

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 30th July, 2010*

+ **RSA No.216/2005**

VIJAY BAHADUR SINGH Appellant
Through: Mr.R.Vasudevan, Advocate.

Versus

PUNJAB NATIONAL BANK Respondent
Through: Mr.Ravi Sikiri & Mr. Vaibhav Kalra,
Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. Learned counsel for the appellant has urged that a substantial question of law has arisen as the impugned judgment dated 10.3.2005 which had endorsed the finding of the Trial Judge dated 8.7.2000 has mis-appreciated vital legal aspects relating to proceedings conducted before the Enquiry Officer and the principles of natural justice not having been adhered to. In this context he has made two fold submissions.

2. Counsel for the appellant has drawn attention of this Court to the impugned judgment dated 10.3.2005 wherein the Court had held that representation of the appellant by a lawyer or legal practitioner in the Enquiry proceedings was not a matter of right, although admitting that presenting officer on behalf of the department namely R.K.Jain was a qualified lawyer. It is

submitted that this aspect of the matter has been brushed aside lightly by both the Courts below without appreciating the fact that the denial of this right to the appellant of being represented before the Enquiry Officer by his advocate has caused severe miscarriage of justice to him as the presenting officer on behalf of the management was himself a qualified lawyer having a LL.B degree; since the appellant could not be represented by a person of the same ability, he has suffered a serious prejudice.

3. Learned counsel for the appellant has placed reliance upon a judgment of the Supreme Court reported in AIR 1983 SC 109 The Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni & Ors. as also 1991 LAB I.C. 1008 J.K.Aggarwal Vs. Haryana Seeds Development Corporation Ltd. & Ors. to support this submission.

4. This submission has been countered by the learned counsel for the respondent. Per contra he has placed reliance upon a judgment of the Apex Court reported in (1997) 4 SCC 384 Harinarayan Srivastav Vs. United Commercial Bank & Anr. as also another judgment reported in AIR 2010 142 Biecco Lawrie Ltd. & Anr. Vs. State of West Bengal & Anr.

5. The judgment of the Trial Court dated 8.7.2000 has dealt with this contention of the learned counsel for the appellant in para 20 and 21 which inter alia states:

“20. The plaintiff has filed his reply Ex.PW1/6. He requested that he be provided Advocate to represent him in the enquiry proceedings. The enquiry Officer Sh.V.K.Chadha has examined Sh.V.K.Bhutani, Sh.S.C.Kapoor, Sh.D.K.Bhatnagar and Sh.R.K.Bhatnagar and the plaintiff was afforded opportunity to cross examine the witnesses. These witnesses have been cross-examined at length by the plaintiff.

21. If we go through the law laid down by Hon’ble Supreme

Court, in this authority, it is clear that denial of providing an advocate to the plaintiff does not vitiate the enquiry held by the Enquiry Officer. There were simple allegations against the plaintiff and there was no necessity to provide the plaintiff an advocate. Moreover the appointment of the presenting Officer was not made on the basis of his qualification but because of its holding a particular position in the defendant Bank. The charges framed against the plaintiff are too simple to need any legal expert to defend the same. The presenting officer was a Law Graduate but he was not a practicing Advocate at any point of time and consequently, he could not be supposed to know miniatures of Advocate.”

6. These finding were endorsed by the Appellate Court who had further noted inter alia as follows:

“Plaintiff/appellant himself was a member of union for member of years and even Vice President of the union and to say that he was deprived of the opportunity to be represented through the counsel is not tenable. The real question in such cases are whether delinquent was denied opportunity of fair representation. Keeping in view proceeding I do not think that the plaintiff/appellant was denied the opportunity of fair representation. There are correspondence on record by which he was permitted by the Enquiry Officer to be represented though a member of the Union.

Hence, ground that the plaintiff/appellant was not allowed to be represented through a legal practitioner in Enquiry Proceedings is not a good ground.”

7. In 1997 4 SCC 384 Harinarayan Srivastava Vs. United Commercial Bank & Anr., it had been held that denial of right to the delinquent official to be represented by an advocate in the Departmental Enquiry would not per se amount to a violation of the rules of natural justice and would not in any manner vitiate the enquiry. In AIR 2010 SC 142 Biecco Lawrie Ltd. & Anr. Vs. State of West Bengal & Anr. while relying upon its earlier judgment of Harinarayan Srivastava (supra) the Supreme Court had held as follows:

“.... refusal of an Inquiry Officer to permit representation by an

advocate even when the management was being represented by a law graduate will not be violative of the principles of natural justice if the charges are simple and not complicated.”

8. In the instant case the charges against the delinquent official read as follows:

- “ - for willful insubordination and disobedience of lawful and reasonable orders of the Management;
- for indulging into trade union activities during the office hours thereby violating the H.O. norms in this regard;
- for creating dis-orderly and indecent behavior on the premises of the bank;
- for doing act prejudicial to the interest of the bank.”

9. These charges are simply worded based on facts raising no complicated or complex legal issues which required any special legal expertise.

10. The judgments relied upon by the appellant only state that a person who is facing an enquiry which has serious civil and pecuniary consequences is permitted to defend his case adequately and may in circumstances be permitted to be represented by a legal practitioner.

11. In this view of the matter this submission of the learned counsel for the appellant has no force.

12. The second submission urged before this Court is that the delinquent official had made a representation before the Enquiry officer that he wishes to summon three persons i.e. the Deputy General Manager (Personnel), Branch Manager of Darya Ganj where the delinquent official was posted and the Regional Manager Mr.O.P.Chopra who had suspended him; this request was unfairly and summarily declined by the Enquiry officer; both the Courts below have also rejected this prayer of the delinquent official arbitrarily. The documents which the delinquent official/appellant

had proposed to get proved through the version of these witnesses was to the effect that in the second half of 14.1.1988 he had submitted an application for half day leave in lieu of certain emergent personal conditions and a telegram to this effect had also been sent by him; as also the security register evidencing the actual reason for his entry in the head office i.e. with regard to the issue of his increments. The Deputy General Manager (Personnel) would have deposed about the various complaints which the delinquent official had forwarded to him against Mr.V.K.Bhutani, the Chief Manager (Personnel). The Manager of Darya Ganj Branch would have proved that the delinquent official had been sanctioned a half day leave for his visit to the head office which would have substantiated his stand that the delinquent official was found in the office premises only for this reason. The third witness Mr.O.P.Chopra, the Regional Manager, would have confirmed that it was at the behest of Mr.V.K.Bhutani who had lodged a false complaint against the delinquent official that the appellant had been suspended. These documents in question were crucial. Both the Courts below have dealt with this request of the appellant in an unfair and arbitrary manner dismissing it on the ground that the documents called for are irrelevant and not required to prove the charges which is clearly not so.

13. Present proceedings have arisen out of a suit for declaration and consequential relief which had been filed by the appellant/plaintiff. Para 9 of the plaint is relevant in this regard which inter alia reads as follows:

“Besides, the Enquiry officer had also not summoned the record of the bank regarding the complaint sent by the plaintiff against Shri V.K.Bhutani prior to this complaint against the plaintiff, the half

day leave record of the plaintiff dated 14.1.88 and the record of the Telegram dated 14.1.188 sent to General manager. Thus the opportunity of fair trial was not afforded to the plaintiff and the principle of Natural justice was also violated.”

14. In the corresponding para of the written statement the department has made a specific denial stating that the plaintiff could not ask for the summoning of irrelevant records; the request for summoning of record regarding complaints by plaintiff against Mr.V.K.Bhutani were irrelevant for deciding the charge; the relevant documents had thus not been summoned.

15. The Trial Judge in the judgment dated 8.7.2000 has held that the documents sought to be summoned by the plaintiff were irrelevant and not required for proving the charges leveled against him. The first Appellate Court had also found no force in this submission of the appellant holding that these documents had no relevance and did not substantiate the submission of the appellant that non-production of these documents amounted to a denial of fair opportunity of representation; with a further finding; senior officers could not be summoned as it amounts to harassment.

16. This last observation of the first Appellate Court that senior officer cannot be summoned as a witness of the defence as it amounts to harassment is definitely not happily worded; if a witness is required to be summoned who can elucidate on the charge or the issue in dispute, whether he is a junior or a senior officer is immaterial; even if he is a senior officer his summoning as a witness would definitely not amount to a harassment.

17. Be that as it may, the question that arises here is whether the witnesses whose presence the delinquent official had sought before the Enquiry Officer and the proof of the said documents through

their versions was relevant for the purpose of the enquiry proceedings. This is the core question.

18. In (1996) 5 SCC 474 State of T.N. Vs. Thiru K.C. Perumal & Ors., following observation of the Supreme Court are relevant:

“Now remains only the third ground viz., the non-furnishing of the documents asked for by the respondent. The Tribunal seems to be under the impression that the enquiry officer/disciplinary authority is bound to supply each and every document that may be asked for by the delinquent Officer/employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. In this case the respondent had asked for certain documents. The Registrar, to whom the request was made, called upon him to specify the relevance of each and every document asked for by him. It is not brought to our notice that the respondent did so. The Tribunal too has not gone into the question nor has it expressed any opinion whether the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out by this Court in *State Bank of Patiala v. S.K. Sharma*. It was the duty of the respondent to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case. Since this has not been done by the Tribunal in this matter, it has to go back for a rehearing.”

19. In (2007) 1 SCC 445 Pandit D. Aher Vs. State of Maharashtra while dealing with the departmental enquiry proceedings the Supreme Court had observed that the question whether the delinquent had committed misconduct or negligence during his tenure in service is essentially a question of fact.

It had been further held:-

“A finding of fact has been arrived at that a copy of the enquiry report was supplied to him. A copy of the document which has not been relied upon is not required to be supplied to a delinquent officer. The documents which are required to be supplied are only those whereupon reliance has been placed by the department.”

20. It is clear that in a departmental enquiry only those documents upon which the department has placed reliance are to be furnished to the delinquent official. If the employee seeks production of other documents, their relevancy has to be established; they cannot be summoned or directed to be produced at his mere askance. In this case the delinquent official in his memo of appeal which he had filed against the order of the Disciplinary Authority, there is not a whisper in the entire body that he had sought production of certain documents before Enquiry Officer and the same had been unfairly and illegally denied to him. A perusal of the body of appeal (page 589 of the inquiry proceedings) in fact show that the contention of the employee was that certain documents including his leave absence letter and telegram had deliberately been withheld by the department for which an adverse inference has to be drawn against the department; clearly meaning thereby that the employee had not made any such request for their production.

21. Both the Courts below had held that these documents are not relevant for the purpose of the enquiry; they had given a concurrent finding of fact that the documents which the plaintiff had sought before the Enquiry Officer were not relevant for the purpose of deciding the charges leveled against him. They were irrelevant. Further five witnesses had eye-witnessed the incident; i.e. the acts committed by the delinquent official at 1.40 PM on 14.1.1988.

22. In fact the case of the appellant has been demolished by himself on his submission that he wanted to prove his leave in the

second half of 14.1.1988. Even if these documents had been proved they would have only evidenced that it was in the second half of 14.1.1988 that the plaintiff was on leave. The charge has specified the time at 1.40 PM. Counsel for the appellant has himself admitted that in banking institutions lunch hour starts at 2.00 PM i.e. after the public dealings are over. Presence of the appellant in the pre-lunch time i.e. at 1.40 PM and the incident having been witnessed by four witnesses demolishes this argument of the plaintiff. These witnesses and documents sought to be summoned were in no way relevant; they were rightly rejected by the enquiry officer. Both the fact findings Courts have held so. There has been no violation of any rules of natural justice.

23. This Court is sitting in second appeal; its jurisdiction is curtailed by the parameters as contained in Section 100 of the Code of Civil Procedure. Only if a substantial question of law arises, can this court entertain a second appeal. After the amendments of 1976, the rigors imposed upon this Court in entertaining a second appeal have narrowed its compass restricting it only to a substantial question of law and no longer only a simple question of law. No question of law much less any substantial question of law has arisen. Appeal is dismissed in limine.

INDERMEET KAUR, J.

JULY 30, 2010
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