel for the respondents further submitted that in the matter of departmental proceeding the scope of judicial review under writ jurisdiction is very limited and only in cases of no evidence or case of perverse findings, this Court can interfere in the matter. Reappraisal of evidence and comparative weight of the materials on record cannot be examined or looked into by a writ Court. In the matters of departmental proceeding a writ Court cannot sit as an appellate forum or a revisional forum to examine the correctness of the findings and the variety of action taken by the Management. Learned Counsel for the respondents further submitted that as per Rule 5(j) of the Bipartite Settlement dated 10.4.2002 'doing any act prejudicial to the interest of the bank and gross

negligence or negligence involved or likely to involve the bank in serious loss' is one of the misconducts. Learned Counsel for the respondents further submitted that this clause is inclusive in nature and it includes any act on the part of the Bank employees which may amount to prejudicial to the interest of the Bank or may likely put the Bank in serious loss. Learned Counsel for the respondents cited a number of decisions of the Supreme Court as well as this Court in support of his contentions as made above.

10. Elaborating his arguments, learned Counsel for the petitioner in support of his first submission relied on a judgment of this Court in the case of Kumar Upendra Singh Parimar v. B.S. Co-op., Land Dev. Bank reported in 2000(3) PLJR 10. This was a case of dismissal and the proceeding was initiated in terms of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930. Enquiry was ordered and enquiry officer was appointed but no witness was examined and no document was proved. Charges against the petitioner in that case was allegedly proved only on the basis of reply given by the petitioner to the chargesheet and on the basis of the documents on record. On that premise this Court held that the proceeding was vitiated.

11. Learned Counsel for the petitioner next cited judgment of the Supreme Court in the case of Hardwari Lal v. State of U.P. reported in : (2000)ILLJ495SC . In this case charge was that the appellant, who was a police constable, under the influence of liquor, hurled abuses in the Police Station at another constable. Matter came to the knowledge of the Inspector who complained about the same and sent the appellant along with another constable to hospital for medical examination. During enquiry neither the Inspector nor the constable, who had taken the appellant to the hospital nor the constable on whom the appellant had hurled abuses were examined. In that circumstance, the Supreme Court held that the enquiry was not properly held and set aside the order of punishment. Apparently, charge was with regard to hurling of abuses which could not have any documentary proof and required oral evidence which was not produced during enquiry and hence it was rightly held that the enquiry stood vitiated. Apparently, both the cases are different on facts and not applicable in the present case.

12. Learned Counsel for the petitioner further relied on a judgment of the Supreme Court in the case of Kuldeep Singh v. Commissioner of Police reported in : (1999)ILLJ604SC . In this case on the complaint of three labourers against the factory owner Smt. Meena Mishra about non-payment of wages, the appellant was sent to sort out the matter. It was alleged that Smt. Meena Mishra paid Rs. 1,000/- towards labour dues of the complainant out of which appellant retained Rs. 200/- with himself. On this charge and on the complaint of the complainants, departmental proceeding was initiated against the appellant and he was ultimately dismissed. In this case complainants were not examined by the Management and the original complaint was not produced. The factory owner was examined in the proceeding as a witness who denied to have paid Rs. 1000/- to the appellant. A number of defence witnesses were also examined in the case including two labourers who completely denied any such occurrence to have taken place on the fateful day. In the circumstances, the Supreme Court held that there was complete violation of principle of natural justice and as such the proceeding was quashed.

13. At this stage I may point out that it is settled that there can be no strait-jacket formula for application of principles of natural justice or fair play in administrative action and case must turn on its own facts and contours of principles of natural justice and fair play have to be adjusted in the light of the particular facts of the case.

14. As stated earlier, in the present case on both occasions petitioner was confronted with illegally retaining the amount in question, upon which he refunded the same. Thus, this amounts to admission on the part of the petitioner of withholding of the amount illegally.

15. So far charge No. 2 is concerned, Cashier Incharge of the day Sri A.K. Singh was examined as Management Witness No. 1, who reported shortage of cash of Rs. 4000/-. At that point of time petitioner was not available in the premises and he was out from the Branch for three and a half hours. He was called back in the Branch on the day and when he was confronted with the shortage of cash he deposited cash from his own account. Defence of the petitioner that he had twice paid Rs. 4000/- to Mr. B.B. Rajwar has been held to be an afterthought and not

discussed or claimed by the petitioner on the day. Thus, taking defence that he had paid cash twice to Mr. B.B. Rajwar on the day was only an attempt by the petitioner to mislead the Management and create confusion in the enquiry proceeding. From the enquiry report it appears that detailed discussions were made by the enquiry officer in respect of this charge and a number of documents of the Bank were considered and the evidence of the Management Witness was taken into account to come to the conclusion that the charge stood proved.

16. So far as charge No. 1 is concerned, enquiry report shows that from the records of the Bank it transpired that said Janardan Sah actually had come to the Bank with more amount to deposit. However, he deposited only Rs. 20,000/- in his account but the rest of the amount was not refunded to him by the petitioner in its entirety and Rs. 1000/- excess amount was kept by the petitioner intentionally without reporting the fact of excess amount received from said Janardan Sah to the Bank authorities. The complaint of Janardan Sah shows that he had earlier requested petitioner to refund the amount which he refused. However, when the matter was reported by him to the Branch Manager by producing carbon copy of the complaint which he had sent earlier by post, petitioner was confronted with the same by the Branch Manager, upon which petitioner suddenly gave a withdrawal slip of Rs. 1,000/- to the said customer Janardan Sah. During enquiry the said Branch Manager and Arvind Kumar, a Staff Clerk have been examined by the Management in support of the charge, who deposed about the happenings of the day. Scroll of the day and other documents were also considered from which the enquiry officer came to the conclusion that this charge was also proved. The fact that on both occasions petitioner volunteered to pay back the amount to the Bank which was illegally withheld by him shows that there is apparent acceptance of misconduct by the petitioner. In these circumstances, non-examination of the complainant Janardan Sah and B.B. Rajwar is of no consequence and did not prejudice the defence of the petitioner. Illegal withholding of amount having been impliedly admitted by the petitioner, his conduct and refund of the same apparently shows that the incident stood admitted by the petitioner and the charges stood proved against him.

17. Learned Counsel for the petitioner further relied on a decision of the Supreme Court in the case of A.L. Kalra v. The Project and Equipment Corporation of India Ltd. reported in : (1984)IILLJ186SC to contend that there is no definite misconduct in the Rules of the Bank relatable to the charges levelled against the petitioner. He submitted that the act alleged on the part of the petitioner on the two charges were not enumerated in any of the misconducts defined in the Rules and as such on the basis of above judgment of the Supreme Court learned Counsel for the petitioner submitted that the petitioner could not be proceeded against and punished for the charges as framed by the respondents.

18. Upon perusal of the aforesaid judgment cited by the learned Counsel for the petitioner, I find that the case was concerned with House Building Advance and Conveyance Advance taken by the appellant from the Management. Appellant had defaulted in payment of advances and had defaulted in complying with the requirements of Advance Rules. Advance Rules themselves prescribe for mode of recovery of the advances made to an employee which include charging of penal interest etc. The Conduct Rules therein contain different Rules. The relevant Rules as noticed by the Supreme Court were as follows:

21. And now to the facts. The gravamen of the two heads of charges is that the appellant is guilty of misconduct as prescribed in Rule 4(1)(i) and (iii). It reads as under:

4(1) Every employee shall at all times:

(1) maintain absolute integrity;

(ii) ...

(iii) do nothing which is unbecoming of a public servant

Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the rules.

22. Rule 4 bears the heading 'General'. Rule 5 bears the heading 'misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would

constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5....

19. From the relevant rules as quoted above and its analysis it is apparent that the general rule under which the appellant had been proceeded against in the case was altogether independent and separate from the rules prescribing various misconducts. As such the Supreme Court held that no misconduct as defined under Rule 5 therein being relatable to the act of the appellant, he could not be punished for the same holding the same to be misconduct. In that case the Supreme Court also held that the act of taking advance under the Advance Rules was a matter of contract and the Advance Rules prescribe for mode and method for realisation of the same. The default on the part of the appellant could at best be termed as breach of contract and there was no question of any integrity or unbecoming of a public servant in the matter. The Supreme Court also found that the punishment order as well as appellate order were absolutely non-speaking. In the premises, the Supreme Court allowed the appeal of the appellant and set aside the order of his removal from service.

20. In the case of Secretary to Government v. A.C.J. Britto : (1997)IILLJ388SC , relied on by learned Counsel for the respondents, case of A.L. Kalra (Supra) fell for consideration. There it was noticed that in the Rule under consideration in K.L. Kalra's case Rule 4 was given the heading 'General' and Rule 5 was given the heading 'Misconduct' which was a separate Rule altogether. This Court took the view that draftsmen of the Rules made a clear distinction about what would constitute misconduct and thereafter observed as follows:.Thus the decision in that case turned upon the scheme of those rules and the construction placed upon Rules 4 and 5 of those rules. This Court in that case has not laid down as a general principal that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act.

21. In the present case, I find that by Bipartite Settlement dated 10.4.2002 Clause 5(j) was included in the category of gross misconduct in the Rules of the respondents. Clause 5(j) reads as follows:

Doing any act prejudicial to the interest of the bank and gross negligence or negligence involving or likely to involve the bank in serious loss

22. Apparently this clause inserted in the category of misconduct in the Rules of the Bank is inclusive and encompasses all acts of the Bank employees which may be found to be prejudicial to the interest of the Bank or may amount to gross negligence or negligence involving or likely to involve the Bank in serious loss. The disciplinary authority as well as appellate authority have come to the conclusion that two acts of the petitioner are prejudicial to the interest of the Bank putting the reputation of the Bank and its credibility at stake. This finding of the disciplinary authority as well as appellate authority is matter of their satisfaction, and this Court cannot assess the worth of the same under writ jurisdiction. The defence of the petitioner was examined and considered by the disciplinary authority as well as appellate authority in detail and all aspects of the matter were gone into by them. I find that the petitioner was also given personal hearing by the disciplinary authority and the stand of the petitioner was taken into account in detail by the disciplinary authority as well as the appellate authority. In the circumstances, while exercising writ jurisdiction under Article 226 of the [Constitution of India](#) and the powers of judicial review, I do not find any infirmity in the decision making process involved in the case.

23. On the question of limitations of this Court while exercising power of judicial review, I may usefully quote from the judgment of Kuldeep Singh's case (Supra) as follows:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this

Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

24. Thereafter, dealing with the distinction, the Supreme Court further held as under:

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

25. Now, coming to the plea of the petitioner before the appellate authority that his punishment was excessive, I find that he had 14 years of unblemish service with the Bank. Moreover, shortage of cash on the cash counter and its reimbursement by the cashier concerned is not an unusual practice in the Bank. From the records it appears that this has happened with the petitioner only once. So far as charge No. 1 is concerned, complainant had filed, the complaint with the authorities of the Bank almost after three months. Petitioner had taken the plea that at the insistence of the Bank authorities and staff he had made good Rs. 1,000/- to the complainant from his own pocket. In this view of the matter, it appears that the appellate authority has not considered the question of quantum of punishment in the right prospective and objectively.

26. As such, I quash the appellate order, as contained in Annexure-11, and remit the matter back to the appellate authority to consider the question of quantum of punishment to the petitioner in right prospective, objectively and reasonably.

27. With these observations and directions, this writ application stands disposed of.

