

Ashok Kumar Aggarwal Vs. State Bank of India and ors.

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Court : Delhi

Decided On : Oct-19-2001

Reported in : 95(2002)DLT824; 2002(61)DRJ427; [2002(93)FLR676];
(2002)IILLJ344Del

Judge : Dalveer Bhandari, J.

Acts : Service Rules - Rule 50(2)

Appeal No. : CWP No. 1788 of 1996

Appellant : Ashok Kumar Aggarwal

Respondent : State Bank of India and ors.

Advocate for Def. : S.L. Gupta, Adv.

Advocate for Pet/Ap. : Yogeshwar Prasad, Sr. Adv.,; R.K. Gupta and; Sangeeta,

Disposition : Petition allowed

Judgement :

Dalveer Bhandari, J.

1. The petitioner, an official of the State Bank of India, was chargesheeted on 17.10.1989 in which 14 charges were leveled against him. The petitioner was given opportunity to file his written statement in defense in terms of Rule 50(2)(iii)

of the Service Rules. In the written statement he refuted all the charges leveled against him. The petitioner's version was not accepted and a departmental inquiry was instituted. The petitioner examined himself and filed a cash book to show that he has been working as an Accountant at IIP Branch during September, 1981 to April, 1985. The Inquiry Officer gave his findings on various charges and found the petitioner guilty. The inquiry report was sent to the disciplinary authority. The aforesaid report was sent by the disciplinary authority to the appointing authority with his brief note for taking appropriate action, with his recommendations thereon.

2. The disciplinary authority disagreed with the findings of the inquiry authority in respect of charges No. 7, 8 & 10. In the note the disciplinary authority observed that the petitioner had not adhered to the laid down instructions of the bank and misused his authority which resulted in financial loss to the bank and the petitioner had passed on pecuniary benefits to his kith and kins to the detriment of the bank. These acts of the petitioner demonstrated his lack of integrity and consequently he was dismissed from the service.

3. The main grievance of the petitioner is that he was neither served nor informed about the note of disagreement recorded by the disciplinary authority regarding charges 7, 8 & 11 leading to the dismissal of the petitioner. It has been urged that the petitioner suffered serious prejudice and, therefore, the entire action of the respondents is illegal and bad in law and consequently the order of dismissal deserves to be set aside.

4. The petitioner's grievance is that the disciplinary authority did not grant any opportunity of hearing to the petitioner before passing the order of dismissal and consequently the order is clearly in violation of the principles of nature justice.

5. The petitioner has placed strong reliance on the decision of their Lordships of Supreme Court in Punjab National Bank v. Kunj Bihari Misra : (1998)IILLJ809SC . Their Lordships of the Supreme Court observed that 'whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings

will have to be conveyed and the delinquent officer must be given an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the Inquiry Officer. The principles of natural justice require the authority which has to take a final decision and also empowered to impose a penalty, to at least provide an opportunity to the officer charged of misconduct to file a representation before the disciplinary records its findings on the charges framed against the officer.'

6. Their Lordships of the Supreme Court placed reliance on the judgment of the Supreme Court in the matter of Institute of Chartered Accountants v. K.L. Rana : [1987]164ITR1(SC) and overruled its earlier judgment in the matter of State Bank of India, Bhopal, v. S.S. Koshal . In Punjab National Bank case (supra) their lordships observed that the authority which has to take a final decision and is empowered to impose a penalty, must give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

7. Learned counsel for the petitioner also placed reliance on a Constitutional Bench judgment of the Supreme Court Managing Director, ECIL v. B. Karunakar : (1994)ILLJ162SC and Union of India v. Mohd. Ramzan Khan : (1991)ILLJ29SC .

8. The learned counsel for the respondents submitted that in this case no prejudice has been caused to the petitioner, therefore, it was not necessary for the disciplinary authority to send note of its findings on the charges where it disagreed with the inquiry authority.

9. The learned counsel for the respondents placed reliance on the latest judgment of the Supreme Court in the case of State of U.P. v. Harendra Arora and Anr. : (2002)IIILLJ 1124 SC . The court observed that 'in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing.'

10. Their Lordships of the Supreme Court in the said judgment referred to the leading English judgment reported as Resell v. Duke of Norfolk (1949) All E R 109 (CA). In the said judgment the Court observed as 'it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard-and-fast

formula and the same cannot be put in a straitjacket as its applicability depends upon the context and the facts and circumstances of each case.

11. Reliance has also been placed on the most well known, widely cited and a celebrated English judgment *Ridge v. Baldwin* 1963 2 All E R 66 (HL). In this case the House of Lord was considering a case where a Chief Constable was dismissed from service without notice and enquiry by the Watch Committee. The question was raised whether the decision was void or merely voidable. The House of Lord laid down that such a decision given without regard to the principles of natural justice was void. The violation in that case, though a procedural one, was of a fundamental nature as it was a case of total violation of the principles of natural justice.

12. Reliance has also been placed on *Jankinath Sarangi v. State of Orissa* : (1970)ILLJ356SC . The relevant extract is reproduced as under:

'In the case of *Jankinath Sarangi v. State of Orissa* Hidayatullah, C.J. speaking for the Court, while considering the question of prejudice in a departmental proceedings, approved judgment of the High Court refusing to grant relief in favor of the delinquent government servant on the ground that no prejudice was caused to him and observed thus: 'From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. ... There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right. ... Anyway the question which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellants but he saw them at the time when he was making the representations and curiously enough he used those replies in his defense. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defense. We do not think that any

prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them.'

13. Even on the touchstones of the latest judgment of the Supreme Court in Harender Arora (Supra) it cannot be said that no prejudice has been caused to the petitioner in any manner. If the petitioner had known that on charges Nos. 7, 8 & 10 the findings of the disciplinary authority are different from the inquiry authority in that event before the findings on these charges are recorded, if he had an opportunity to reply to the show cause notice given by the disciplinary authority he could have certainly made an earnest endeavor to persuade the authority to rely on the findings of the inquiry authority. therefore, this case does not render any help or support to the respondents. The prejudice caused to the petitioner in this case is quite manifest.

14. In the case of Mohd. Ramzan Khan (Supra) their Lordships of Supreme Court has held that the rule of natural justice is applicable to the disciplinary authority also.

15. I have heard the learned counsel for the parties at length and perused the impugned order. In the instant case the disciplinary authority disagreed with the findings of the inquiry authority on charges Nos. 7, 8 & 10. The disciplinary authority was within its domain of jurisdiction to give contrary findings but not without affording an opportunity to the delinquent officer. The severe punishment which had been inflicted on the petitioner was primarily because of the disciplinary authority's finding on charges 7, 8 & 11. Admittedly, no such opportunity has been given by the disciplinary authority to the petitioner and there is clear violation of the principle of natural justice. The order of the disciplinary authority is contrary to the judgment of the Supreme Court in the case of Punjab National Bank (supra). Consequently, the findings of the disciplinary authority are set aside.

16. This petition was filed in this court in 1996 and the petitioner was removed from service in July, 1992. During the pendency of this petition, the petitioner has superannuated, therefore, in the peculiar facts and circumstances of this case, I deem it appropriate to remit the matter to the disciplinary authority to record its findings de-novo only after giving a proper hearing to the petitioner in consonance

with the principles of natural justice as envisaged in the case of Punjab National Bank (supra).

17. In the facts and circumstances of the present case, I deem it appropriate to direct the disciplinary authority to conclude the proceedings as early as possible and in any event within four months from the date of receipt of this order.

18. With these directions, this writ petition is disposed. The parties are directed to bear their own costs.

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