

Bank of India

Vs

Degala Suryanarayana

Civil Appeal Nos. 3053 and 3054 of 1997

(Sujata V. Manohar, R. C. Lahoti JJ)

12.07.1999

JUDGMENT

R.C. Lahoti, J. –

1. Degala Suryanarayana, the respondent has been in the employment of the Bank of India, the appellant. In the year 1981 he was working in Middle Management Grade-II and was due for promotion. On 16.4.1981 the appellant made a complaint against the respondent to the CBI alleging certain misappropriations. While the complaint was under investigation the respondent was interviewed for promotion in the year 1981-82. The result of the interview was withheld on the ground of pendency of criminal proceedings against him. In 1983, two criminal cases were filed by the CBI implicating the respondent before a Special Court at Visakhapatnam. In the year 1987, he was again considered for promotion. However, he was informed that though he was found fit for promotion with effect from 1.1.1986, the finding of the promotion committee was not being given effect to on account of the pendency of the criminal cases. The criminal cases ended on 17.8.1988 favourably to the respondent acquitting him of the offences charged. However, the order of promotion was not issued.

2. In the year 1990, CWP No. 17490/90 was filed by the respondent seeking relief of the order of promotion being issued and given effect to. By an interim order dated 3.4.1991, the High Court directed the respondent to be promoted on ad hoc basis with effect from 1.1.1986. There was a writ appeal wherein the Division Bench confirmed the interim order of the learned Single Judge but at the same time went on to add an observation in its order that the employer was at liberty to enquire into the matter departmentally though ad hoc promotion as ordered by the Single Judge had to be given.

3. On 3.12.1991 a charge-sheet was given to the respondent alleging commission of misconduct by him. The statement of allegations accompanying the charge-sheet referred to certain incidents of the years 1973 to 1978. The respondent filed CWP No. 12577/92 mainly contending that the domestic enquiry related to stale matters and therefore the charge-sheet dated 3.12.1991 was liable to be quashed. The writ petition was however dismissed consequent whereupon the enquiry proceeded ahead. On 11.10.1994 the Enquiry Officer submitted a report recording a finding that none of the charges levelled against the respondent was proved. The Disciplinary Authority however disagreed with the finding recorded by the enquiry officer on one of the charges namely charge 1(b) and called upon the respondent to show cause why he be not punished. By order dated 4.3.1995 the Disciplinary Authority reversed the finding of the Enquiry Officer on charge 1(b) and held the respondent guilty of misconduct and imposed upon him the punishment of reduction of pay by one stage which is a major punishment.

4. CWP No. 12577/92 was at this point of time subject matter of Writ Appeal No. 112/93. Before the Division Bench hearing the writ appeal the respondent sought for the writ petition being amended in view of the subsequent event of a major punishment having been inflicted on him. The Division Bench permitted the respondent to amend the writ petition so as to seek the relief of the punishment order being set aside.

5. The learned Single Judge held that though the Disciplinary Authority had jurisdiction to record a finding at variance with the one recorded by the Enquiry Officer, but in the facts and circumstances of the case, the finding arrived at by the Disciplinary Authority was perverse. Accordingly, the learned Single Judge allowed the writ petition and set aside the order of penalty passed against the respondent. In the writ petition seeking the relief of promotion, the learned Single Judge held that the respondent was not entitled to any promotion earlier than 1.1.1986, but the bank was agreeable to upholding the respondent's entitlement to promotion with effect from 1.1.1986. The promotion given to the respondent with effect from 1.1.1986 which was treated as ad hoc pursuant to the order of the Court was directed to be regularised from that date followed by release of all consequential benefits. The two writ petitions were thus disposed of by a common order.

6. The appellant-Bank filed two writ appeals which have been disposed of by a common order by the Division Bench of the High Court. The order of the learned Single Judge has been upheld and both the appeals have been dismissed. The aggrieved Bank of India has come up to this Court seeking special leave to appeal which has been granted.

7. Before this Court the controversy has centered around the question whether the learned Single Judge of the High Court was justified in interfering with the findings recorded by the Disciplinary Authority in reversal of the findings recorded by the Enquiry Officer. As already stated, the Disciplinary Authority has found the respondent guilty of the charge 1(b) and therefore the facts relevant to this charge alone are being briefly stated hereinafter.

8. One Degala Sri Ramulu (DS, for short) had savings bank account No. 14 at Kakinada Branch of the appellant Bank with a balance amount of Rs. 70.30 as on 28.6.1977. He issued a cheque in that account on that date for Rs. 14,000/- and deposited the same in his own SB account No. 645 with Anakapalle branch of the Bank where the respondent was working as a Branch Manager. ON 1.7.1977, the respondent sanctioned two clean loans amounting to Rs. 14,000/- to M. Peddarajua and v. Nageswara Rao who credited those amounts into their respective savings bank accounts in Anakapalle branch and transferred the same on 2.7.1977 to SB account No. 645 of DS. On 3.7.1977 DS withdrew a sum of Rs. 14,000/- from that account and credited the same in SB account No. 14 in Kakinada Branch on 4.7.1977. The cheque dated 28.6.1977 for Rs. 14,000/- was then cleared by Kakinada Branch on 5.7.1977 and the same was honoured. There were two charges against the respondent. Charge No. 1 consisted of six items and the statement of allegations accompanying the charge-sheet stated that to the extent of Rs. 26,854.64 (referable to six transactions including the transaction relating to Rs. 14,000/- set out herein-before), the respondent had committed misconduct inasmuch as Regulation 3(1) of the Bank of India Officer Employees (Conduct) Regulations, 1976 requires each officer employee to take at all times all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer and failure to do so is prescribed by Regulation 24 to be misconduct punishable under the Bank of India Officer Employees (Discipline and Appeal) Regulations 1976. Charge No. 2 alleged appropriation of the funds of the Bank by the respondent for himself and/or others. The Enquiry Officer exonerated the respondent of both the charges (including all the sub-heads of charge No. 1). As to charge 1(b) the Enquiry Officer held as

under :-

"The evidence brought out by the Presenting Officer indicates that some of the documents connected with the instant allegation were written/signed by the CSO. However, the matter regarding sanction of clean loans has not been clearly established, in the absence of clear testimony, by way of sanctioned proposals, copies, the then Dealing Officer's evidence and related data. It is common practice in a small/medium sized branch for the Manager to assist in writing vouchers, filling up vouchers and rendering customer service in any such way. As a matter of fact, when customers directly meet the Branch Manager, rendering such personalized service goes a long way for future business relations. Keeping this in mind, I would not directly relate the CSO's handwriting/signature on some documents, as a direct indication of his involvement in the irregularity cited. More importantly the fundamental Articles of Charge No. 1, stresses on misappropriation of funds by the CSO and securing by him of a pecuniary advantage. This aspect has not been touched upon by the Presenting Officer. Added to this fact, certain documentary evidences were not made available. In my opinion, the Presenting Officer has not brought out full details relating to the allegation. As such the allegation could not be substantiated. My finding is that the allegation is not proved."

9. The Disciplinary Authority reversing the abovesaid finding held as under :-

"I find from the records of the Departmental Enquiry that the investigating Officer of CBI who investigated into the allegation against Sri D. Suryanarayana was produced as witness before the Departmental Enquiry. Sri Saibaba, investigating Officer of CBI (MW-3) in his deposition has stated that Sri M. Peddaraju and Sri V. Nageswara Rao both given the address as C/o S. Sundara Rao, Gandhinagaram, Anakapalle for the purpose of obtaining the loans. Similarly Sri Degala Kannayya Kapu and Sri D. Sriramulu also gave their address as C/o S. Sundara Rao, Gandhinagaram, Anakapalle. It is clear from the deposition of the Investigating Officer that these two persons who are not ordinarily residents at Anakapalle, have approached Shri D. Suryanarayana, the then manager so that they can avail loan for some reason or other. Similarly, Sri D. Sriramulu and Sri D. Kannayya Kapu had also given their address as C/o S. Sundara Rao, Gandhinagaram, Anakapalle. It has been established during the departmental enquiry that all the above were having nexus some connection with each other which was known to Shri D. Suryanarayana. Further the management witness Sri K. Simhachalam, the then officer, Anakapalle Branch (MW4) who deposed before the Departmental Enquiry confirmed the handwriting of Sri D. Suryanarayana on the various vouchers/transactions by which loans were sanctioned to Shri M. Peddaraju and Sri V. Nageswara Rao. MW-4 further established that the vouchers by which the loan was transferred to the SB account of Sri D. Sriramulu and Sri D. Kannayya Kapu were also in the handwriting of Sri D. Suryanarayana. The documents marked as exhibit numbers ME-2 to ME-16 are documents pertaining to sanction of loans to Sri Peddaraju and Sri V. Nageswara Rao by Shri D. Suryanarayana on the above said documents. All these would go to show that Sri D. Suryanarayana sanctioned loans to Sri Peddaraju and Sri V. Nageswara Rao and transferred the funds to SB A/c No. 645 of Sri D. Sriramulu who could withdraw the amount even though he was not having sufficient balance in his account with Kakinada Branch. MW-3 confirmed that Sri D. Sriramulu was having a SB account

No. 14 at Kakinada branch and balance in the account was only Rs. 70.30 as on 28.6.77. Thus it is clearly established that Sri D. Sriramulu was not having sufficient balance on the date he issued the cheque on Kakinada branch. The material on record alongwith deposition of the MW-3 and MW-4 would clearly establish that Sri D. Suryanarayana has extended undue favours to Sri Degala Sriramulu and allowed him to draw cash to the tune of Rs. 14,000/- even though he was not having sufficient balance in the account at Kakinada branch. I had also gone through the defence wherein it is pointed out that there is no evidence to show that Sri D. Kannayya Kapu, Sri D. Sriramulu, Sri V. Nageswara Rao and Sri Peddaraju are related to each other. Even though no evidence is on record to show that they are close relatives of each other, there is nexus between the above named persons inasmuch as every one had given the following address at Anakapalle :

C/o S. Sundara Rao,

Gandhinagar, Anakapalle.

This would indicate that they are not ordinarily residents at Anakapalle and known to each other. The defence contended that the management could not prove that the balance in the SB account at Kakinada Branch was only Rs. 70.30 on 28.6.77. In this connection the investigating officer has categorically stated in his deposition that the balance in the SB account No. 14 of the Kakinada branch on 28.6.77 was only Rs. 70.30. There is nothing on record to disbelieve the statement of investigating officer. The Investigating Officer had gone through various records at the time of investigation and his deposition in connection with factual position of the matter can be accepted. I, therefore, hold that the allegation No. 1(b) as stated in the Statement of Allegations issued to Sri D. Suryanarayana in support of Article of Charge No. 1 is proved."

10. The law is well settled. The Disciplinary Authority on receiving the report of the Enquiry Officer may or may not agree with the findings recorded by the latter. In case of disagreement, the Disciplinary Authority has to record the reasons for disagreement and then to record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the Enquiry Officer for further enquiry and report.

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like as appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In *Union of India v. H.C. Goel, 1964(4) SCR 718* the Constitution Bench has held :-

"the High Court can and must enquire whether there is any evidence at all in support

of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

12. Regulation 7 of the Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 accords with the settled service jurisprudence and provides as under :-

*"7. Action on the inquiry report :*

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagree with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) 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.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

13. In the case at hand a perusal of the order dated 5.1.1995 of the Disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court. We are, therefore, of the opinion that the learned Single judge as well as the Division Bench of the High Court were not right in setting aside the finding of the Disciplinary Authority and restoring that of the Enquiry Officer. The High Court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned Single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by the Bank of India deserves to be allowed to that extent.

14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his

entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see *Union of India etc. v. K.V. Jankiraman etc.*, AIR 1991 SC 2010 : 1991(3) SCT 317 (SC), 2113). As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled a on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986.

15. For the foregoing reasons, the appeals stand partly allowed that it is directed that the Civil Writ Petition No. 17490/90 filed in the High Court by the respondent seeking a writ of mandamus giving effect to the promotion of the appellant with effect from 1.1.1986 shall stand allowed and the orders made by the learned Single Judge as also by the Division Bench in that regard are maintained. The Civil Writ Petition No. 12577/92 seeking quashing of the charge-sheet dated 3.12.1991, subsequently amended to seek the relief of setting aside the punishment of reduction of pay by one stage by the order dated 4.3.1995 of the Disciplinary Authority, is directed to be dismissed. The judgment of the learned Single judge and of the Division Bench, to the extent to which the order of the Disciplinary Authority and the punishment imposed by him have been interfered with by the High Court are set aside. The appeals be treated as disposed of accordingly. In view of the partial success there will be no order as to costs.

Appeals partly allowed.