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Court : Orissa

Decided On : Dec-03-1992

Reported in : 76(1993)CLT237; 1993(II)OLR467

Judge : B.L. Hansaria, C.J. and ;R.K. Patra, J.

Acts : Evidence Act, 1872 - Sections 25

Appeal No. : Original Jurisdiction Case No. 3267 of 1987

Appellant : Narayan Panda

Respondent : Zonal Manager, Bank of India and anr.

Advocate for Def. : G.A.R. Dora, Adv.

Advocate for Pet/Ap. : P. Palit, R. Mohapatra, A.K. Bhagat, D.P. Dhalsamanta and S.K. Satpathy

Judgement :

R.K. Patra, J.

1. The petitioner, a quondam employee of Bank of India, in This writ petition seeks to invalidate Annexure-3, the order discharging him 'from bank's service'.

2. We may briefly set out the facts. On the allegation that he committed misconduct in course of his duty as Staff-subordinate, Berhampur (Ganjam)

Branch of the Bank, the petitioner was served with charge-sheet dated 29-3-1982 and supplementary charge-sheet dated 30-8-1982, Annexure-1 series which contained altogether five different charges. He was called upon to submit explanation to those charges.

After stating details of facts proceedings and submissions, it is held :

4. It is true that in the notice to show cause containing the charges, an enquiry officer was appointed and the petitioner was asked to submit his explanation to him. In almost all the rules dealing with departmental proceedings a delinquent is first called upon to show cause to the charges and after submission of the cause if the disciplinary authority finds that the cause shown is not sufficient, he goes to appoint an enquiry officer. In the instant case, appointment of the enquiry officer in the charge-sheet itself is indubitably irregular. But in the facts and circumstances, the enquiry and decision taken thereon by the disciplinary authority is not vitiated for the simple reason that the petitioner had participated before the enquiry officer and allowed the proceeding to come to its logical conclusion. The point raised on behalf of the petitioner on this count need not detain us in view of the decision of this Court in Sridhar Chand v. State of Orissa, 44 (1977)CLT 126 where- in it has been held that after a delinquent submits written statement of defence to the enquiry officer and participates in the enquiry proceeding without raising any objection cannot be allowed to question the validity of the proceedings on the ground that enquiry officer was appointed in the charge-sheet itself.

5. The other two contentions raised on behalf of the petitioner are telescoped into each other and instead of cutting them as under, it is taken up in concert for discussion. The enquiry officer in his report in Annexure 2 series held that the bank has suffered a loss of Rs. 64,300/- due to drawal of the said amount from Bhubanesawar Branch showing credit of C.D. A/c. of S.N. Patnaik, a fictitious person. He also held that the bank was cheated as a sum of Rs, 66,000/- and Rs. 38,000/- were withdrawn from Cuttack and Rourkela Branches respectively by means of two forged credit notes. The enquiry officer observed that without help of bank staff such frauds could not have been committed. He noted that the petitioner along with other bank staff had access to all the papers and B. C. Sahoo and S. N.

Patnaik were non other than N. P. Singh Samanta who was cut red-handed at Rourkela Branch. The circumstances which are found against the petitioner by the enquiry officer are :

(i) he has got friendly relation with N. P. Singh Samanta who actually caused the fraud on the bank ;

(ii) petitioner took a false plea that he has no relationship with N. P. Singh Samant ; and

(iii) Bank employees were found in the house of the petitioner at his village.

The three circumstances enumerated above may raise suspicion which by themselves cannot prove the guilt of the petitioner. As a matter of fact, the enquiry officer has relied upon the communication Ext. P. 39 received from S. K. Mohaptra, Sub-Inspector of Police saying that the oetitioner had confessed before him in course of investigation of the case and on the basis of it held him guilty of the charges.

6. There is also no dispute at the Bar that the finding of guilt recorded by the enquiry officer solely rested on Ext. P. 39. Let us have a look at the contents of the said document which are extracted herein below :

'The Agent, Bank of India, Berhampur (Ganjam) Branch

Aska Road, Berhampur Town Dist. Ganjam.

Ref: Rourkela Township P.S. Case No. 98 dt. 4-3-1978 Under

Sections 420/467/468/471/34, IPC.

Sub : Arrest of Narayan Panda, Daftari of Bank of India,Berhampur

(G.M) Branch.

Sir,

In connection with the above noted case Narayana Panda, a sub-staff (Daftari) of your Branch has been arrested on 10-3- 1978 and forwarded to Court on 11-3-1978 as prima facie evidence was established against him for the offences mentioned above. During course of investigation of the case Narayana Panda also confessed before me that he stealthily removed blank Bank draft forms, credit note form S. B. Account Opening Card Forms, Agents complements cards and envelopes and supplied them to Narayan Prasad Singh Samanta who used those forms and committed fraud in respect of Rs. 1,68,000/-, He may be placed under suspension from the date of his arrest. A confirmation may please be sent to the undersigned.

Yours faithfully,

Sd/-

(S.K. MOHAPATRA)

16-3-1978

SI, Township P.S. Sector-19. Rourkela,

P.O. Rourkela-769005 Dist. Sundargarh.

The said document came to be exhibited while the Branch Manager R. N. Mishra was deposing as witness in the enquiry who has stated that he received the communication Ext. P. 39 from the Sub-Inspector of Police. It is an admitted fact that the Sub-Inspector of Police S. K. Mohapatra was not examined in course of the enquiry and his version as per Ext. P. 39 that the petitioner had confessed before him admitting the guilt is hear-say evidence. The Constitution Bench of the Supreme Court in the case of State of Mysore v. Shiva Basappa,AIR 1963 SC 375 observed as follows :

'Domestic tribunals exercising quasi-judicial functions are not Courts and, therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information, material for the points under enquiry from all sources and

through all channels,without being fettered by rules and procedures which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used, and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.'

In the case of K. L. Sindhe v. State of Mysore, AIR 1976 SC 1080, the Apex Court held that the previous statements of witness who resiled from them at the domestic enquiry were admissible in evidence against the delinquent. It observed as follows :

'It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act'.

6. Is there any bar against reception of hear-say,, evidence by domestic tribunals This question directly came up for consideration before this Court in Harihar Das v. I.G. of Police, 37 (1971) CLT 913. It has been held therein that hearsay evidence is admissible before the domestic tribunal provided the essential condition that opportunity was afforded to the parties to comment and contradict such evidence was fulfilled. This view is buttressed from the observations of Lord Denning M. R. in T. A. Miller Ltd. v. Minister of Housing and Local Govt. (1963) 2 All. E.R. 633 which are as follows :

'A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. Most of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable. Tribunals are entitled to act on any material which is logically probative,

even though it is not evidence in a Court of law : see Reg v. Deputy Industrial Injuries Commissioner, Ex parte Moore,(1965)1 OB 456. During this very week in Parliament we have had the second reading of the Civil Evidence Bill. It abolishes the rule against hearsay, even in ordinary Courts of the land. It allows first-hand hearsay to be admitted in civil proceedings, subject to safeguards. Hearsay is clearly admissible before a tribunal No doubt in admitting, the tribunal must observe the rules of natural justice but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commen- ting on it and of contradicting it : see Board of Education v. Rice, (1911) AC 179, Reg. v. Deputy Industrial Injuries Commr., (1965) 1 OB 456.''

Justice V. R. Krisna Iyer speaking for the Supreme Court in the case of State of Haryana v. Rattan Singh, 1977 SC 1512 observed as follows ;

'...in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act...'

7. In view of the legal position stated above, we have no hesitation to hold that there is no legal bar against reception of hear- say evidence by domestic tribunal but the extent to which such evidence may be received and used may depend on the facts and circumstances of the case. Reception and use of such evidence are always subject to disgrace of the principles of natural justice. In course of deposition before the Enquiry Officer R.N. Misra stated that he had received from the Sub-Inspector of Police the communication Ext. P. 39 saying that the petitioner had confessed before him and there is prima facie evidence against him. (We have extracted the contents of Ext. P. 39 in earlier paragraph of the judgment). The copy of Ext. P. 39 was supplied to the petitioner. R. N. Misra was cross-examined by the petitioner with reference to the said document. R. N. Misra in his

examination-in-chief stated as follows ;

'P. O. : Please tell the enquiry if any communication was received thereafter by you from the police with regard to this case ?

R. N. M. : I received a communication from K. C. Mohapatra, S.I., Township Police Station, Rourkela to the effect that Mr. Narayana Panda, a Sub-staff working at Berhampur (Ganjam) Branch has confessed and prima faice evidence was established against him, simultaneously requesting to keep Mr. Narayana Panda under suspension.'

In his cross-examination, the witness was asked the following questions. The same is extracted with his answers :

'D. R. ; Mr Misra on the basis of the report received from Shri S. K. (Defence Mohapatra, S. I., Township P. S. Rourkela Shri Narayana Represen- Panda was suspended. Had the police along with this tative) tetter Ext. P. 39 sent to your branch any confession letter signed by Shri Panda or any other document

R. N. M.: No.

D. R. : Please tell the enquiry what you have done after receiving this letter from S. I., Township P. S., Rourkela ?

R. N. M. : As far as I recollect I had informed higher authorities.

D. R. ; Had you met this concerned S. I. in connection with this case ?

R. N. M. : No. I have not met him.'

Nothing substantial seems to have been brought out to jettison the contents of Ext. P. 39. It is not a case where Ext. P. 39 was utilised in the inquiry behind the back of the petitioner. On the oth3r hand, the copy of the said document was made available to him who had adequate opportunity to cross-examine the witness who proved Ext. P. 39. It was open to the petitioner to adduce rebuttal evidence which he did not do although he had examined four witnesses on his behalf in support of his defence. Thus, the requirements of principle of natural justice for utilising Ext.

P. 39 have been complied with. In the premises, we do not find anything wrong in the finding recorded by the Enquiry Officer holding the petitioner guilty of the charges.

8. The contention of Shri Palit is that as Section 25 of the Evidence Act does not permit use of the confession made to police officer and as the petitioner was accused of an offence, his statement before the Sub-Inspector of Police vide Ext. P 39 cannot be pressed into service. The Supreme Court in the case of State of U. P. v. Deoman, AIR I960 SC1126 observed that Section 25 gets attracted in a 'criminal proceeding'. What is a 'civil proceeding' and 'criminal proceeding' came up for consideration before the Supreme Court in the case of Narayan Row v. Iswar Lal, AIR 1965 SC 1813. The matter arose out of a proceeding under Art. 226 of the Constitution in a recovery proceeding of tax under the Income Tax Act. The question before the Apex Court posed was whether an appeal under Art, 133 (1) (c) of the Constitution filed in the case arose out of a civil proceeding. The Court observed that 'there is no ground for restricting the expression 'civil proceeding' only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Art. 226, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes.' Keeping the law in view, the Full Bench of the Punjab High Court in the case of Mohinder Singh v. State of Punjab, AIR 1967 Punjab 450 held that a departmental disciplinary enquiry is not a criminal proceeding. It may not be out of context to note here that even a proceeding Under Section 517 of the Old Code of Criminal Procedure was regarded as analogous to civil proceedings in the case of Mahant Singh v. Hetram, AIR 1954 Punjab 27. As such the departmental proceeding held against the petitioner is not a criminal proceeding and, as such Ext. P. 39 is not hit by Section 25 of the Act as the same is not applicable to the departmental proceedings held against the petitioner.

9. Shri Palit also contended that since the other staff of the bank had access to the transaction in question, finding of guilt returned against the petitioner cannot be sustained. It may be that other staff along with the petitioner might have got

access to the transaction but that cannot be a ground for interference by a writ Court. The rule to prove the offence in a criminal trial beyond reasonable doubt is not applicable in proving misconduct in a departmental enquiry, vide State of Andhra Pradesh v. S. Sreeram Rao, AIR 1 963 SC 1723. Sufficiency of evidence in proof of the finding by domestic tribunal is beyond scrutiny by the writ Court (See State of Haryana v. Rattan Singh). This is not a case of ho evidence against the petitioner nor is it a case where no reasonable person could have come to such a finding, as has been found by the enquiry officer against the petitioner.

10. No other point was urged on behalf of the petitioner. In the result, we do not find any merit in the writ petition which is accordingly dismissed.

11. The delay in delivery of judgment is due to the fact that in course of argument, the counsel appearing for the bank submitted that the Sub-Inspector of Police expired before conclusion of enquiry and as such it was not possible to examine him as a witness. By order dated 27-9-1992, he was called upon to .file necessary affidavit on 26-10-1992. Pursuant to the said direction, affidavit supported by the certificate of death and pension payment order has been filed on 4-11-1992 saying that Sub Inspector S. K. Mohapatra died on 3-6-1 1983.. The petitioner was to file objection to the said affidavit within two weeks after filing of the affidavit by the bank and the time for that purpose expired on 19-11-1992. The petitioner has not yet done so, Whether the Sub-Inspector could have been examined or not in course of the enquiry is totally irrelevant for the reasons we have taken on Ext. P 39 Further the departmental proceeding file was made available by the counsel for the bank on 30-11-1992.

B.L. Hansaria, C.J.

12. I agree.

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