

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.314 of 2015

In

Civil Writ Jurisdiction Case No.5246 of 1998

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1. The Central Bank of India through its Chairman and Managing Director, Central Office, Chandramukhi, Nariman Point, Mumbai-400021.
 2. Zonal Manager, Central Bank of India , Zonal Office, B Block, 2nd Floor, Maurya Lok Complex, Patna-800 001.
 3. Regional Manager, Central Bank of India, Regional Office, Near Rameshwar Singh Path, Vishal Tank, Gaya.
 4. Assistant Regional Manager, Central Bank of India , Regional Office, B Block, 2nd Floor, Maurya Lok Complex, Patna-800 001.
 5. Branch Manager, Central bank of India, Dumka Branch, Dumka.
 6. Assistant General Manager, Central Bank of India , Zonal Office, B Block, 2nd Floor, Maurya Lok Complex, Patna-800 001.

... .. Appellant/s

Versus

Ram Swarup Mistry Son of Shri Indradeo Mistry resident of Mohalla Gurhatta, Sonartoli, Dr. Masaue Ali Road, Patna City, P.S. Khajekala, Patna City, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr. Shivendra Kishore, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 02-02-2018

Heard Mr. Ajay Kumar Sinha, learned counsel for the appellants and Mr. Shivendra Kishore, learned Senior counsel appearing on behalf of the respondent.

2. In the present *intra* Court appeal under Clause-X



of the Letters Patent of this Court, the Central Bank of India (hereinafter referred to as the Bank), has put to challenge the judgment and order, dated 26.09.2014, passed by a learned single Judge of this Court in CWJC No. 5246 of 1998 (Ram Swarup Mistry Vs. Central Bank of India and ors), whereby the order of the disciplinary authority imposing punishment upon the sole respondent has been set aside. The subsequent orders passed by the authorities of the Bank on the respondent's first and second mercy appeal have also been set aside by the learned single Judge and while thus, allowing the writ application filed by the respondent a liberty has been given to the respondents to proceed afresh after providing an opportunity of hearing on the proposed punishment. By the judgment and order under appeal, the learned single Judge has thereafter directed for reinstatement of the respondent in service.

3. This is to be noted at the outset that the learned single Judge has, however, specifically held that the plea of the respondent that he was deprived of sufficient opportunity to make representation is bereft of merit, rather he was not only supplied the relevant documents but was given opportunity for inspection of the documents as well.

4. The sole ground on the basis of which the



disciplinary action against the respondent has been interfered with by the learned single Judge is Clause 21 of the Bipartite Settlement dated 14.02.1995 between management of 56 'A' Class Banks as represented by the Indian Banks' Association (IBA) and their workmen represented by the All India Bank Employees' Association and Confederation. In terms of Clause 26 of the Memorandum of Settlement arrived on 14.02.1995, the Settlement came into effect and became effective from 01.11.1992. Clause 21 of the Settlement dated 14.02.1995, introduced a new provision in Clause 19.12 of the existing first Bipartite Settlement dated 19.10.1966, which is crucial for deciding the question involved in the present appeal, which provided that for a misconduct which occurred prior to the promotion of the employee to officer cadre, disciplinary action shall be in terms of rules applicable to workmen employees. There is an aspect, which needs to be noticed at this stage. The respondent was earlier working as Head Cashier and he was promoted to the post of Junior Management Grade (JMG) Scale-I with effect from 02.11.1992 notionally, in the year 1993 and he had joined his new place of posting after his promotion on 12.08.1993.

5. The misconduct alleged against the respondent



relates to the period when he was posted as Head Cashier. The allegation of misconduct against him came to the fore after he was promoted in the officers Grade. Departmental action against the officers of the Bank is governed by Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as 'the Appeal Regulation, 1976') read with Central Bank of India Officer Employees' (Conduct) Regulation, 1976 (hereinafter referred to as 'the Conduct Regulation, 1976'). There is no dispute about the fact that Chapter IX of the Bipartite Settlement, 1966 as modified from time to time in terms of further agreement arrived at between the employees and the association of Banks governs disciplinary action and its procedure in respect of workmen of the Bank (Employees other than Officers). Clause 19.12 prescribes the procedure for disciplinary action against a workmen. It provides, *inter alia*, that a workmen shall also be given a hearing as regards the nature of proposed punishment in case any charge is established against such workmen.

6. The Appeal Regulations, 1976 read with Conduct Regulation, 1976, which deal with departmental action against Officers of the Bank, however, do not contain such stipulation.

7. As is evident from the facts, which have been



taken note of, the respondent was an Officer of the Bank when the disciplinary proceeding was initiated against him with the issuance of charge-sheet on 18.02.1994 and 15.03.1994. There was no provision that for a misconduct, which had occurred prior to promotion of the employee to Officers Cadre, disciplinary action shall be in terms of the rules applicable to workmen employees. In the above background, the only question which has arisen in the present appeal is as to whether the Bank was required to follow the procedure prescribed under Clause 19.12 of the Bipartite Settlement for the purpose of departmental proceeding against the respondent, in view of retrospective effect having been given to the provision introduced vide Clause 21 of the Agreement dated 14.02.1995 with effect from 01.11.1995. There is yet another question as to whether for not following procedure under Clause 19.12, viz, by not giving an opportunity of hearing to the respondent on the point of proposed punishment, the disciplinary action taken against the respondent of his removal from service can vitiate.

8. Mr. Ajay Kumar Sinha, learned counsel appearing on behalf of the Bank, assailing the impugned judgment, has submitted that despite Clause 21 of the Settlement, dated 14.02.1995, read with Clause 26, the effect of the said Clause



21 shall be prospective in nature. He has submitted that any amendment introducing change in procedural law shall have prospective effect only. He has placed reliance on Supreme Court's decision in case of ***Hitendra Vishnu Thakur and others vs. State of Maharashtra and others*** reported in ***(1994) 4 SCC 602*** with reference to paragraph 26. He has next submitted that apparently the settlement was arrived at on 14.02.1995 by which time the disciplinary proceeding against the respondent was on the verge of conclusion inasmuch as the Inquiry Officer had already submitted his report and the disciplinary authority was required to take a decision on the question of imposition of punishment. He has further submitted that even if it is assumed that an opportunity of hearing on the point of punishment was required to be given, in view of the nature of misconduct established against the respondent, no prejudice can be said to have been caused to him. According to him, by no stretch of imagination, the punishment imposed in view of the misconduct proved against respondent could be said to be disproportionate. He has relied on Supreme Court's decision in case of ***State Bank of India and another Vs. Bela Bagchi and others*** reported in ***(2005) 7 SCC 435*** to submit that higher level of integrity is expected of a Bank Officer.



9. Reliance has also been placed on another Supreme Court's decision in case of *Union of India and others vs. P. Gunasekaran* reported in (2015) 2 SCC 610 with reference to paragraph 20 thereof in support of the contention that the punishment imposed upon respondent is befitting the misconduct proved against him.

10. Mr. Shivendra Kishore, learned Senior Counsel appearing on behalf of the respondent, on the other hand, while justifying the decision of the learned single Judge has submitted that it was incumbent upon the Bank to have proceeded against the respondent in accordance with the procedure prescribed for taking disciplinary action against workmen of the Bank in view of the clear stipulation in Clause 21 read with Clause 27 of the Memorandum of Settlement, dated 14.02.1995. He has further submitted that in terms of the said requirement, the respondent had statutory right to be heard on the point of punishment before decision was taken against him by the disciplinary authority on this count. He has tried to convince us that even in course of the disciplinary proceeding the respondent was not given due opportunity of cross-examining the witnesses, producing the documents and inspecting required documents for the purpose of his defence in the departmental enquiry. According to him,



these submissions can be very well verified from the records of the departmental proceeding.

11. Before we proceed to examine the correctness of the judgment and order under appeal, we at the very threshold reject the submission advance on behalf of the respondent of non-compliance of the principles of natural justice in course of the departmental enquiry by the Inquiry Officer. From the judgment and order under appeal, it is manifest that these submissions were made on behalf of the respondent in the writ proceeding, which have been specifically rejected. Learned single Judge did not find the findings recorded by the Inquiry Officer or the disciplinary authority on the point of misconduct of the respondent to be arbitrary, biased, based on no evidence or based on materials not *germane* to the facts of the case. Learned single Judge has further recorded that the plea of the respondent that he was deprived of sufficient opportunities to make representation was bereft of merit. It has also been added on the basis of affidavits and materials on record before the learned single Judge that the respondent was not only supplied documents but was given due opportunity to inspect them as well. The said findings have not been assailed in any manner in the present proceeding and, therefore, the findings, in our view,



have attained finality. We, therefore, need not go into the question of correctness of the findings on the point of proof of respondent's misconduct.

12. Coming to the main question involved in the present appeal as has been noticed, i.e., as to whether Clause 26 as noticed above, shall have prospective or retrospective effect, we consider it appropriate to reproduce the relevant provisions of Clause 19.12 of the first Bipartite Settlement with changes made therein from time to time, Clauses 21 and 26 of the Agreement, dated 14.02.1995 which read thus:-

“19.12. The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be



defended:

(i) x x x

(ii) x x x

(iii) x x x

He shall also be given a hearing as regard the nature of the proposed punishment in case any charge is established against him.

21. Disciplinary Action and Procedure Therefor

(i) *The following shall be added as sub-clause (f) in Clause 19.12 of the First Bipartite Settlement dated 19th October, 1966 and in Clause 6 of paragraph 521 of the Sastry Award as applicable to State Bank of India.*

(f) *For a misconduct which occurred prior to the promotion of the employee to officers' cadre, disciplinary action shall be in terms of the rules applicable to workmen employees.*

26. (i) *This Settlement shall be binding on the parties for five years from 1st November, 1992. Six months before the Settlement expires, the unions may submit their charter of demands to the IBA. The negotiations will commence before the last three months of the expiry of the Settlement."*

13. We have already noticed, in the Appeal Regulation, 1976 read with Conduct Regulation, 1976 dealing



with the disciplinary proceeding against the Officers of the Bank, where there is no requirement of giving hearing on the question of imposition of punishment. This is not in dispute that the Bank had adopted procedure prescribed under Appeal Regulation, 1976 for the purpose of taking disciplinary action against him. If we notice Clause 19.12 of the Bipartite Settlement, this is not in dispute that the respondent was given charge-sheet clearly setting forth the circumstances appearing against him. It is not the case of the respondent that any requirement as contemplated under Clause (a) of 19.12 of the Bipartite Settlement was breached because of the procedure adopted by the Bank in the departmental proceeding. Clause 19.12 (a), however, requires giving of hearing on the question of proposed punishment. This requirement is admittedly to be applied to proceeding against workmen of the Bank. The said provision could not be applied in case of the respondent on the date when the disciplinary action was initiated against the respondent since there was no provision then like Clause 21 of the Agreement dated 14.02.1995. In our view, Mr. Sinha, learned counsel appearing on behalf of the Bank is correct in his submission that the effect of addition of Clause 21 of sub-clause (f) of the Agreement dated 14.02.1995, in Clause 19.12 of the



Bipartite Settlement shall have prospective effect, in view of the Supreme Court's decision in case of Hitendra Vishnu Thakur (supra), paragraph 26 of which reads thus:-

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the Court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas



law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

14. Mr. Sinha is also correct in his submission that in any view of the matter, no prejudice can be said to have been caused to the respondent in view of the grave nature of misconduct established against him, he being an employee of the Bank, in the light of the Supreme Court's decision in case of ***State Bank of India and another Vs. Bela Bagchi*** (supra), paragraph 15 of which reads as follows:-

“15. A bank officer is required to exercise higher standards of honesty and integrity. He deals



with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager V. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance”.

15. The allegations of misconduct, which finally came to be proved against the respondent are serious in nature, relevant portion of which are being extracted herein below from the findings recorded by the disciplinary authority:-

“The evidence introduced, i.e. documents and witnesses clearly and reputably establish the charge of misappropriation of the Bank's money.

The evidence introduced i.e.



documents and witnesses clearly and irregularly establish the charge of misappropriation of the Bank's money by the charged Officer, as proved. In view of proven charges and after applying my mind taking into consideration all the extenuating circumstances I am disinclined to take a lenient view in respect of clear misappropriation of Bank's fund by the CSO.

I therefore award the punishment of "Removal From service without notice as per Clause 4(g) of C.B.I. Officer Employees' (D & A) Regulations 1976, for charge No. 1,2,3 treating the charges as proved."

16. In view of the above discussions, we are of the considered view that Clause 21 read with Clause 26 of the Bipartite Settlement, dated 14.02.1995, in so far as it lays down procedure for departmental enquiry shall have prospective effect only and it shall not apply to the proceeding already initiated before 14.02.1995. We are also of the view that the said provision shall apply to the proceeding initiated after 14.02.1995 if misconduct alleged is prior to promotion of the employees to the officers' cadre.

17. Having stated thus, we do not find any illegality in



the procedure adopted by the Bank leading to imposition of punishment of removal of the respondent from service. The punishment cannot be said to be disproportionate, in view of the discussions as above, in the light of the Supreme Court’s decision in case of *State Bank of India Vs. Bela Bagchi* (supra) and *Union of India Vs. P. Gunasekaran* (supra).

18. The judgment and order under appeal, therefore, needs interference and is, accordingly, set aside.

19. C.W.J.C. No. 5246 of 1998 stands dismissed.

20. This appeal is, accordingly, allowed.

21. The parties shall bear their own costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
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