

B. Shantakumar Vs. the Chief Regional Manager, Bank of India

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Court : Karnataka

Decided On : Nov-10-2005

Reported in : 2006(1)KarLJ316

Judge : R. Gururajan, J.

Acts : [Constitution of India](#) - Article 311

Appeal No. : Writ Petition No. 17566 of 2003

Appellant : B. Shantakumar

Respondent : The Chief Regional Manager, Bank of India

Advocate for Def. : Sundaraswamy Ramdas, ;Anand and ;Sawkar, Advs.

Advocate for Pet/Ap. : S.V. Shastri and ;A.N. Reddy, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R. Gururajan, J.

1. Petitioner-Shantakumar is before me challenging the order dated 23-7-2002 in C.R. No. 44 of 1998 on the file of the Central Government Industrial Tribunal-cum-Labor Court, Bangalore (Annexure-D).

2. Petitioner joined service as Cashier-cum-Clerk with effect from 20-3-1982 with the respondent. He was issued with a charge-sheet dated 8-9-1993 alleging therein that he has misappropriated certain sums belonging to the respondent-bank and committed a misconduct in terms of Clause 19.5(d) and 19.5(j) of the Bipartite Settlement dated 19-10-1966. On the very day, one Sri N. Rajaratnam, Deputy Chief Officer (Personnel), Regional Office of the respondent was appointed as Enquiring Authority. Enquiry was held. According to the petitioner, report was obtained. Accepting the report, management terminated the services of the petitioner. Petitioner, thereafter, has raised conciliation. Conciliation resulted in an order of reference to the Central Government Industrial Tribunal-cum-Labor Court, Bangalore. Parties entered appearance. Statements were filed. Evidence was recorded. Learned Judge, after hearing, has chosen to hold that the enquiry is fair and proper. This order is challenged in this writ petition.

3. Respondent entered appearance. Matter was taken up for final disposal. This Court has issued rule in the year 2003.

4. Heard the learned Counsels for the parties.

5. Sri S.V. Shastri, learned Counsel for the petitioner would argue that the material on record would show a biased enquiry in the case on hand. He strongly contends that the charge-sheet and also the order appointing an Enquiring Officer are of the same date and that therefore the present enquiry can be termed as biased enquiry. According to him, before the enquiry proceedings, no opportunity as such was given by way of reply to the charge-sheet. He therefore wants the order at Annexure-D to be set aside.

6. Per contra, learned Counsel for the management would say that the bias theory is liable to be rejected in the given circumstances for want of pleadings and evidence. He wants the order impugned herein to be confirmed.

7. After hearing, I have carefully perused the material placed on record.

8. In the normal circumstances, I would not have interfered with an order passed on the preliminary issue relating to the fairness of the domestic enquiry. Same

could have been considered after final award is passed. But, in the case on hand, this Court has issued rule nisi in the year 2003 and the parties also have addressed against on the merits of the matter. In my view, on the peculiar facts of this case, this matter has to be considered notwithstanding the order being interim in character.

9. Material on record would reveal that an enquiry was conducted. Serious charges have been levelled against the workman. Workman was issued with articles of charge on 8-9-1993. On the very day, Enquiring Officer has been appointed in terms of Annexure-B. Argument of the petitioner is that the appointment of the Enquiry Officer on the same has resulted in bias against the petitioner. Let me see as to whether bias-theory is acceptable or not.

10. Bias is serious in nature. It reflects in conducting of an enquiry. Bias has to be proved with reference to facts in a given case. I have seen the claim statement filed by the petitioner. Nowhere, petitioner states that he is prejudiced on account of want of opportunity to reply to the charges or that the enquiry is biased on account of charge-sheet at Annexure-A and the order at Annexure-B appointing the Enquiring Officer being of the same date. Claim statement is silent in that respect.

I have also seen the evidence of the petitioner. Petitioner nowhere says in his evidence that he was either prejudiced or that he was handicapped on account of bias.

In the circumstances, it is clear to me that there is no foundation at all for the so-called 'Bias' in the case on hand.

11. The learned Judge after noticing all these aspects has come to a conclusion that no prejudice as such is caused in the matter. I am satisfied on facts that there is no material on record with regard to the theory of bias.

12. Learned Counsel for the petitioner Sri Shastri strongly relies on a judgment of the Supreme Court in *State of Punjab v. V.K. Khanna and Ors.* AIR 2001 SC 343 : 2001 Lab. I.C. 391 (SC) : (2001)2 SCC 330 : 2001 SCC (L and S) 1010. The Head

note (F) in the said decision reads as follows.-

(F) It is well-settled in service jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge- sheet or show cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise. Thus where even before reply was filed by the delinquent Chief Secretary to the charge-sheet issued against him, the Chief Minister made an announcement appointing an Enquiry Officer to go into the charges, thus indicating its mindset that the inquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent was free and fair.

This finding of the Apex Court has to be seen in the light of the facts of the case. In the said case, it is seen that the Government has cancelled two earlier notifications initiating CBI enquiry against the petitioner therein. Thereafter a charge-sheet was issued and immediately statement was made by the Chief Minister. It is also seen that the contentions were urged with regard to bias in terms of the pleadings found in the material on record. The Court also has noticed mala fide argument in the said case. It was in those circumstances that the Supreme Court, with reference to the facts of that case, has chosen to say that there is absence of some justification with regard to criticism of enquiry without reply. In paragraph 34 of the said judgment, the Apex Court has noticed that that Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias. It was in those given circumstances that the Apex Court has made those observations. In fact, in the very said judgment, the Apex Court has noticed some excerpts in *Kumaon Mandal Vikas Nigam Limited v. Girja Shankar Pant and Ors.* AIR 2001 SC 24 : 2000(7) Supreme 112 : 2001 Lab. I.C. 11 (SC) : 2001-I-LLJ-583 (SC) : (2001)1 SCC 182. In Girja Shankar's case, the Apex Court has noticed various judgments in paragraph 28 and has observed that the Court of appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. The Court has also noticed in paragraph 8 of its judgment reading as

follows.-

The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand, the allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

13. In the circumstances, the test is one of application of mind to the facts of this case. There is no danger of bias at all in the absence of any complaint at any point of time by the petitioner. Therefore, the argument of the petitioner does not appeal to me. The enquiry conducted by the management in the case on hand cannot be equated to the one covered under Article 311 of the Constitution. It is an additional factor that distinguishes the said judgment on the facts of this case.

14. In fact, the Apex Court in *Employees of Firestone Tyre and Rubber Company (Private) Limited v. The Workmen* : (1967) IILLJ714SC , has ruled with regard to a similar issue in para 6 reading as under: although it may be desirable to call for such an explanation before serving a charge-sheet there is no principle which compels such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary, where the explanation is good but in many cases it would be open to the criticism that the defence of the workman was being fished out. If after a preliminary enquiry there is prima facie reason to think that the workman was at fault, a charge-sheet setting out the details of the allegations and the likely evidence, may be issued without offending against any principle of justice and fairplay.

(emphasis supplied)

In the very judgment, the Supreme Court has ruled that the domestic enquiry cannot be equated to enquiries under Article 311 of the Constitution.

15. A learned Judge of this Court in V.B. Dhanaraju v. Cauvery Gramina Bank, Mysore and Anr. 2002(1) Kar. L.J. 250, after referring to various cases, has ruled that the decision taken to hold domestic enquiry and appointment of Enquiry Officer even before submission of reply by delinquent officer to charge-sheet issued to him, do not vitiate enquiry proceedings in the absence of any prejudice caused to the delinquent officer.

16. In Motor Industries Company Limited v. Adinarayanappa and Anr. 1978(1) Kar. L.J. 245, this Court has ruled reading as under:

On a plain reading of Standing Order 22, the view that a written explanation should be called for on the charges levelled against an employee before giving him an opportunity in a domestic enquiry is impossible. Informing the delinquent employee of the specific charges levelled against him in writing and giving him an opportunity to defend himself in an enquiry fulfills the requirement of principles of natural justice and it is not a necessary requirement of principles of natural justice that before holding an enquiry, an earlier opportunity of furnishing reply to the charges should be given to a delinquent employee.

17. At this stage, I must also notice bipartite settlement between the parties. Bipartite settlement also provides for enquiry being held without explanation.

18. Looking from any angle, the given facts and circumstances compel me to accept the order of the learned Judge impugned in this petition.

19. No grounds. Petition stands rejected.