B.C. Basak Vs. Industrial Development Bank of India and ors.

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Court : Kolkata

Decided On : Aug-04-1988

Reported in : (1989)ILLJ122Cal

Judge : Manoj Kumar Mukherjee and ;Haridas Das, JJ.

Appellant : B.C. Basak

Respondent : industrial Development Bank of India and ors.

Judgement :

Manoj Kumar Mukherjee, J.

1. This appeal under Clause 15 of the Letters Patent is directed against the judgment and order dated May 2, 1983 passed by a learned Judge of this Court rejecting the petition filed by the appellant under Article 226 of the Constitution of India. Facts leading to the filing of the writ petition are as under.

2. At all material times the appellant was the Deputy Manager (Technical) of the Industrial Development Bank of India, Calcutta, (hereinafter referred to as 'the Bank'), the respondent no I herein. By a letter dated February 14, 1976 the General Manager of the Bank called upon the appellant to show cause why disciplinary proceeding should not be instituted against him for having availed of pecuniary advantage to the tune of Rs. 1,375/- in April, 1974 from M/s. Traco Carbide Limited, Calcutta ('the Company' for short) with whom the appellant was

having official dealings in connection with processing of their application for financial assistance. As the cause shown by the appellant in reply thereto was not found satisfactory he was served with a charge sheet dated April 12,1976. The answer given by the appellant to the charges did not satisfy the Bank and therefore a departmental enquiry was ordered. Earlier, a criminal case was also registered (R.C. 48 of 1974) against the appellant at the instance of the Bank and investigation thereof was taken up by the Central Bureau of Investigation.

In the enquiry that followed five witnesses were produced on behalf of the Bank and a number of documents, including some which were seized by the Central Bureau of Investigation (CBI) during investigation, were exhibited. Besides, statements recorded during investigation by the CBI under Section 161 Cr. P C and by the Magistrate under Section 164 Cr. P C were also exhibited. On conclusion of the enquiry, the Enquiry Officer reported that the charge levelled against the appellant could not be conclusively proved. The disciplinary authority disagreed with the view expressed by the Enquiry Officer and served a second notice upon the appellant asking him to show cause why he should not be dismissed from service as the charge levelled against him stood proved. In showing cause appellant reiterated that the allegations made against him were baseless and frivolous and that they could not be proved in the enquiry. The reply did not find favour with the disciplinary authority and, as such, the appellant was dismissed from the Bank's service by an order dated November 28,1979.

Aggrieved by the order of dismissal the appellant preferred an appeal to the Board of Directors of the Bank which was disposed by its Executive Committee (hereinafter referred to as 'the appellate authority'). While upholding the finding of the disciplinary authority that the appellant was guilty of the charge levelled against him the appellate authority reduced the penalty of dismissal to stoppage of promotion till July 31,1981. Order was accordingly passed directing appellant's reinstatement and treating the period between the dates of his dismissal and reinstatement as spent on duty. Against the order of the appellate authority, the appellant moved a writ petition in this Court and obtained a Rule which was registered as Civil Rule No. 8725 (W) of 1980. The Rule was disposed of on November2, 1981 with a finding that the appellate authority did not dispose of the appeal properly and from the cryptic order passed it did not appear that it had adverted to the contentions raised by the appellant in his memorandum of appeal. On such findings the Court, while disposing of the Rule, directed that the appellate authority would rehear the appeal in accordance with law and give reasons for its decision. In complying with the above directions the appellate authority reheard the appeal and in upholding its earlier order gave detailed reasons. Against the said decision the appellant filed another writ petition, which culminated in the impugned order.

3. To appreciate the merits of the appeal it will be profitable at this stage to consider the charge against the appellant and his explanation thereto. In the charge-sheet it was alleged that during his stay at the Himalayan Hotel, Kalimpong with members of his family from April 18 to April 28, 1974 the appellant incurred an expenditure of Rs. 1,375/- and that amount was borne by the Company with whom he was having official dealing in connection with the processing of an application for financial assistance received from the Company. It was further alleged that in his communication from Kalimpong dated April 20, 1974 to the Bank's Calcutta Regional Office the appellant indicated his leave address as 'C/o. Dr. Boral, Main Road, Kalimpong, Dist. Darjeeling (West Bengal)' though he was actually staying at Kalimpong Hotel during the relevant period. The other allegation was that he did not disclose the correct Calcutta address while making entries in the register of the Hotel. On the above allegations, the appellant was charged with having committed a breach of Regulation 44(1) of the Reserve Bank of India (Staff) Regulations, 1948 by availing of pecuniary advantage to the tune of Rs. 1,375/- from the Company and thereby an act of misconduct under Regulation 47 of the said Regulations.

4. In his reply the appellant denied that he availed of any pecuniary advantage from the Company, as alleged. He asserted that he had arranged to pay a sum of Rs. 1,402.53 to Sri Niladri Chatterjee of the Company for remitting payment in advance to M/s. Himalayan Hotel, Kalimpong through Sri M.C. Parikh, the then Manager (Technical) of the Bank: and in support of his contention he relied upon a letter dated April 5, 1974 which was received from Sri Chatterjee, a copy of which was enclosed with his earlier explanation. In his reply he asked for a personal

hearing and requested the Bank to ensure presence of Sri Parikh at the hearing to support his contention. Along with the reply he enclosed a copy of a production slip issued by Sri A.B. Mukherjee, Inspector of CBI, whereby he took charge of the letter dated April 5, 1974 addressed to the appellant by Sri Chatterjee and two M.O. receipts bearing Nos. 1326 and 1327 dated April 3, 1974 for Rs. 800/- and Rs. 375/- respectively.

5. As has been already noticed the reply was found unsatisfactory and a domestic' enquiry followed. In that enquiry five witnesses were examined on behalf of the Bank, namely, Subhas Chandra Bose, who at the material time was the Secretary of the Company, Mrs. V.A. William, one of the partners of Himalayan Hotel, Kalimpong, Dr. M. Boral, a resident of Kalimpong, Asoke Ghose, Internal Auditor of the Company at the relevant period and Sri A.B. Mukherjee, Inspector of Police, CBI who investigated into the criminal case registered against the appellant. The documents exhibited on behalf of the Bank in the enquiry included three statements made by Sri Niladri Chatterjee who worked as a Public Relation Officer of the Company at the material time. While one of the three statements was recorded by the Investigating Officer Sri A.B. Mukherjee under Section 161 of the Code of Criminal Procedure, another was by a learned Magistrate, on the prayer of the Investigating Officer, under Section 164 of the Criminal Procedure Code: and the third one was a complaint lodged by Sri Chatterjee before the Officer in Charge of Tollygunge Police Station. The letter dated 5th April written by Sri Chatterjee and the two money order receipts showing remittance of Rs. 1,373/ to the Himalayan Hotel on April 3, 1974, which were seized from the appellant were also exhibited by the Bank Exts. 27 and 28 respectively. The appellant, however, did not examine any witness but he submitted a detailed argument at the conclusion of the enquiry.

6. Mr. Banerjee, appearing in support of the appeal, first contended that the disciplinary proceeding was vitiated by serious irregularities and infirmities in conducting the same, and as such the same was liable to be quashed. In elaborating his contention, Mr. Banerjee submitted that both the disciplinary authority and the appellate authority relied upon three statements supposedly made by Sri Niladri Chatterjee but no opportunity was given to the appellant to

cross examine Sri Chatterjee. According to Mr. Banerjee, it is the elementary rule of natural justice that before any statement or deposition of any person can be used against the delinquent he must be given an opportunity to cross-examine that person. In our considered view, this contention of Mr. Banerjee is indefeasible. Indeed, Dr. Pal appearing on behalf of the Bank also did not dispute the above contention of Mr. Banerjee. He, however, submitted that even if the statements of Sri Chatterjee were left out of consideration the charge levelled against the appellant stood proved; and in fact, Dr. Pal submitted, the appellate authority came to a conclusion about the appellant's guilt independent of those statements.

7. In the instant case we find that some of the witnesses who were produced in the enquiry were not examined at length, but their statements recorded earlier during investigation were treated as their examination-in-chief after those statements were read over and admitted by them as correctly recorded, and thereafter they were allowed to be cross-examined. Since the rigours of Evidence Act are not applicable to domestic enquiries no exception can be taken to the procedure so adopted, but then from the records we find that as far as Sri N. Chatterjee and Sri A.P. Mitra were concerned, they were not even examined, but their statements earlier recorded were treated as evidence in the enquiry. The procedure so followed being clearly violative of the principles of natural justice the statements of those two witnesses should have been left out of consideration by the concerned authorities as they were not legally entertainable. An attempt was however made on behalf of the Bank to prove through some of the witnesses examined in the enquiry that Sri N. Chatterjee was not available but then that could not have been a ground for entertainment of his statements particularly because the statements were recorded ex parte and the appellant had no opportunity to assail those statements through cross-examination or otherwise.

8. To bring home his contention that de hors the statements of Sri Chatterjee and Sri Mitra the charge against the appellant stood proved and in fact was found to have been proved by the appellate authority and therefore non-examination of Sri Chatterjee or Sri Mitra did not affect the case of the Bank, Dr. Pal relied upon a decision of the Supreme Court in the case of Zora Singh v. J.M. Tandon (AIR) 1971 S.C. 1537.

9. The merits of above contention of Dr. Pal need not be considered at this stage as we find that the disciplinary proceeding stands vitiated by another serious infirmity. It appears that throughout the enquiry a Deputy Superintendent of the Central Bureau of Investigation was present and he was even permitted to re-examine one of the important witnesses, namely, Mrs. William on a point which had a strong bearing on the merits of the case. Dr. Pal, however, contended that as no objection was raised initially to the presence of the Deputy Superintendent of Police, CBI on behalf of the appellant, he could not be allowed at this stage to assail the enquiry on that score, more particularly when no case of prejudice caused thereby has been made out. As regards the participation of the officer concerned, Dr. Pal submitted that the question he asked to Mrs. William and the answers he got from her might be excluded for similar answer was given by that witness in her cross-examination by the appellant. We regret our inability to accept the contention of Dr. Pal. In our considered view, when the enquiry was a domestic one outsider should not have been allowed to be present, particularly a Senior Officer of CBI at whose instance an investigation was conducted in the case in question. Apart from the fact that presence of such an outsider must be held to be violative of the principles of natural justice, that he was allowed to participate in the enquiry, though on a single occasion, clearly vitiated the proceeding of the enquiry. The contention of Dr. Pal that no objection was raised to his presence and at one point of time when such an objection was raised Sri Sinha was not allowed to be present does not make any difference in our view.

10. It appears from record that when Sri A.B. Mukherjee was examined to bring on record the statement made by various witnesses before him, Sri B.N. Sinha was not allowed to be present on the objection of the appellant but then the records indicate that even when Sri A.B. Mukherjee was examined by an Inspector of CBI he was allowed to be present to assist the enquiring officer and the presenting officer in case of need. Delinquents in a departmental enquiry are not expected to be nor are they normally conscious of and conversant with statutory rights and consequently they might not be knowing that they might object to the presence of an outsider. But then whether any objection is raised or not about the presence of an outsider the adage that justice must not only be done but it must appear to have been done has to be followed in all judicial and quasi judicial proceedings.

Judged in that context we must hold that the presence of an officer of CBI during the entire proceeding, and as the records indicate, to assist the enquiring officer and presenting officer in case of need clearly violated the basic norms of a disciplinary proceeding. In making this observation we have taken into consideration the fact that the witnesses who were examined during enquiry supposedly made statements before the CBI-which statements could not be statutorily signed by the makers thereof-and those statements were sought to be relied upon as correctly recorded. If therefore a senior officer of the CBI is present there then the witnesses whose purported statements made before the Investigating Officer were being treated as their evidence in examination in chief in the enquiry, certainly would not dare say that the statements were not correctly recorded. This inference drawn by us gets support from the evidence of Mrs. William. Initially the following questions were put to and answers given by her-

Wit: I was the partner of Himalayan Hotel, Kalimpong. My sister died on the 23rd March 1977 and I seem to be the Incharge of the Hotel.

P.O : One Shri Mukherjee, Inspector, CBI, Calcutta, had come here on the 26th February 1975 and he is stated to have enquired of you about the details relating to Shri B.C. Basak in connection with his stay in your Hotel and recorded a statement. I will give you copy of the said statement. Is this the statement you had recorded or have you any point on which you want to differ or which is materially incorrect?

Wit: (After going through the copy of the statement). One thing has been worrying me./ told it to Shri Sinha yesterday that it is not true that Shri Basak came and introduced himself as the guest of Traco Carbide Ltd. I do not think that Sri Basak stated to me that he was the guest of Traco (emphasis supplied). It was Shri Bose from Calcutta who said that Shri Basak was the guest of Traco Carbide Ltd. Shri Basak did not say so. When he came to my Hotel, I told Shri Basak that I got his money. I want to be fair to all, I do not remember Shri Basak having told that he was the guest of Traco.

11. After her evidence was concluded, Mrs. William was allowed to be re-examined by the officer of the CBI and the following answer was obtained from

her:

DSP: On 7th May 1977 you have not told that it is not true that Shri Basak came and introduced himself as the guest of Traco Carbide Ltd. and also the remaining portion of the beginning of paragraph ' I do not think....Traco' You said only that the statement recorded by Shri A.B. Mukherjee has been correctly recorded excepting the wrong English written i.e. introduced 'him.' The correct English should have been 'himself'. Otherwise the statement is correctly written. Further you told that you had not introduced Shri Basak with other outsiders. Do you confirm?

Wit: Yes, I confirm

P.O: Thank you Mrs. William.

12. As in our view the presence and participation of the senior officers of Central Bureau of Investigation, Calcutta in the enquiry vitiated the entire proceedings of enquiry, we need not delve into or decide the question whether the finding of the appellate authority independent of the statements of Sri Chatterjee and Sri Mitra, who were not examined during enquiry, could be sustained or not. For the foregoing discussions the proceedings of the enquiry which culminated in the order of the appellate authority must therefore be quashed. On the above findings the only consequential order which should have been normally passed was one of directing a fresh enquiry in accordance with law, but then considering the fact that since the alleged misdemeanour was committed more than 14 years have elapsed, we are not inclined to pass such an order.

13. In the result we allow this appeal and the writ petition. The impugned orders dated December 3, 1979 passed by the disciplinary authority and dated April 28, 1982 passed by the appellate authority (Annexures B and E to the writ petition) are hereby quashed. Let appropriate writs, as prayed for, issue accordingly. There will be no order as to costs.

Haridas Das, J.

14. I agree.