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

Date of pronouncement: 27th July, 2018

+ W.P.(C) 4926/2000

S.R. MITTAL

..... Petitioner

Through: Mr. Robin George and Mohd.
Zeeshan Ansari, Advs.

versus

SYNDICATE BANK & ANR.

..... Respondents

Through: Mr. Jagat Arora and Mr. Rajat
Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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1. These proceedings emanate from a charge-sheet, dated 9th April, 1999, issued to the petitioner, by the respondent Bank. The said charge-sheet proposed to hold an inquiry, against the petitioner, under Regulation 6 of the Syndicate Bank Officers Employees (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as “the Regulations”).

2. The charge-sheet contained two articles of charge. These related to credit facilities extended, by the petitioner, to M/s Raja Forge and M/s Shyamji Industries, during the period when the petitioner was working as Sub-Manager at the Faridabad branch of the respondent-Bank. Certain irregularities, in the manner in which the said credit facilities had been extended, were alleged.

3. The petitioner categorically denied having committed any irregularity in respect of the aforementioned two accounts, and contended that the full facts, relating to the said accounts, were not forthcoming in the charge-sheet. In the light of the view that I propose to take, it is not necessary to enter into the specifics of the defence advanced by the petitioner to the articles of charge against him.

4. The disciplinary authority appointed Mr. V. Desikan as the Inquiry Officer (hereinafter referred to as “IO”), to inquire into the charges against the petitioner.

5. The petitioner addressed a communication (which does not bear a date), to the IO, requesting that he be provided certain documents, so as to enable him to defend himself in the inquiry. The said communication also mentioned the place where the officer, in whose custody the documents could be found, was posted, as well as the relevance of the said documents, insofar as the petitioner’s defence was concerned.

6. At this stage, one may refer to sub-regulation (10) to (12) of Regulation 6 of the Regulation; which read thus:

“10(a) The inquiring authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The inquiring authority shall also record an order that the officer employee may for the purpose of preparing his

defence-

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents listed;
- (ii) submit a list of documents and witness is that he wants for the inquiry;
- (iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the inquiring authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the inquiring authority;
- (iv) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of the documents referred to in item (ii).

Note: The relevancy of the documents and the examination of the witnesses referred to item (ii) shall be given by the officer employee concerned.

(11) The inquiring authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

(12) On the receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the inquiring authority on the date, place and time specified in the requisition;

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In that event, it shall inform the inquiring authority accordingly.”

7. It is clear from a reading of the aforementioned sub-regulations (10) to (12) (of Regulation 6), that the charged officer was permitted to submit a list of the documents and witnesses which he wanted for the inquiry, subject only to the condition that the relevancy of the documents be given by him. Sub-regulation (11) required the Inquiry Authority (hereinafter referred to as “IO”) to, on receipt of such a notice from the charged officer, forward the same to the authority, in whose custody the documents were kept, with a requisition for production of the documents, whereupon the said authority, was, by sub-regulation (12), required to arrange to produce the said documents before the IO.

8. The record of proceedings, dated 23rd December, 1999, before the IO, reveal that, on the IO directing the Presenting Officer (hereinafter referred to as “PO”) to lead evidence on behalf of the management, the petitioner objected, stating that he had been deprived of an opportunity to be defended. The petitioner pointed out that he had, till then, not been provided the documents sought, by him, to enable him to defend his case. The PO, in response, asserted that the documents which were available with the respondent had duly been supplied to the petitioner. These, I may note, were only three of the twenty documents requested by the petitioner in the aforementioned undated letter of request. The remaining documents, it was submitted by the IO in the said proceedings, were not available with the respondent. In view of the said plea taken by the respondent, the IO proceeded with the recording of evidence, effectively closing the issue

of supply of documents to the petitioner.

9. The disciplinary proceedings culminated in the passing of an order dated, 24th March, 2000, whereby the General Manager, in his capacity as disciplinary authority, imposed, on the petitioner, a penalty of compulsory retirement from the services of the Bank, with immediate effect.

10. The petitioner appealed, against the said order, to the General Manager (P), who, *vide* his order dated 14th June, 2000, confirmed the aforementioned penalty awarded to the petitioner by the disciplinary authority.

11. Aggrieved thereby, the petitioner has petitioned this Court.

12. Mr. Robin George, learned counsel for the petitioner, essentially addressed arguments on the aspect of natural justice. In his submission, the respondent acted in manifest violation of the said principles, by conducting the inquiry, against his client, and returning adverse findings, consequent thereupon, without providing him copies of the documents required by him for his defence. He draws my attention to the fact that when the request for the documents was made to the IO, the IO initially directed the PO to arrange for the said documents, whereupon the respondent prevaricated, stating that the documents were not available. Mr. George points out that, as against this, in para 3.2 of the counter affidavit, filed by the respondent in reply to the writ petition, it had been admitted that, though most of the

documents sought by the petitioner at the time of enquiry could not be provided as they were not available/untraceable at the Faridabad Branch of the Bank, “now it has transpired that the documents were filed in the Debt Recovery Tribunal and *the record was maintained at ARM Branch of the Bank*”. Mr. George, pointed out that, in these circumstances, his client has moved CM No. 21276/2015, in these proceedings, for issuing of a direction, to the respondents, to place on record, herein, the twenty documents sought by the petitioner in his undated letter already referred to hereinabove so that this Court could satisfy itself regarding the relevancy thereof. Mr. George pointed out that, though notice was issued, in the aforementioned CM No. 21276/2015, as far back as on 8th February, 2016, the respondent had neither filed any response to the said application, nor made available, even for the perusal of this Court, the documents referred to therein.

13. In these circumstances, I had given an opportunity, to the respondent, represented by learned counsel Mr. Jagat Arora, to file a response to CM No. 21276/2015. The respondent has done so, by means of an additional affidavit, wherein it is averred that some of the documents sought by the petitioner, were filed before the DRT and records in respect to the same were maintained in the Assets Recovery Management Branch at Chandigarh. Thereafter, it is stated, “there was an incident of fire at the office of the respondent’s Bank at Chandigarh on 03.07.2014”, as a result of which “the records/documents pertaining to the present case were destroyed.” Even so, in the very next paragraph, the counter affidavit asserts that “*since the documents demanded by the petitioner had no relevance to the charges hence the*

same were not supplied during the course of inquiry.” It is obvious that this assertion, as contained in the counter affidavit, is not correct, as the denial of documents, to the petitioner, during the course of the inquiry proceedings, was not on the ground of their being irrelevant, but because they were not available or, more appropriately, were not available at that stage.

14. Mr. George points out, correctly, that the submission of irrelevance of the documents sought by him has been raised, for the first time, in the additional affidavit of the respondent, filed in July, 2018.

15. On my querying, of Mr. Arora, as to how adverse findings, returned against the petitioner, by the IO and, subsequently, by the disciplinary authority without providing him the documents required for his defence, could sustain in law, Mr. Arora seeks to place reliance on the judgments of the Supreme Court, in *Syndicate Bank v. Venkatesh Gururao Kurati*, (2006) SCC (L&S) 487, *Chandrama Tewari v. Union of India*, AIR 1998 SC 117 and *Suresh Pathrella v. Oriental Bank of Commerce*, (2006) 10 SCC 572.

16. Having perused these decisions, I am of the considered opinion that they cannot apply in the facts of present case, especially in the light of the specific provisions contained in the Regulations applicable to the respondent Bank.

17. *Syndicate Bank (supra)* was a case in which, out of the documents requisitioned by the delinquent officer, twelve documents,

which formed part of the charge-sheet and were relied upon by the IO, were supplied to him, along with two more documents, produced during the inquiry, for examination of the witnesses. The remaining documents were not supplied to the respondent in that case, on the ground that they were not relevant to the inquiry. The Supreme Court held, in para 18 of the judgment, that “non-supply of documents on which the Inquiry Officer does not rely during the course of inquiry does not create any prejudice to the delinquent”, and that “it is only those documents, which are relied upon by the Inquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice.”

18. ***Chandrama Tewari (supra)***, which was relied upon, by the Supreme Court in ***Syndicate Bank (supra)***, similarly, opined that, in inquiry proceedings against a charged officer, “only material and relevant documents are necessary to be supplied to him.” As per the said decision, documents which were not relevant to the charges, or were not referred to or relied upon by the IO in holding the charges proved against the government servant, were not required to be provided to him.

19. ***Suresh Pathrella (supra)***, was a case in which the opinion of the handwriting expert, stated to have been produced by IO after the inquiry was closed, had not been furnished to the charged officer despite request. The Supreme Court held that, as the charged officer had accepted the statement of the complainant, and the handwriting expert confirmed the said statement in cross-examination, no prejudice

had been caused, to the charged officer, by not furnishing the copy of the handwritten statement of the complainant in cross-examination. In the present case, there is no such admission, so that this decision, quite obviously, is of no assistance to the respondent.

20. Apropos the decisions of the Supreme Court in *Syndicate (supra)* and *Chandrama Tewari (supra)*, it does not appear, from the said decision, that the Supreme Court was concerned with any provision akin to Regulation 6 (10) (b) (ii), or sub-regulations (11) and (12) of Regulation 6 of the Regulations, which apply in the present case. These Regulations make it clear, beyond any pale of doubt, that the charged officer was entitled to submit, to the IO, a list of documents and witnesses which he required for his defence, subject only to the condition that he had to set out the relevancy thereof. The petitioner, in the present case, complied with this requirement, clearly enumerating the documents required for his defence and setting out, in respect of each document, why, in his perception, it was relevant. Sub-regulation (11) of Regulation 6 required the IO to, on receipt of the notice for discovery of production of documents, forward the same, to the authority in whose custody or possession the documents were kept, with a requisition of production of the documents, whereupon the said authority was required to produce the same. The IO, in the present case, acted in accordance with this sub-regulation, by requiring the PO to make the documents, sought by the petitioner, available to him during the inquiry proceedings. At that stage, the stand taken by the respondent was that the documents were not available and could not, therefore, be supplied to the petitioner. As against this, in the counter

affidavit, the respondent states, executing, as it were, a neat *volte face*, that the documents were, in fact, were available in the custody of the ARM branch of the respondent Bank at Chandigarh. Even so, despite the admission, by the respondent, of the availability of the said documents, they were not produced before this Court. Rather, now, in 2018, it is sought to be contended in the additional affidavit filed by the respondent that a fire took place at the Chandigarh branch of the respondent Bank, as a result of which the documents were forthcoming. Again, for the first time, it is being sought to be contended, in the said additional affidavit, that the documents that were demanded were not relevant. No such plea of irrelevancy of documents has been taken at any earlier stage. Despite the petitioner's undated request for supply of documents having specifically set out, document by document, their relevance, insofar as his defence was concerned, the respondent never put it to the petitioner that these documents were not relevant; rather, the act of the IO, in directing the PO to make the documents available, impliedly acknowledges their relevance, for the defence of the petitioner. There can be no justification, whatsoever, for the said documents not to have been made available to the petitioner, in these circumstances. The inaction on the part of the respondent, in doing so, in my view, clearly infracts Regulation 6 of the Regulations, and amounts to clear violation of principles of natural justice, as the petitioner has had to proceed without being provided an adequate opportunity to defend the charges against him. Besides, given the manifest vacillation, by the respondent, at every succeeding stage, of the reason for non-supply of the documents, asserting, first, that they were not available; thereafter,

that they were available at the ARM branch at Chandigarh; thereafter, that they were not available as a fire had broken out at the Chandigarh branch of the respondent, and, lastly, that they were not being supplied as they were not relevant, this Court is constrained to infer, adversely against the respondent, that the documents were being deliberately withheld from the petitioner.

21. I may also refer, profitably, to the decision of a Constitution Bench of the Supreme Court, rendered nearly half a century ago, in ***Trilok Nath v. Union of India***, AIR, 1967 SLR 759(SC), authored by J.R. Mudholkar, J., which clearly holds that “if the public servant so requires for his defence, *he has to be furnished with copies of all the relevant documents, i.e. documents sought to be relevant upon by the IO or required by the public servant for his defence*”. In view of this clear exposition of the law by the Constitution Bench, it cannot, obviously, lie in the mouth of the respondent to contend that it was justified in proceeding with the inquiry, by making available, to the petitioner, only documents relied upon by the IO.

22. In view of the abovementioned discussion, I am of the view that the manner in which the respondent has proceeded against the petitioner is manifestly violative of the principles of natural justice as well as Regulation 6 of the Regulations, and cannot sustain. Consequently, the punishment of compulsory retirement, awarded to the petitioner by the impugned order dated 24th March, 2000, as upheld subsequently, in appeal, is quashed and set aside.

23. At this stage, the petitioner cannot, quite obviously, be reinstated in service. Ordinarily, in such cases, the matter would have been remanded to the IO to be continued from the stage where the proceedings stood vitiated. However, inasmuch as, in the present case, the proceedings have been vitiated on the ground of non-supply of the documents sought by the petitioner, and it is the respondent's present stand that these documents are not available, no purpose would be served, by remanding the matter for a *de novo* adjudication.

24. The situation, therefore, is one in which a charge-sheet stands issued to the petitioner but, owing to the default on the part of the respondent itself, the charge-sheet has, by efflux of time, become incapable of being proceeded with. In such circumstances, the petitioner, would, in law, be entitled to all benefits which would have accrued to him, had the charge-sheet never been issued in the first place.

25. Before concluding, it may be noted that Mr. Arora also sought to rely on *Union of India v. P. Gunasekaran*, AIR 2015 SC 545, which merely delineates the scope of interference, by this Court, under Article 226 of the Constitution of India, with Orders of disciplinary authorities. These principles are trite and well settled, and further reference to the said decision, is not, therefore, required.

26. Consequently, this writ petition is allowed in the following terms:

- (i) The impugned punishment of compulsory retirement, of the petitioner, from service, is quashed and set aside.
- (ii) The petitioner would be treated as continuing in service from the date of his compulsory retirement and would be entitled to all benefits, including the retiral benefits which would have accrued to him, had such order of compulsory retirement never had been passed.
- (iii) The respondent is directed to disburse the above amounts to the petitioner, within a period of eight weeks from the date of receipt of a certified copy of this judgment.

27. There shall be no order as to costs.

C.HARI SHANKAR, J

JULY 27, 2018

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