

K. Umar Vs. the Manager, Syndicate Bank and Others

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Court : Kolkata

Decided On : Mar-16-2012

Judge : Subhro Kamal Mukherjee & Dipankar Datta

Appeal No. : MAT.NO. 016 OF 2012

Appellant : K. Umar

Respondent : The Manager, Syndicate Bank and Others

Judgement :

Dipankar Datta, J.

1. The appellant is an employee of Syndicate Bank (hereinafter the bank). He was placed under suspension in contemplation of disciplinary proceedings vide order dated October 27, 2009. Thereafter, he was proceeded against departmentally by the bank. A chargesheet was issued against him on November 18, 2009 by the Deputy General Manager and disciplinary authority, the respondent no.3. It was alleged therein that while the appellant was on leave on sick ground, he went to the PBMC Branch of the bank at Port Blair on September 23, 2009 during business hours and demanded the branch attendance register to be shown to him without any authority. He had questioned the authority of Shri Ramit Sengupta, Probationary Assistant Manager to mark one Smt. Nadira, clerk of the PBMC Branch of the bank, absent on September 22, 2009 in the said register, although she remained absent without sanction of leave. It was further alleged that he had

entered into an unwarranted argument with Shri Sengupta and shouted at him in filthy and unparliamentary words in the open hall of the branch premises in the presence of customers and the Branch Manager and in the process had also passed derogatory remarks against senior officials of the bank. It was also alleged that such attitude of the appellant indicated that his visit to the branch was pre-planned to create unpleasant scene to threaten the bank officials. The acts of the appellant were viewed to be highly objectionable, subversive of office discipline, discourtesy shown to the superiors and tarnishing the image of the bank in the eye of the customers and the public, constituting misconduct as per provisions of the bipartite settlement (memorandum of settlement dated April 10, 2002). Consequently, the appellant was charged with "riotous, disorderly and indecent behaviour on the premises of the bank" vide clause 5(c) and "doing acts prejudicial to the interest of the bank" vide clause 5(j) of the aforesaid bipartite settlement. The chargesheet referred to the complaint dated September 23, 2009 of Shri Sengupta addressed to the Regional Office of the bank at Chennai and the covering letter of the Branch Manager dated October 05, 2009, whereby the aforesaid complaint was forwarded to the General Manager, Regional Office of the bank at Chennai.

2. The appellant having denied and disputed the material allegations leveled against him in the chargesheet, an enquiry followed. Three witnesses deposed as management witnesses while the appellant himself, the said Smt. Nadira and two others deposed as defence witnesses. Upon consideration of the evidence on record, the Inquiry Officer submitted his report dated May 28, 2010 holding that the charges leveled against the appellant have been conclusively proved during the enquiry. The report was forwarded to the appellant vide a letter dated June 06, 2010 inviting his response thereto. The appellant in his letter dated July 19, 2010 alleged that the report of enquiry is totally one sided and prepared with ulterior motive to malign him. The report of enquiry and the response of the appellant were considered by the disciplinary authority and by his notice dated August 07, 2010, he conveyed to the appellant that he concurred with the findings of the Inquiry Officer and held that the appellant was guilty of gross misconduct. It was, accordingly, proposed to award the appellant the punishment of "reduction in basic pay by two stages for a period of two years". The appellant was called upon to

attend personal hearing on the proposed punishment on August 28, 2010. The appellant submitted a written reply in response to the notice of hearing dated August 08, 2010 and prayed that the finding of the Inquiry Officer and concurrence therewith by the disciplinary authority, as recorded in the aforesaid notice, may be reviewed/recalled on the ground that clear evidence pointing to innocence of the appellant was overlooked and that there was clear violation of principles of natural justice in proceeding against him. The disciplinary authority upon consideration of the said written reply passed the final order of punishment dated September 13, 2010. In modification of the proposed punishment, the appellant's basic pay was reduced by two stages for a period of one year and it was further ordered that the period of suspension shall be treated as not on duty and that he would not be entitled to any back wages/notional increment/consequential benefits whatsoever during the period of suspension other than what has been paid to him as subsistence allowance.

3. The order of punishment dated September 13, 2010 was carried in appeal by the appellant before the General Manager (Personnel) being the appellate authority, the respondent no.2, by a petition of appeal dated September 27, 2010. The appellate authority by an order dated December 09, 2010 concurred with the disciplinary authority and confirmed the punishment imposed on the appellant.

4. Thereafter, the appellant attempted to raise an industrial dispute under the Industrial Disputes Act, 1947 by approaching the Central Labour Commissioner by writing a letter dated April 27, 2011. However, the parties to the dispute could not be ad idem and hence the proceedings ended in failure. The failure report was forwarded to the Secretary to the Govt. of India, Ministry of Labour and Employment, New Delhi by the Conciliation Officer but the Central Government did not make any reference for adjudication.

5. Having failed to have the grievance resolved through the machinery provided by the Industrial Disputes Act, the appellant preferred a writ petition before this Hon'ble Court, registered as WP 1246 of 2011. The writ petition was heard on contest and by judgment and order dated January 16, 2012, the learned Judge was pleased to dismiss the same holding, inter alia, that there was no merit in the

contention that the proceedings were vitiated by breach of natural justice and further that the Inquiry Officer, the disciplinary authority as well as the appellate authority had arrived at their respective conclusions upon due consideration of all aspects of the matter and the circumstances of the case.

6. The judgment and order dated January 16, 2012 is the subject matter of challenge in the writ appeal being MAT No.016 of 2012.

7. In course of hearing, Ms. Ganguly, learned advocate appearing for the appellant raised only one point. According to her, the conclusion arrived at by the Inquiry Officer, the disciplinary authority and as well as the appellate authority that the appellant was guilty of the charges leveled against him is based on no evidence and that the conclusions were reached without considering the evidence in defence, both oral and documentary.

8. It has been contended that none of the management witnesses had deposed to the effect that the appellant had hurled filthy and abusive language towards Shri Sengupta and none witnessed any riotous, indecent and disorderly behaviour of the appellant during banking hours and as such question of the appellant indulging in acts prejudicial to the interest of the bank did not arise.

9. She also submitted that the decision to punish the appellant was taken without considering the complaint of the appellant dated September 24, 2009, marked DEX-1, addressed to the General Manager of the bank whereby it was alleged that Shri Sengupta was the person who shouted at him and used unparliamentary language against his caste and community and that Shri Sengupta was guilty of misconduct as mentioned therein. According to her, non-consideration of such complaint renders the final order of punishment perverse and, therefore, the entire proceedings stood vitiated.

10. Finally, she urged that the explanation that the appellant offered in respect of what transpired in the cabin of Shri Arvind Kumar, the Chief Manager of Port Blair branch of the bank, was also not considered in the proper perspective.

11. In support of her submission that the charges leveled against the appellant ought to have been proved in the inquiry based on legally admissible evidence, Ms. Ganguly relied on the decision of the Hon'ble Supreme Court reported in (2009) 2 SCC 570 (Roop Singh Negi -vs- Punjab National Bank and others).

12. She, accordingly, prayed for setting aside of the judgment and order impugned in this writ appeal as well as the final order of punishment imposed on the appellant.

13. Per contra, Mr. George, learned advocate appearing for the respondents contended that the judgment and order impugned does not merit interference since the learned Judge did not act illegally or commit any error of jurisdiction in dismissing the writ petition. According to him, the finding of the Inquiry Officer that the appellant was guilty of the charges leveled against him is based on the evidence on record before him and therefore the contention that there was no evidence on record based whereon the appellant could have been found guilty is without substance. It was further contended that the proceedings were conducted upon extending reasonable and adequate opportunity to the appellant to raise defence and that there was neither breach of principles of natural justice nor any provision contained in the bipartite settlement, which governs disciplinary proceeding against employees like the appellant, were violated.

14. We have heard learned advocates for the parties and considered the materials on record.

15. Although, it is not the function of the Writ Court or the Court sitting in appeal over the decision of the Writ Court to re-appreciate and re-analyse evidence tendered in course of a domestic enquiry, we consider it necessary to peruse the documentary evidence and the oral evidence in some detail in view of the point raised by Ms. Ganguly that there was no evidence on record to nail the appellant.

16. It appears from the complaint lodged by Shri Sengupta on September 23, 2009 that he had marked the said Smt. Nadira absent on September 22, 2009 on instruction from the Branch Manager of the PBMC Branch of the bank since she had not attended office; that the appellant came to the branch on September 23,

2009 and started shouting in front of the customers ventilating that Smt. Nadira could not have been marked absent; that while uttering filthy language, he asked the personnel of the branch to show him the attendance register; that the appellant became furious when Shri Sengupta advised him to seek an advice of the Branch Manager and threatened the former with dire consequences; that thereafter the appellant passed unparliamentary and derogatory remarks against the Manager, Chief Manager and even the addressee of the complaint by uttering words in direct speech as mentioned therein.

17. The said complaint of Shri Sengupta was forwarded to the General Manager by the Branch Manager by writing as follows:-

“Sub: Representation of Sri. Ramit Sengupta

We are forwarding the representation made by Sri. Ramit Sengupta. We request you to take necessary action on the representation. I would further like to state that this incident has occurred in my branch in my presence on 23/09/09.

This incident has definitely caused utter humiliation to Sri. Ramit Sengupta further it has also tarnished the image of the bank.”

18. Shri Sengupta was management witness no.1. In his examination in chief, he stated that “I stand by the contents of the complaint”. His version could not be shaken in cross examination. Answering to a query in course of cross examination as to why he did not mention the specific words in his complaint which, according to him, amounted to use of filthy language against him by the appellant, Sri Sengupta replied that his culture did not permit him to write such filthy language. To a further query posed in course of cross examination, he deposed that the appellant passed unparliamentary and derogatory remarks against his superiors “to prove his reach and power in the organization”.

19. Shri Kumar was management witness no.3. He had conducted an enquiry into the complaint lodged by Shri Sengupta against the appellant and had submitted a report. On being asked to say, what his findings were, this is what Shri Kumar stated:

“I came to know about the incident that took place at PBMC Branch on 23/09/2009 and immediately I called Mr. Umar to my cabin and enquired about the incident. Mr. Umar agreed that he shouted at the branch with Mr. Ramit and prepared to express his regrets to Mr Ramit then I called Mr Ramit Sengupta to my cabin. At that stage I told Mr Ramit that Mr Umar is expressing his regrets and Mr Umar said sorry to Ramit Sengupta. However Mr Ramit Sengupta is not ready to accept the regrets of Mr Umar and he expressed that disciplinary action shall be taken against Mr Umar. Since Mr Umar insulted me and threaten in front of all the customers. He also added that since I am in his place he is threatening me, if he is going to Kolkata I can also do damage to him. Subsequently I have submitted my report to GM.”

20. In course of cross examination, Shri Kumar was asked only one question i.e. about the attitude and behaviour of the appellant towards his superiors, colleagues and customers, to which he replied that except for his short temper, the appellant is good and works hard for the bank.

21. The oral evidence of Shri Kumar as extracted (supra) corroborates the evidence of Shri Sengupta, who stated that he stood by his complaint.

22. It is also found from the evidence of the appellant in course of examination in chief that he demanded the Branch Manager to show him the attendance register.

23. The other defence witnesses when asked as to whether the appellant had used any unparliamentary words or not never answered in the negative but gave evasive replies that so long as they were at the spot the appellant had not used any unparliamentary words or that they had not heard any such kind of words when they were there.

24. The defence witness no.2 was not present in the branch premises at the relevant time and his evidence is of no worth.

25. Insofar as the defence witness no.3 Smt. Nadira is concerned, she was an interested witness in the sense that it was on her request to intervene that the appellant had visited the branch despite being on leave on the ground of suffering

from jaundice and, therefore, is unreliable.

26. There was one other witness on behalf of the defence i.e. defence witness no.4, Shri H.Vikram, a clerk posted at the PBMC branch of the bank. In reply to question no.6 in course of examination in chief, he replied that since he was in the cash counter, he did not understand what the appellant was discussing with the Branch Manager. In the same breath, in reply to question no.8, he answered what Shri Sengupta had told the Branch Manager upon entering his chamber as well as the reaction of the Branch Manager. In course of cross examination, reply came from Shri Vikram that he was in the cash counter and, therefore, he could not make any attempt to defuse the situation to control the appellant and Shri Sengupta. Being entrusted to handle cash in the cash counter and having failed to hear what discussion was taking place between the appellant and the Branch Manager, it was least probable that he could hear what Shri Sengupta told the appellant in the presence of the Bank Manager and what the Branch Manager subsequently told Shri Sengupta. The evidence of Shri Vikram is, therefore, not credit worthy.

27. The contention of Ms. Ganguly that the statements of the defence witnesses was not considered in the proper perspective does not appear to be sound considering their oral evidence.

28. Let us now consider the evidence to which our attention has been drawn by Ms. Ganguly to contend that the charges against the appellant could not have been held to be established.

29. The evidence of the Branch Manager Shri J. Sunderesan, being the management witness no.2, was made the sheet anchor of the appellant's claim. When asked whether he agreed with the contents of the complaint lodged by Shri Sengupta, Shri Sunderesan replied that some conversation took place between the appellant and Shri Sengupta in Hindi, which he could not understand. He further stated that between the two, Shri Sengupta started arguing first and that to the extent he knows Hindi, he did not think that the appellant had used filthy language or that he could not comprehend as to whether the appellant had passed derogatory remarks against superior officers.

30. Having regard to the contents of MEX-2 as extracted supra, it is clear that Shri Sunderesan had taken a somersault and resiled from what he had expressed earlier. The reason for his somersault is not far to seek. The appellant was the leader of the Union and was so close to Shri Sunderesan that the former could ring the latter even at 05.30 hours in the morning on his cell phone. It would not be unreasonable to infer that Shri Sunderesan did not wish to incur the displeasure of the appellant.

31. Be that as it may, the oral evidence of Shri Sunderesan pales into insignificance in view of the clear testimony of Sri Sengupta, since corroborated by Shri Kumar and the version in MEX-2.

32. The next contention that the complaint of the appellant dated September 24, 2009 being DEX-1 was not considered does not appear to be correct. The Inquiry Officer upon consideration of the complaint being DEX-1 and the oral evidence of the appellant arrived at a finding that DEX-1 had been lodged by the appellant as a counter complaint and with a view to defend himself. Thereafter, the Inquiry Officer upon analysing the entire evidence on record arrived at the following findings:

“While analyzing the evidence brought on record by the Management as well as defence, the sequence of events such as - CSE is in very aggressive mood right from entering into PBMC Branch, demanding Attendance Register from the Manager, questioning the authority of Branch Manager for marking ‘A’ to Ms. Nadira, when MW-1 interfered, the CSE sharply reacted by entering into an argument, expressing regrets for his acts to the MW-1 before MW-2 etc., indicate that his behaviour is not normal at the relevant time and also sows his high handedness. From the evidence of MW-3, it has come on record that the CSE is a short-tempered person. In addition to the circumstantial evidence discussed above, I observe that unless and otherwise the CSE felt guilty for the language used by him there was no need for him to apologize or express his regrets to MW-1 in front of the Chief Manager. All the above goes to indicate that the CSE used filthy language against Sri Ramit Sengupta and also used derogatory remarks against executives of the Bank. This is further strengthened by MEX-2 wherein the

MW-2 stated that the said instance has definitely caused utter humiliation to Sri Ramit Sengupta, besides tarnishing the image of the bank.

In view of the foregoing, I hold that the charges of committing the Gross Misconduct of -

1. "Riotous, disorderly and indecent behavior on the premises of the bank" vide Clause No. 5(c); and

2. "Doing acts prejudicial to the interest of Bank" vide Cl. No.5(j) of the Bipartite Settlement (Memorandum of Settlement) dated 10.04.2002.

levelled against the CSE, Sri K. Umar, Emp. No.477929, Clerk, Ferarganj Branch vide Charge Sheet No. CGS/ROCH/09/2009/F.819 dated 18.11.2009 are conclusively PROVED during the enquiry."

33. We are thus not persuaded to accept that the defence evidence of the appellant was not considered.

34. Now, the final contention of Ms. Ganguly that the appellant had expressed regret in the presence of Shri Kumar because he was made to believe that expressing regret would bring an end to the entire episode may be considered. We are of the opinion that the same has to be rejected as an after thought. Shri Kumar was never questioned on this aspect of the matter in course of his cross examination and it is only after the finding was returned that the appellant was guilty of the charges on the basis of what transpired in course of enquiry conducted by Shri Kumar that such a contention was raised at a much later point of time. We find no merit in the contention, which accordingly stands overruled.

35. It cannot be lost sight of that standard of proof in a disciplinary proceeding is that of preponderance of probability and judged by this standard, the conclusion reached by the Inquiry Officer, the disciplinary authority and the appellate authority cannot be termed perverse.

36. The decision in Roop Singh Negi (supra) has been duly considered by us. Based on legally admissible evidence, the appellant was found to be guilty, and

the findings returned by the Inquiry Officer and the other authorities are not based on surmises and conjectures. Therefore, the cited decision does not aid the appellant.

37. It is clear that the bank, in the present case, has sought to discipline a Union leader who despite being on leave on the ground that he was suffering from jaundice, could wake up the Branch Manager at 05:30 hours in the morning to protest against marking of Smt. Nadira as absent without reason and could also barge in the branch premises to flaunt his authority as such leader. Unless indiscipline is discouraged by taking stern punitive steps, the situation is likely to go beyond control and having regard to the facts and circumstances of the present case, we do not consider that the bank by imposing the penalty of reduction of basic pay for a year on the appellant has acted in such an arbitrary and unreasonable manner that interference in exercise of writ jurisdiction would be warranted.

38. We find no reason to interfere with the judgment and order under appeal. The writ appeal stands dismissed, without order for costs.

39. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant, on observing all requisite formalities at an early date.

Subhro Kamal Mukherjee, J.

I agree.

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