

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1847 of 2012

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1. The Punjab National Bank, through its Chairman Bhikajikama Place, Africa Avenue, New Delhi
 2. The Zonal Manager, Punjab National Bank, Zonal Office, R-Block-Patna
 3. The Regional Manager, Punjab National Bank, Regional Office, Muzaffarpur
 4. Manager-Cum-Enquiry Officer, C/O Regional Manager, Punjab National Bank, Regional Office, Muzaffarpur
 5. Sri C.D. Ram, Manager, Punjab National Bank, Siwan.

.... Appellants

Versus

Awadhesh Singh, son of Late Sheonath Singh, resident of Village - Bhalua, P.S.-Barahiya, Siwan.

.... Respondents

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Appearance :

For the Appellants: : Mr. Prashant Vedasen, Advocate
For the Respondent. : Mr. D.K. Sinha, Sr. Advocate
Mr. Abhinay Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 31-03-2016

The Punjab National Bank is in this Intra-Court

Appeal against judgment and order dated 24.08.2012 passed

in C.W.J.C. No. 5873 of 1997 by learned Single Judge.

2. The sole contesting respondent was the writ

petitioner and was an employee in the Punjab National Bank

and at the relevant time he was Cashier-cum-Godown

Keeper. He had challenged the order of dismissal that had

been passed consequent to departmental proceedings. The



learned Single Judge allowed the writ petition, and set aside the order of dismissal, holding that, the enquiry report not having been supplied by the departmental authority, before the decision to dismiss him was taken. Severe prejudice has been caused to the writ petitioner. However, the matter was remanded to the disciplinary authority to carry on the proceedings from the stage of submission of enquiry report. It is being aggrieved against this decision of the learned Single Judge that the Punjab National Bank has preferred this appeal.

3. We have heard Sri Prashant Vedasen, learned counsel for the Punjab National Bank and Sri D.K. Sinha, learned Senior Counsel for the writ petitioner/respondent, and with their consent, this appeal is being disposed of at this stage itself.

4. Learned counsel for the writ petitioner/respondent points out that he had specifically taken the plea before the appellate authority that enquiry report was not furnished to him. This is evident from the order of appellate authority itself, wherein, he has noted the plea of the writ petitioner/respondent in clear terms. He then notices that inquiry was made, from which, it reveals that enquiry report



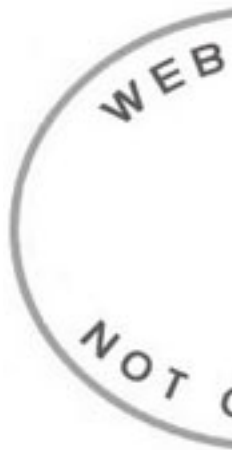
had been sent through the regional office for service to the writ petitioner/respondent, but the appellate authority does not record any finding that the enquiry report was, in fact, served on the writ petitioner, which the writ petitioner has been denying. The appellate authority then noticed that, in any view of the matter, let the enquiry report be served on the delinquent, and then he proceeded to hear the matter and dismiss the appeal.

5. On behalf of the Punjab National Bank, it is submitted that non-furnishing of enquiry report is of no consequence unless prejudice is shown. On the other hand, on behalf of the writ petitioner/respondent, it is submitted that the question, as to what is the effect of non-supply of enquiry report, has been set at rest by the Constitution Bench in the case of *Managing Director ECIL Vs. K. Karunakar* since reported in (1993) 4 SCC 727=AIR 1994 SC 1074.

6. It is further submitted on behalf of the writ petitioner/respondent that, law envisages a fair trial followed by a fair appeal and not an unfair trial followed by a fair appeal, because, that would be effectively take away one forum of impartial adjudication. Reliance has been placed on the decision of *Institute of Chartered Accountants of India*

Vs. L.K. Ratna since reported in ***AIR 1987 SC 71***.

7. Having considered the matter, in our view, the contentions, as raised on behalf of the writ petitioner/respondent, are correct. Firstly, to the question of the effect of non-supply of enquiry report. This controversy really started with a deletion of proviso to Clause-2 of Article 311 to the Constitution by 42nd Amendment. The issue came up in the case of ***Union of India Vs. Mohd. Ramzan Khan*** since reported in ***AIR 1991 SC 471 = (1991) 1 SCC 588***. In that case, the Division Bench of the Apex Court consisting of three judges were of the view that, so far as supply of enquiry report to a delinquent is concerned, that right remains unchallenged. It is not affected by the constitutional amendment. That right is a part of principles of natural justice. No enquiry can be conducted and no decision can be taken in any enquiry without supplying the material on which the disciplinary authority relies, and enquiry report is one of the materials which forms basis for the decision by the disciplinary authority where the enquiry officer is a person different from the disciplinary authority. It clearly held that non-supply of enquiry report was a prejudice in itself that would vitiate the disciplinary



proceedings.

8. This judgment would have had far reaching consequences, both in respect of proceedings that were pending at the initial stage when the judgment was delivered, as well as on proceedings that had been concluded, so far as proceedings that had already been concluded, under an impression by the authorities, that supply of enquiry report was not essential after the 42nd Amendment. By virtue of this judgment in *Mohd. Ramjan Khan's case*, all those proceedings, even if they attained finality, would have stood vitiated. In this perspective in *Mohd. Ramjan Khan's case* itself, their Lordships resorted to the principles of prospective operation of decision and specifically limited its operation from the date of judgment, but in respect of past transactions, their Lordships held that as those proceedings had been concluded, the delinquent would have to show prejudice as a consequence of non-supply of enquiry report. It is this which has to be kept in mind.

9. Subsequently, there was apparent conflict between the cases of *Mohd. Ramjan Khan (supra)* and *Kailash Chander Asthana Vs. State of U.P.* since reported in (1988) 3 SCC 600; and the matter was then referred to



Constitution Bench in the case of *Managing Director ECIL Vs. B. Karunakar* since reported in (1993) 4 SCC 727. The majority judgment was that of Justice Sawant. We have been taken through the judgment in detail, by both the parties, and especially what has said in paragraph 30[v] thereof, both the sides are relying on this paragraph.

10. We have considered the matter. In our opinion, there is a distinction which seems to have been forgotten. To the question, as to the requirement of supply of enquiry report, the Constitution Bench in categorical terms have held that notwithstanding the 42nd Constitutional Amendment amending Article 311(2) of the Constitution, it is mandatory to supply enquiry report to the delinquent before any decision is taken. That is a part of reasonable opportunity and natural justice. Then, their Lordships have held that the natural consequence of non-supply would be that the enquiry proceedings (disciplinary proceedings) would stand vitiated. Consequently, it would have to be restarted from that stage. What happens and to what relief to the delinquent be entitled at this stage from the court, it is in that perspective their Lordships have held in paragraph 30[v] that, once the enquiry stands vitiated because of non-supply

of enquiry report to the delinquent before decision is taken by the disciplinary authority, the proceedings stand vitiated and have to be restarted. Hence, reinstatement pending re-enquiry should not be, as a matter of course, and it is in that perspective their Lordships have held which reads as such:

“30[v]. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual.....”

11. It is in this perspective their Lordships have said as to why automatic reinstatement should not be ordered unless prejudice, to that extent, is shown. It is not reinstatement after setting aside the disciplinary proceedings, but his reinstatement pending conclusion of disciplinary proceedings, which have to be begun again.

12. If we look at the judgment in that perspective, then, the bold proposition, as proposed by learned counsel for the Bank, is that, the disciplinary proceedings does not get vitiated unless prejudice is shown

in non-supply of enquiry report, cannot be accepted as correct. The question of prejudice arises only when reinstatement pending conclusion of inquiry is being ordered.

13. Thus, in our view, the consequences of non-supply of enquiry report would be that the disciplinary proceedings stand vitiated, but they have to be restarted from the stage of submission of enquiry report. Pending this, the employee cannot, in all cases, consistent with the judgment of the *B. Karunakar case (supra)* be ordered for reinstatement much less with back-wages, unless he, then, shows sufficient prejudice in the matter. The Constitution Bench judgment cannot be, in our view, held to mean that, even if, enquiry report is not furnished and order of punishment is passed, that order of punishment would stand, unless prejudice is shown on grounds of non-supply of enquiry report. In our view, the law is, thus, otherwise.

14. Learned counsel for the Bank, Sri Vedasen, submits that, as apparent from the appellate order, enquiry report was supplied to him by the appellate authority and the appeal was heard after grant of full opportunity. The simple answer to this is the case of *L.K. Ratna (supra)*. In

that case, the Apex Court clearly held that the rule of law is a fair trial followed by a fair appeal and not an unfair trial followed by a fair appeal. That would effectively take away one forum of independent adjudication.

15. Thus, on both counts, we find that the contention on behalf of Punjab National Bank is not correct. We, thus, find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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