IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2383-1994 (O&M)
Date of decision : 30.09.2024

Punjab National Bank ...... Appellant

versus

Darshan Pal Gupta (Deceased) through LRs. ...... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Saurav Verma, Advocate
Ms. Preeti Grover, Advocate and
Ms. Anshul Pareek, Advocate
for the appellant.

Mr. Mukand Gupta, Advocate
for the respondent.

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PANKAJ JAIN, J. (Oral)

1. Defendant is in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondent as plaintiff.

2. Plaintiff filed suit for declaration to the effect that the orders of dismissal dated 03.06.1987 as well as order dated 30.09.1987 are illegal, malafide and are against the principles of natural justice. Plaintiff was serving as a Manager with the defendant-bank. He was charge-sheeted vide order 20/25.11.1986 and was asked for the copies of the documents which were the basis of the charge sheet. The joint General Manager is the disciplinary authority and the General Manager is an appellate authority, whereas in this case, the charge sheet was served upon the plaintiff by the General Manager and punishment was

awarded by Assistant General Manager, who is subordinate in rank to that of disciplinary authority. The charges levelled against the plaintiff is that he sanctioned loan to one Ajit Singh and Pargat Singh, which was adjusted vide credit entry dated 01.08.1984 by Shir A.K. Vadhera. Thus, the adjustment of loan by Shri A.K. Vadhera indicates that it was he who maneuvered this loan and the said A.K. Vadhera did not appear in the witness box, who was the material witness. The inquiry officer travelled beyond the charge in the inquiry and has tried to prove the charge which was not proved by the pretension witness by putting questions to the witness and to the plaintiff. Before passing dismissal order, the plaintiff was not given any show cause notice or hearing.

3. In the written statement filed jointly by the defendants, it was pleaded that the suit is barred under the provisions of the Specific Relief Act, 1963 and the plaintiff has been dismissed from service after holding an enquiry as he was afforded full opportunity to defend himself.

4. On the basis of the pleadings with the parties, suit filed by the plaintiffs was put to trial by the Court framing following issues:-

> *"1. Whether the order of dismissal passed by the General Manager, New Delhi dated 03.06.1987 and order dated 20.11.1987 passed in appeal by the Assistant General Manager, are illegal, null and void? OPP.*
>
> *2. Whether the suit for declaration is barred under the provisions of Specific Relief Act, 1963? OPD.*
>
> *3. Whether the suit is not property valued for the purposes of Court Fee and Jurisdiction? OPD.*
>
> *4. Relief."*

5. Trial Court while returning the findings on issue No.1 came to the conclusion that right from the inception of disciplinary proceedings, i.e. from issuance of chargesheet till punishment, appellant defendant proceeded against law, resulting in violations of the principle of nature justice and thus, the punishment awarded to the plaintiff vide impugned orders was not sustainable. It was found by the Trial Court that after the plaintiff was served with chargesheet, he submitted application dated 26.12.1985, Ex.P-1, for supply of documents. The same was followed by reminder Ex.P-2 dated 24.01.1986. Both the application Ex.P-1 and reminder Ex.P-2 are the documents of unimpeachable character having been retrieved from custody of defendants only. However, instead of responding to the aforesaid communications, defendant-authorities opted to appoint the inquiry officer. Inquiry was initiated. Even inquiry officer was in breach of statutory requirements. As per Trial Court, the inquiry officer was required to pass an order in terms of Regulation 10 of the New Bank of India Officer Employees' (Discipline and Appeal Regulation), 1982 ordering the office of charge to furnish list of documents and the list of witnesses to be used to prove the proposed charges to the employee. Thus, no such order was passed. Inquiring Authority was supposed to supply copy of the statements of witnesses recorded prior to the inquiry. Admittedly, the preliminary inquiry was conducted, yet no document was supplied. Bank witness No.7-S.K. Verma was examined, cross-examined and re-examined. No opportunity of cross examination was afforded to the plaintiff. On 28.09.1986, the delinquent employee and the Presiding Officer were required to submit their brief. Presiding

Officer submitted his written brief. In order dated 30.08.1986, though inquiry officer noticed that a chance needs to be given to the delinquent employee to submit his brief, yet inquiry proceedings were closed on the same day.

6. Trial Court further reproduced Regulation 6(17) and held that the same required the inquiry officer to question the delinquent employee on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him, but the same was totally ignored and no such examination of the delinquent employee was forthcoming from the inquiry proceedings. Trial Court further held that from the impugned order Ex.P-2 dated 23.06.1983, it is evident that the disciplinary authority apart from recording concurrence with the findings of the inquiry officer, has not assigned any opinion either with respect to finding on the charges or with respect to penalty. In view of the aforesaid lapse, impugned order cannot be sustained. Trial Court further held that even the Appellate Authority was apprised of non supplying of the inquiry report, but the same has been brushed aside merely recording that the inspection report of the branch was shown to delinquent employee. Trial Court further held that there is no evidence to show that the copy of inquiry report was ever supplied to the plaintiff. Regulation 9 mandates the inquiry report to be supplied to the delinquent employee. For the aforesaid violations, Trial Court decided issue No.1 in favour of plaintiff and decreed the suit. The aforesaid findings of fact have been affirmed by the Lower Appellate Court.

7. Learned counsel for the appellant while assailing the impugned judgment and decree passed by the Courts below, submits that merely for the non-supply of documents, Courts below have decreed the suit filed by the plaintiff. In terms of settled proposition of law, mere violation of principles of natural justice cannot lead to the finding that the disciplinary proceedings are unsustainable until and unless employees are able to show the prejudice caused to them owing to such violation.

8. *Per contra*, counsel for the respondent submits that Courts below have returned pure finding of fact which show that the authorities erred in ignoring the mandate of the regulations. The plaintiff having been denied excess to the evidence on the strength of which the proposed charges were to be proved to the plaintiff, the Courts below rightly decreed the suit filed by the plaintiff.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. The issues raised by the plaintiff are no more *res integra* and have been answered by 5 Judges Bench in ***Managing Director, ECIL, Hyderabad vs. B. Karunakaran 1993(5) SLR 532*** holding as under:-

> "xx xx xx
>
> 25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has

considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment."

26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The finding further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a findings is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own finding on the basis of

the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

27. <u>It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the</u>

delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings."

11. Counsel for the appellant is not in a position to dispute that in terms of Regulation 10, the inquiry officer was required to pass an order at the time of inception of the inquiry, directing Presenting Officer to supply copy of the documents relied upon by the agent to prove charges against delinquent employee. No such order was passed. He is also not able to dispute that after witnesses were re-examined, opportunity of cross-examination was not provided to the plaintiff. Last but not the least, neither the inquiry report was supplied to the plaintiff nor was he served with notice prior to acceptance of the inquiry report or grant of punishment.

12. In view of the aforesaid infirmities and illegalities, no fault can be found with the opinion formulated by the Courts below and decreeing the suit filed by the plaintiff. Whole of the approach of the appellant-authority being in violation of the principles of natural justice, and express provisions of the regulations, applicable to the inquiry proceedings initiated against the plaintiff, this Court does not find any reason to interfere in the present regular second appeal. Resultantly, the same is ordered to be dismissed.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

30.09.2024
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No