

Allahabad Bank

Vs

Prem Narain Pande and Others

Civil Appeal No. 6038 of 1993

(B. P. Jeevan Reddy, S.B. Majmudar JJ)

19.10.1995

JUDGMENT

S.B. MAJMUDAR, J.

1. The appellant-Bank by special leave has brought in challenge the order passed by the Lucknow Bench of the Allahabad High Court in Writ Petition No. 3841 of 1986 decided on 30-7-1993. Respondent 1 was the writ petitioner before the High Court. The short question involved in this appeal is as to whether the Assistant General Manager of the Patna Division of the appellant-Bank was entitled to pass the penalty order against Respondent 1.

2. In order to appreciate the nature of controversy between the parties it is necessary to note a few background facts.

Background facts

3. Respondent 1 was serving in the appellant-Bank in the Junior Management Scale I while posted in the regional office of the appellant-Bank at Lucknow. He was served with a charge-sheet dated 24-8-1983 containing charges of misconduct as Manager of the Palia Kalan Branch of the Allahabad Bank, District Lakhimpur-Kheri during the period from April 1979 to December 1980.

4. The charge-sheet was served on Respondent 1 by the Deputy General Manager of the Bank working at the Central Zone, Lucknow. The said disciplinary authority appointed Shri B.B. Shesh as Enquiry Officer to enquire into the charges of misconduct. The said appointment was made by the Deputy General Manager on 19-12-1983. It appears that the disciplinary proceedings continued for quite some time and on the meantime on 15-7-1985 Respondent 1-employee was transferred from Lucknow to Ranchi, Bihar. Respondent 1 unsuccessfully challenged his transfer order before the High Court. His writ petition was ultimately not pressed. The enquiry was completed on 24-2-1986. The Enquiry Officer submitted his report together with the records of the enquiry proceedings and other documents to the disciplinary authority.

5. It appears that after transfer of Respondent 1 to Ranchi branch of the Bank, the Assistant General Manager, Zonal Office, Allahabad Bank, Patna Zone took over as the disciplinary authority in respect of the pending enquiry against Respondent 1. On 20-3-1986 the Assistant General Manager informed Respondent 1-officer that he has been nominated by the competent authority to act as the disciplinary authority in respect of the enquiry against him.

6. That after considering the report of the Enquiry Officer and record of the proceedings, the

Assistant General Manager, Zonal Office, Patna, passed an order dated 21-3-1986 dismissing Respondent 1 from service of the Bank in terms of Regulation No. 4 of the Allahabad Bank (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as "the Regulations").

7. Respondent 1 challenged the said order of dismissal by filing a writ petition in the Allahabad High Court, Lucknow Bench. In the said writ petition Respondent 1 raised various contentions for challenging the impugned order. One of the contentions canvassed before the High Court by Respondent 1 was to the effect that when disciplinary proceedings were initiated against him by the Deputy General Manager, Central Zone, Lucknow, the Assistant General Manager, Zonal Office, Patna had no authority or jurisdiction to pass the impugned dismissal order and it has the disciplinary authority which initiated the proceedings which was competent to pass the final order of penalty, if any. The appellant-Bank resisted the petition and contended amongst others that as per the Regulations the Assistant General Manager, Zonal Office, Patna was fully competent as a disciplinary authority to pass the impugned dismissal order. The High Court took the view that Respondent 7, the Assistant General Manager, Patna Zone, Patna was not competent to pass the impugned order of dismissal. Only on this short ground the writ petition was allowed. The High Court did not, therefore, go into the other contentions canvassed by Respondent 1 against the impugned order of dismissal. The High Court accordingly set aside the order dated 21-3-1986 as contained in Annexure 29 to the writ petition. It is the aforesaid order of the High Court which has brought the appellant-Bank to this Court being aggrieved by the same.

Rival contentions

8. Shri Sanghi, learned Senior Counsel for the appellant-Bank, contended that the High Court had patently erred in law in voiding the impugned order of Respondent 7 on the ground that he was not competent to pass the said order. That the relevant regulations of the Bank were not properly appreciated by the High Court. That there was nothing in the Regulations to suggest that once a disciplinary authority had initiated the proceedings by serving a charge-sheet and appointing an enquiry officer against the delinquent officer the proceedings cannot be transferred to another equally competent disciplinary authority as per the Regulations. That there was no question of parallel proceedings being conducted by two disciplinary authorities at a given point of time. That the High Court has wrongly assumed that that would be the situation if the appellant-Bank's contention was accepted. The High Court had equally erred in assuming that under the Regulations Respondent 1 would lose right of appeal if the disciplinary proceedings initiated by the Deputy General Manager got decided ultimately by the Assistant General Manager as appeal would otherwise lie against the order of the Assistant General Manager to the Deputy General Manager. That in such an eventuality, submitted learned Senior Counsel, the appeal may be entertained by still higher authority, namely, the General Manager and that such an eventuality had still not occurred and it was not the contention of Respondent 1 that his right of appeal had not (sic been) whittled down under the Regulations. It was, therefore, contended that the decision rendered by the High Court was required to be set aside.

9. Shri Verma, learned Senior Counsel for Respondent 1-employee, who is the only contesting party, on the other hand submitted that once the disciplinary proceedings were initiated by Deputy General Manager they had to be carried to their logical end by the same authority and that abruptly in midstream after the enquiry report was submitted proceedings could not have been transferred to Assistant General Manager. In any case, submitted learned Senior Counsel for Respondent 1, there was nothing on the record to indicate that the competent authority had ordered continuation of these disciplinary proceedings by Assistant General Manager though initially they were started by the

Deputy General Manager. It was further contended that Respondent 1 came to know for the first time that the disciplinary authority had been changed only on 20-3-1986 and before he could make any representation to that authority almost simultaneously on the next day, that is, 21-3-1986 the impugned order was passed. It was ultimately submitted by Shri Verma, learned Senior Counsel for Respondent 1 that on the scheme of the Regulations the order of the High Court was perfectly justified and well sustained.

Our conclusion and reasons thereof

10. We have carefully considered these rival contentions. We have reached the conclusion that the High Court has taken too narrow a view of the controversy posed before it and has set aside the dismissal order on too hypertechnical a view which is not well sustained on the scheme of the Regulations.

11. We will, therefore, proceed to consider the scheme of the Regulations which governs the controversy between the parties. The Regulations of 1976 have been framed by the appellant-Bank in exercise of powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Regulations are framed in consultation with the Reserve Bank and with previous sanction of the Central Government. Regulation 3 contains definitions. It has been laid down therein that in these Regulations, unless the context otherwise requires, "appellate authority" means the authority specified in the Schedule to dispose of appeals; "competent authority" means the authority appointed by the Board for the purpose of these Regulations; and "disciplinary authority" means the authority specified in the Schedule which is competent to impose on an officer-employee any of the penalties specified in Regulation 4. Regulation 4 deals with penalties. It provides for imposition on any officer-employee for act of misconduct or for any other good or sufficient reason amongst others major penalty of dismissal which shall ordinarily be disqualification for future employment. It is not in dispute between the parties that Respondent 1 at the relevant time was officer-employee who was in Junior Management Scale I. It is also not in dispute that he was imposed a penalty by way of dismissal from service. Regulation 5 deals with authority to institute disciplinary proceedings and impose penalties. Sub-regulation (1) thereof lays down that the Managing Director or any other authority empowered by him by general or special order may institute or direct the disciplinary authority to institute disciplinary proceedings against an officer-employee of the Bank. It has also been mentioned therein that the Chairman and Managing Director vide order dated 11-5-1979 has authorised Deputy General Managers in terms of Rule 5(1) of the said Regulation to take disciplinary action against officers in Grade III and above as also to impose on them minor and/or major penalties as under:

Minor Penalties:

(i) Censure.

(ii) Recovery from pay of the whole or part of any pecuniary loss caused by the officer to the Bank by negligence or breach of orders.

(iii) Withholding of increments of pay.

Major Penalties:

(i) Stoppage of one or more increment(s).

- (ii) Reduction to a lower stage in the grade of the officer or to a lower grade.
- (iii) Compulsory retirement.
- (iv) Termination of service.
- (v) Dismissal from service.

The order of the Chairman and Managing Director dated 11-5-1979 as per sub-regulation (1) of Regulation 5 was further amended on 15-12-1980 to the following effect:

"In addition to the Schedule to Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, and in furtherance to my order dated 1-7-1977, as well as 11-5-1979, I do hereby authorised Deputy General Managers and Assistant General Managers in terms of Rule 5(1) of the said Regulations to take disciplinary action against officer in Grade III, Grade II and Grade I (corresponding to Scale I, Scale II and Scale III respectively of Allahabad Bank Officers Service Regulations, 1979) and also to impose on them minor and/or major penalties as under:

Minor Penalties:

- (a) - (d)

Major Penalties:

- (a) - (c)

(d) Dismissal which shall ordinarily be a disqualification for future employment."

Sub-regulation (2) of Regulation 5 lays down that the disciplinary authority may himself institute disciplinary proceedings. As per Regulation 6 sub-regulation (2)

"whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against an officer-employee, it may itself enquire into, or appoint any other public servant (hereinafter referred to as the enquiring authority) to inquire into the truth thereof".

As per sub-regulation (3) of Regulation 6

"where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the officer-employee and the articles of charge, together with a statement of the allegations, on which they are based, shall be communicated in writing to the officer-employee, who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days), or within such extended time as may be granted by the said authority, a written statement of his defence".

As per sub-regulation (21)(ii) of Regulation 6 after completion of the inquiry

"the inquiring authority, where it is not itself the disciplinary authority, shall forward

to the disciplinary authority the records of inquiry which shall include -

- (a) the report of the inquiry prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the officer-employee referred to in sub-regulation (15);
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs referred to in sub-regulation (18), if any, and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

Then follows Regulation 7 which deals with "action on the inquiry report". Sub-regulation (3) of Regulation 7 provides that "if the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer-employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty".

12. We may now turn to the Schedule to the Regulations. We have already noted the definition of disciplinary authority as found in definition clause (g) of Regulation 3. The disciplinary authority which can impose penalties specified in Regulation 4 are those which are specified in the Schedule. The relevant amended Schedule to the Regulations lays down that for Officers Scale I to III the disciplinary authority is Deputy General Manager/Assistant General Manager, the appellate authority is Deputy General Manager/General Manager and the reviewing authority is Chairman and Managing Director. It becomes, therefore, clear that both the Deputy General Manager as well as the Assistant General Manager are disciplinary authorities who can initiate proceedings against the officer like Respondent 1 who is in Scale I and who can also pass the final penalty order. It is of course true as rightly contended by learned Senior Counsel, Shri Verma that there cannot be two parallel simultaneous proceedings before the two disciplinary authorities, namely, Deputy General Manager and Assistant General Manager. However, there is nothing in the Regulations to suggest as the High Court has with respect wrongly assumed that once a competent disciplinary authority, namely, Deputy General Manager has initiated disciplinary proceedings by framing charges and appointing Enquiry Officer as per Regulation 6 sub-regulation (3), it is only that disciplinary authority, namely, the Deputy General Manager who must necessarily complete the proceedings till they are terminated and final orders are passed under Regulation 7. It may also be noted at this stage that there was nothing on the record of the High Court in the writ petition to suggest that it was the Chairman and Managing Director who had directed the Deputy General Manager to institute disciplinary proceedings against Respondent 1. On the contrary as provided by sub-regulation (2) of Regulation 5 any competent authority can himself institute disciplinary proceedings. Even otherwise Regulation 5(1) as further amended on 15-12-1980 shows that there is a general authorisation given by the Chairman and Managing Director to all the Deputy General Managers and Assistant General Managers in terms of Rule 5(1) of the Regulations to take disciplinary action against officers in Scale I like Respondent 1 and has also authorised them to impose on them minor and major penalties including the major penalty of dismissal. Therefore, authorisation both to Deputy General Manager as well as Assistant General Manager to act as disciplinary authorities for initiating departmental enquiries against Scale I officers as per Regulation 6(3) as well as to pass appropriate

penalty orders under Regulation 7 is already granted by general order of the Managing Director as seen from the amended Regulation 5(1) dated 15-12-1980. It is, of course, true that in the present case the Deputy General Manager, Lucknow Division, initiated the disciplinary proceedings as disciplinary authority under Regulation 6(3) by framing charges and appointing the Enquiry Officer. The enquiry was completed by him but before the stage of Regulation 7 was reached the Enquiry Officer's report as per Regulation 6 sub-regulation (21)(ii) came to be sent to another equally competent disciplinary authority, namely, Assistant General Manager, Patna Branch. Beyond that stage, when Regulation 7 was to operate, it was only the Assistant General Manager who remained the sole disciplinary authority in the field on account of transfer of these disciplinary proceedings from initial disciplinary authority, namely, Deputy General Manager to Assistant General Manager who was an equally competent disciplinary authority. With respect the High Court has wrongly assumed that this is likely to result in two conflicting orders of two equally competent authorities. Such a situation would never arise for the simple reason that for one disciplinary enquiry against an officer concerned at a given point of time there would be only one disciplinary authority. But that would not mean that the entire gamut of the departmental enquiry against the officer must be conducted from beginning to end by only one disciplinary authority and one competent disciplinary authority which initiated the proceedings cannot get changed in midstream by another equally competent disciplinary authority. As we have seen earlier the amended Schedule clearly shows that for officers like Respondent 1 in Scale I both the Deputy General Manager and the Assistant General Manager are equally competent to act as disciplinary authorities. Under Regulation 6 such a competent disciplinary authority can initiate proceedings. He can appoint an enquiry officer but for exigency of service and requirements of administration if final action at the stage of Regulation 7 is to be taken by any other equally competent disciplinary authority like Assistant General Manager it cannot be said that both the competent authorities are simultaneously acting at the same point of time in the departmental enquiry against the officer. In our view the High Court has also erred in taking the view that such a change of disciplinary authority before completion of the enquiry would whittle down the right of appeal available to the delinquent concerned. Firstly such a situation has still not arisen in the present case as it is not the contention of Respondent 1 that his right of appeal under the Regulations against the impugned order has been adversely affected. In fact he has not filed any appeal against the impugned order of dismissal but he straightaway went to the High Court challenging the same. But even that apart, if the Deputy General Manager has initiated the disciplinary proceedings against the delinquent officer as per Regulation 6 sub-regulation (3) and if at the stage of passing final orders he is substituted by another equally competent disciplinary authority like Assistant General Manager, then in such a case, the penalty order though passed by Assistant General Manager will have a linkage with the initiation of the disciplinary proceedings by the Deputy General Manager as disciplinary authority and in such an eventuality the appeal would lie to the General Manager who is also one of the appellate authorities as mentioned in the amended Schedule and in either case the reviewing authority against the appellate authority will remain the same, namely, the Chairman and Managing Director. Consequently it cannot be held as assumed by the High Court that under the Regulations it is the disciplinary authority which initiates the proceedings as per Regulation 6 sub-regulation (3) that has necessarily to complete the proceedings till the stage of Regulation 7 and it is that very authority which must pass the final orders of penalty. Consequently the decision of the High Court voiding the impugned order of dismissal on this short ground cannot be sustained.

13. We may also mention here that the submission of learned Senior Counsel for Respondent 1 that he did not get adequate opportunity to represent against the proposed action based on the enquiry report before the changed disciplinary authority, namely, Respondent 7 is a contention which has

nothing to do with the competence of Respondent 7 as the disciplinary authority to pass impugned order of dismissal under Regulation 7. The contention about absence of reasonable opportunity to make such a representation before the new disciplinary authority has not been gone into by the High Court. Therefore, it cannot be considered by us at this stage. We, however make it clear that as the High Court has allowed the writ petition only on the short ground about the competence of Respondent 7 to pass the impugned order of dismissal and as we disagree with the said view of the High Court and as the High Court has not gone into other contentions canvassed by learned counsel for Respondent 1 for challenging the impugned order, it will also be open to Respondent 1 to challenge the impugned order of dismissal on the ground of non-availability of reasonable opportunity for putting forward his defence before the ultimate disciplinary authority, as the proceedings will have to be remanded to the High Court for a fresh decision on merits on other contentions that may be open for Respondent 1, which of course will be decided by the High Court in accordance with law after hearing all concerned.

14. In the result this appeal succeeds and is allowed. The order of the High Court is quashed and set aside. Writ Petition No. 3841 of 1986 is restored to the file of the High Court for decision on merits on remaining contentions which may be canvassed by Respondent 1 against the impugned order of dismissal. As Respondent 1 is out of service since 21-3-1986 and as pending this appeal the order of the High Court was stayed by this Court we request the High Court to make it convenient to dispose of the remanded proceedings in the aforesaid writ petition at its earliest convenience and preferably within six months from the receipt of the writ of this order at its end. In the facts and circumstances of the case there shall be no order as to costs.