

State Bank of India and Others

Vs

D.C. Aggarwal and Another

Civil Appeal No. 4813 of 1992

(S. R. Pandian, R. M. Sahai JJ)

13.10.1992

JUDGEMENT

R. M. SAHAI, J. :-

1. Can Disciplinary Authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent is the only issue, of substance, which arises for consideration in this appeal, filed by the State Bank of India against the judgment and order of the High Court of Punjab and Haryana.

2. Even though more than ten years have elapsed since the respondent was charge sheeted the proceedings have not achieved finality as yet. Partial responsibility for the delay was of the respondent, as well, who on every minor issue rushed to the courts including this Court. At one stage the inquiry had been closed ex parte against him. But it was directed to be re-opened by this Court in 1984 with direction to continue it from the stage it was closed and permission to the bank to produce material including examination of witnesses subject to cross-examination. The Court further directed the Central Vigilance Commission to appoint another Inquiry Officer. In pursuance of this direction an IAS officer of the Tamil Nadu cadre was appointed. Out of the thirteen charges framed against the respondent the Inquiry Officer found charges I(1) and II(1) only to have been proved. Remaining were found not to have been proved. Consequently the Inquiry Officer recommended for exonerating the respondent as the charges found to be proved were minor and of procedural nature. Instead of acting on this recommendation the Bank appears to have directed the Inquiry Officer to submit the report through the CVC. Under what provision this was done is not clear. In fact at one stage the learned Additional Solicitor General stated that the Bank itself was aggrieved by this conduct of the Inquiry Officer in sending its recommendation to CVC. But it appears he was not properly instructed as the finding, recorded by the High Court that the Inquiry Officer submitted his report to the CVC on the direction of the Bank in contravention of the order passed by this Court remained uncontroverted. From rule 52 of the State Bank of India (Supervisory Staff) Service Rules part of Chapter VI dealing with Discipline and Appeal does appear that the Bank is empowered, 'to consult the Central Vigilance Commission, wherever necessary, in respect of all disciplinary cases having vigilance angle'. The fact of the matter is that the CVC examined the inquiry report and recorded its own findings on each of the charges and sent its recommendations running into nearly fifty pages to the Bank. The CVC not only disagreed with the Inquiry Officer and found charges I, II, III, IV, VIII, XI to XIII to have been proved, but it advised, 'imposition of a major penalty not less than removal from service'.

3. Both the Inquiry Report and recommendations of the CVC were sent to the Disciplinary Authority who passed an elaborate order recording finding against the respondent, and coincidentally, agreeing on each charge on which CVC had found against him but disagreeing on quantum of punishment. It was observed,

"While the wrongful acts indulged in by the official are no doubt grave, the facts brought out during the enquiry do not show that Bank sustained any monetary loss thereby. There is also no conclusive proof that the official in all the transactions for procurement of steel, fans, etc. had misappropriated bank's funds or obtained pecuniary gains for himself. Considering the totality of the circumstances, therefore, in my opinion the imposition of the extreme penalty of cessation of service as advised by the Central Vigilance Commission would be too harsh."

The departmental appeal against this order was, dismissed. But the order was quashed by the learned single Judge of the High Court,\* as it was in violation of the principle of audi alteram partem. It was found that the report of the CVC having not been supplied to the respondent it could not furnish basis for the order passed by the Disciplinary Authority. Punishment was also found to be disproportionate. The Division Bench dismissed the appeal summarily.

(\*Reported in 1991 Lab IC 1618 (Punj & Har)

4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment, in writ jurisdiction, but we propose to confine only to the question of effect of non-supply of CVC recommendations as if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.

5. Reliance was placed on sub-rule (5) of Rule 50 which reads as under :

"(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."

It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these

submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior officer of the bank. He was promoted to the top executive grade in August 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error.

In the result the appeal fails and is dismissed with costs. Appeal dismissed.

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