

V. Narayanan Vs. Deputy General Manager, Disciplinary Authority,

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Court : Chennai

Decided On : Nov-18-2008

Reported in : (2009)IILLJ135Mad

Judge : S.J. Mukhopadhaya and ;V. Dhanapalan, JJ.

Acts : [Constitution of India](#) - Article 311(2); Indian Overseas Bank Employees' Discipline and Appeal Regulations, 1976 - Regulation 6(4) and 6(5)

Appeal No. : Writ Appeal No. 392 of 2008

Appellant : V. Narayanan

Respondent : Deputy General Manager, Disciplinary Authority, ;mr. Raj Kumar Moses, ;general Manager, Appellate Au

Advocate for Def. : N.G.R. Prasad, Adv. for C. Ravichandran, Adv.

Advocate for Pet/Ap. : Party-in-Person

Disposition : Appeal allowed

Judgement :

V. Dhanapalan, J.

1. Appellant has filed this Writ Appeal, aggrieved over the order, dated 31.01.2008, passed in W.P. No. 20687 of 2001, whereby a learned single Judge

confirmed the punishment of compulsory retirement imposed on the appellant by the first and third respondents.

2. Appellant was a Lead Bank Manager at Pudukkottai Branch of Indian Overseas Bank and he had put in more than 29 years of service. For the alleged harassment caused to him, he wrote several letters to the superior authorities with copies to outside agencies such as Ministry of Finance, Reserve Bank of India, Indian Banks Association etc. Construing the same as misconduct, disciplinary proceedings were initiated against the appellant, framing certain charges, which resulted in his suspension on 20.08.1999. Thereafter, Inquiring Authority was appointed to look into the matter. Based on the inquiry report, the disciplinary authority, namely, first respondent, passed an order of compulsory retirement against the appellant, by an order dated 04.05.2001, which was confirmed by the appellate authority, namely, third respondent, by an order dated 06.10.2001, against which the Writ Petition was filed, whereupon also, the punishment of compulsory retirement imposed on the appellant was affirmed. Hence, this Writ Appeal.

3. Since this Writ Appeal involves a short point of law as regards the non-supply of list of documents and the list of witnesses during the course of enquiry, we restrain ourselves to the said point, which would suffice for disposal of this Writ Appeal, and, for that matter, we feel it appropriate to refer the facts to that extent alone.

4. As per Regulation 6(5)(iii) of the Indian Overseas Bank Employees' Discipline & Appeal Regulations, 1976, the Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiry Authority a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated.

5. In paragraph 3 of the counter filed by the respondent-Bank, it is stated as follows:

3. I state that by letter dated 14.10.1999, the first respondent directed the inquiring authority to conduct enquiry proceedings against the appellant herein which was marked as M.E-4 in the findings of the Enquiry authority dated 03.03.2001. In the

said letter itself, the name of the charge sheeted officer and his particulars and also the name of the presenting officer on behalf of the Bank were given, besides enclosing charge sheet dated 23.06.1999 and also additional charge sheet dated 23.09.1999. In compliance with Regulation 6(5) of the Discipline and Appeal Regulations, the list of witnesses and list of documents were also forwarded to the inquiry authority though they have not been specifically mentioned in the letter dated 14.10.1999. It is evident from the inquiry proceedings that the Presenting Officer supplied the list of 51 management documents and list of 4 management witnesses to the appellant along with a set of xerox copies of the listed documents to the appellant as per the directions of the Inquiring Authority on 30.10.1999. It is also evident from the inquiry findings that the Presiding Officer produced the originals of the listed documents to the appellant for his perusal and verification with the xerox copies supplied to him. Further, I state that on 11.01.2000, the appellant was supplied with the copies or additional documents 1 to 12. The appellant refused to verify the xerox copies with the originals and therefore time was given to him. It is not the case of the appellant that the documents marked were not genuine and varied with the originals either in the domestic enquiry or in the appeal. No prejudice was alleged by the appellant in this regard. It is submitted that the file containing the charge sheet, reply to the charge sheet received from the member and other relevant records of the case was sent to the Presenting Officer on 14.10.1999 in compliance of Regulation 6(5) of the Discipline and Appeal Regulations, 1976. The said Regulation 6(5) of the Discipline and Appeal Regulations is only procedural Regulation in conducting disciplinary proceedings against the charge sheeted officer.

6. The appellant has relied upon the following decisions:

(i) Kashinath Dikshita v. Union of India and Ors. : (1986)IILLJ468SC :

When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the

concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employees facing the departmental enquiry depends on the facts of each case. In the facts and circumstances of the present case the appellant had been prejudiced in regard to his defence on account of the non-supply of the statements and documents. The appellant would have needed those documents and statements in order to cross-examine the 38 witnesses and to make effective arguments. Although the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes, but even in this connection the reasonable request of the appellant to have the help of his stenographer was refused. Thus the appellant had been denied reasonable opportunity to defend himself.

(ii) State of Uttar Pradesh v. Mohd. Sharif (dead) through Legal Heirs : (1982)ILLJ180SC :

Charge-sheet served on the delinquent employee (respondent) not indicating with sufficient particularity the date, time and location of the alleged incident which constituted the charge of misconduct - Copies of statements of witnesses recorded during preliminary enquiry not furnished to him at the time of disciplinary enquiry - On facts held, reasonable opportunity of defence against the charges not afforded to the respondent and he was prejudiced in the matter of his defence - Hence, dismissal order passed against him, held, illegal, void and inoperative.

7. On the other hand, learned Counsel for the respondents would cite the following authorities:

(i) Jaipal Singh v. Chairman, D.T.C. and Ors. 1998 III LLJ 99 (Suppl):

The court does not find any validity in the grievance of the petitioner that he was not furnished with copies of certain documents. The Court observed these documents had no relevance either to the charge sheet issued to the petitioner or the inquiry or the defence of the petitioner to the charge sheet.

(ii) Khandelwal Ferro Alloys Ltd. and Ors. v. Member, Industrial Court, Nagpur :

To contend that the crane operators were not given an opportunity to submit their explanation as to why action should not be taken against them before enquiry is initiated is totally baseless and without any substance. The Standing Orders do not require that the delinquent should be given an opportunity to explain why an enquiry in respect of a charge should not be conducted against him. The Standing Orders do not contemplate such a procedure. All that the delinquent is entitled to have is that he should be given sufficient notice of the charges against him and of the allegations on which the charges are based and a fair and a reasonable opportunity to meet the charges and establish his defences, if any, before the enquiring authority. This is an accepted principle of law.

(iii) State of U.P. v. Harendra Arora and Anr. : (2002)IIILLJ 1124 SC :

12. Thus, from the case of ECIL 1949 (1) ALL ER 109 (CA), it would be plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein.

23. ...The provision in Rule 55-A of the Rules for furnishing a copy of enquiry report is a procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of ECIL to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing a copy of enquiry report under the statutory provisions and/or service rules.

(iv) Secretary to Government and Ors. v. A.C.J. Britto :

Mere non-furnishing of copies of documents would not vitiate departmental action and the Administrative Tribunal has to find out how documents are relevant and how he was prejudiced in defending himself as a result of failure to supply copies of document.

(v) Food Corporation of India v. B.J. Jambulkar 1998 II LLJ 852:

In the absence of any material to show that relevant documents were sought for and refused, enquiry cannot be held to be bad in law.

(vi) U.P. State Textile Corporation Ltd. v. P.C. Chaturvedi and Ors. :

10. Records reveal that copies of large number of documents were supplied to the respondent No. 1. Whether they were adequate for the purpose of taking a view in the disciplinary proceedings is another matter, but to say the relevant documents were not supplied is not correct. The High Court had attached great importance to the alleged admission of documents for the purpose of adjudication on October 8, 1992. Though this ground was urged with great vehemence before the High Court, it is not disputed that what was accepted by the Enquiry Officer on October 8, 1992 was not any document but list of documents/books of accounts in the possession of respondent No. 1 - employee. It has not been shown as to how the non-supply of this list caused any prejudice. The stand of the respondent was that additional documents had been entertained which plea the High Court had wrongly accepted. As noted above, no additional document was brought on record, and it was the list. On that score, the High Court's view is clearly untenable.

(vii) Syndicate Bank and Ors. v. Venkatesh Gururao Kurati : (2006)ILLJ988SC :

The prejudice allegedly caused by the non-supply of those documents must be established by the delinquent. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused to him by non-observance of principles of natural justice. It is not possible to countenance the submission at all that the documents which do not

form part of the charges or are relied upon by the prosecution during the course of enquiry, non-supply thereof would cause any prejudice to the delinquent officer.

(viii) S. Shenbagaraj v. Additional Commissioner of Industries and Commerce, Chepauk, Chennai - 5 : (2004) III LLJ 624 Mad :

8. As far as the furnishing of the copies of the documents after the conclusion of enquiry was concerned, here again, the acknowledgement endorsed by the petitioner on 06.11.1997 disclose that while he was furnished with certain documents on 06.11.1997, certain documents numbering 29 were not furnished as on that date. It is not the case of the petitioner that the marking of the documents in the enquiry on behalf of the Management was done behind the back of the petitioner. The documents were all marked in the course of enquiry, in which the participation of the petitioner was full fledged...furnishing the copies of the documents after the conclusion of the enquiry was wholly immaterial so long as the petitioner had an opportunity to peruse the documents in the course of examination of witnesses during the enquiry....

(ix) Bank of India v. Apurba Kumar Saha :

The records show that the respondent had avoided filing written explanation and also, for no valid reason, refused to participate in the disciplinary proceedings. A bank employee who had refused to avail of the opportunity provided to him in a disciplinary proceedings of defending himself against charges of misconduct involving his integrity and dishonesty cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself and the disciplinary proceedings had resulted in the violation of the principles of natural justice.

(x) State Bank of Patiala and Ors. v. S.K. Sharma :

No prejudice had resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. It could not be said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry.

(xi) State of U.P. and Ors. v. Nand Kishore Shukla and Anr. :

7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based upon the proved misconduct against the government servant. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere.

(xii) Union Bank of India v. Vishwa Mohan : (1998)ILLJ 1217 SC :

12. ...The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him.

(xiii) K. Swarna Kumari, Subordinate Judge v. Government of Andhra Pradesh and Ors. 2006 2 LLN 439:

14. It is well settled law that the party, who alleges prejudice, must show that real prejudice has been caused to him/her and that should be pleaded and demonstrated.

(xiv) Apparel Export Promotion Council v. A.K. Chopra : (1999)ILLJ962SC :

16. ...Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings

unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty....

8. We have heard the appellant in person and the learned Counsel for the respondents and also gone through the records, coupled with the authorities cited.

9. Admittedly, the appellant was a Lead Bank Manager at Pudukkottai Branch of Indian Overseas Bank and he had put in more than 29 years of service. For the alleged misbehaviour, disciplinary proceedings were initiated against him, framing certain charges, which resulted in his suspension on 20.08.1999. Thereafter, Inquiring Authority was appointed to look into the matter and, based on the inquiry report, the disciplinary authority, namely, first respondent, passed an order of compulsory retirement against the appellant, by an order dated 04.05.2001, which was confirmed by the appellate authority, namely, third respondent, by an order dated 06.10.2001.

10. As could be seen from the letter of the disciplinary authority, dated 14.10.1999, and the other records, it is evident that the disciplinary authority, while appointing the Inquiry Authority under Regulation 6(4) of the Regulations, had not complied with Regulation 6(5)(iii), which is a condition precedent, for conducting the proceedings against the appellant/delinquent. Besides, no evidence is also produced by the respondents in respect of the said compliance, except the ipse dixit thereto. In the absence of non-furnishing of the said documents, the appellant was unable to counter his case effectively and the very enquiry would get totally

vitiated.

11. In Kashinath Dikshita's case, relied upon by the appellant, the Supreme Court has categorically held that 'when a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner and no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him; in the absence of such copies the employee concerned cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible and whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case'. In the said decision, another decision of the Supreme Court in *State of Punjab v. Bhagat Ram* : [1975]2SCR370 was followed, wherein it had been emphatically stated as under:

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant, he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

12. When an employee is facing a disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges levelled against him in

an effective manner. No one, facing departmental enquiry, can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, the delinquent cannot prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case.

13. In the case on hand as well, the appellant had been prejudiced in regard to his defence on account of non-supply of statements and documents, which were very vital. The appellant would have needed those documents and statements in order to cross-examine the witnesses and to make effective defence. Thus, the appellant had been denied a reasonable opportunity by the authorities to defend himself effectively, thereby causing much prejudice. Therefore, the principles of natural justice embodied in Article 311(2) of the Constitution are violated on failure to supply the statements and documents in question. On that short ground, the order of punishment imposed on the appellant needs interference by this Court.

14. The alleged misbehaviour of the appellant against the authorities is also noticed from the records. But, it is not a crucial factor to be relied upon, to give a finding against the appellant, as this Court is mainly on the point of law. When the law is not followed, this Court does not give much importance to the alleged misbehaviour, as there would have been a possibility of the said alleged misbehaviour being disproved, were the documents and statements furnished to the appellant. In other words, though the alleged misbehaviour on the part of the appellant is noticed *prima facie* from the records, that cannot be a ground to confirm the action of the respondents, as the preliminary and primary statutory requirement, as contemplated under Regulation 6(5)(iii) has not been complied with by the authorities.

15. Following the ratio laid down by the Supreme Court in Kashinath Dikshita's case and in view of our findings in the foregoing paragraphs, the irresistible conclusion that could be arrived at by this Court is that the appellant has to be

reinstated in service. It is brought to the notice of this Court that the appellant has attained the age of superannuation by now. Therefore, considering the facts and circumstances of the case, we are inclined to direct the respondents to afford all benefits to the appellant by treating continuity of service. However, considering the long severance of employee-employer relationship between the appellant and the respondents/Bank, we feel it appropriate to order only 25% of back wages.

16. Accordingly, this Writ Appeal is allowed, setting aside the order of the learned single Judge. The respondents are directed to calculate and pay all consequential benefits as though the appellant was in service and had retired on attaining the age of superannuation, within a period of three months. However, we make it clear that the appellant is entitled only to 25% of back wages. No costs.

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