

SUPREME COURT OF INDIA

Central Bank of India

Vs.

Nripendra Nath Sarkar

C.A.No.3544 of 2008

(Tarun Chatterjee and Dalveer Bhandari JJ.)

13.05.2008

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.
2. This appeal is directed against the judgment dated 20.8.2007 passed by the High Court of Calcutta in APOT No.363 of 2007.
3. Brief facts which are necessary to dispose of this appeal are as under:-

“The respondent was working as a Clerk with the appellant-Bank at Calcutta. The respondent was issued a charge-sheet for short deposit of Rs.36,990.53. An enquiry was instituted against him and he was found guilty and consequently he was dismissed from service. The respondent aggrieved by the order of dismissal preferred a writ petition under Article 226 of the Constitution before the High Court.”
4. The learned Single Judge came to the conclusion that the enquiry officer was biased and the proceedings were conducted in a manner prejudicial to the interest of the delinquent respondent. The entire proceedings except the charge-sheet were quashed. The appellants herein were granted an opportunity to proceed with the matter de novo on the same charge-sheet.
5. The appeal filed against the aforesaid judgment was dismissed by the Appellate Court with slight modification of the order affirming the decision of the learned Single Judge.
6. The appellant-Bank proceeded against the respondent de novo appointing an enquiry officer. The second enquiry ultimately revealed that there has been a loss to the bank to the tune of Rs.9, 662.46 only and not Rs.36, 990.53. The enquiry officer held that the charges have been proved. The learned Single Judge observed that the respondent was served with a copy of the enquiry report. The respondent filed detailed explanation against

the enquiry report. However, the second show cause notice was issued by the appellant-Bank again proposing punishment of dismissal from service.

7. The respondent filed the second writ petition which came up for hearing before the learned Single Judge who granted liberty to the appellant-Bank to proceed with the dismissal proceedings and to pass a final order. The respondent was again dismissed from service. On perusal of the said dismissal order, the learned Single Judge found a number of infirmities in the order.

8. The court observed that the disciplinary authority without dealing with the issues raised by the respondent rejected the contentions by observing them as 'irrelevant'. According to the disciplinary authority, the explanation offered by the respondent on enquiry report was not satisfactory.

9. The learned Single Judge on the basis of the observations made in the earlier judgment as well as the second enquiry report came to the conclusion that the original charge of defalcation of Rs.36,990.53 had been whittled down to Rs.9,662.46. Thus, it has been observed that there has been a dilution of the charge to a substantial extent. The learned Single Judge observed that it might be possible that if there was a third enquiry formed the amount might have been lesser. This according to the learned Single Judge would lead to the conclusion that there is likelihood of faulty accounting system. A request was made by the learned counsel for the respondent to produce the audit report wherein the discrepancy had surfaced. It was submitted that if the report is produced it would show that the respondent was given a clean chit by the audit officials. The learned Single Judge, therefore, came to the conclusion that an opportunity should be given to the delinquent to prefer an appeal from the final order and directed that the Appellate Authority may go into the question afresh in the light of the observations made by the learned Single Judge. The respondent deposited the sum of Rs. Rs.9, 662.46 with the bank. This was a pre-condition of filing an appeal. The Appellate Authority was directed to grant personal hearing to the respondent.

10. The Division Bench observed that despite orders of the learned Single Judge, the Appellate Authority has not decided the case according to the observations of the court. The learned Single Judge had gone to the extent of observing that "the Appellate Authority had scant regard for the dignity and the finality of the observations made by the two learned Single Judges of this court." In spite of the contemptuous comments made by the Appellate Authority, the learned Single Judge directed it to take a fresh decision in the light of the observations made by the learned Single Judge in his order dated 24th March, 2006. The appellant-Bank filed an appeal being APOT No. 363 of 2007 which was dismissed by the Division Bench with the following orders:-

"Heard the learned counsel for the appellant. In our opinion, since the learned Single Judge has not imposed any punishment on the appellant, the present appeal would not be maintainable under section 19 of the *Contempt of Courts Act, 1971*. In case the appellant is aggrieved by certain observations made by the learned Single Judge with regard to the merits of the decision taken by the authorities, the appellant would

always be at liberty to seek remedy by way of inter-court appeal under clause 15 of the Letters Patent. Accordingly, both the appeal and the application are disposed of.

All parties concerned are to act on a signed Xerox copy of this order on the usual undertakings."

11. The Division Bench with great anguish made the following observations regarding the conduct of the appellant-Bank. We reproduce the same as under:-

"We see absolutely no merit in the appeal. In our opinion, the Appellate Authority of the appellant-Bank has been shown a great deal of leniency by the learned Single Judge. Even after taking note of the unwarranted observations of the Appellate Authority in rejecting the appeal filed by the respondent-writ petitioner and in a manner totally contrary to the observations made by the learned Single Judge, no punishment was imposed on the Appellate Authority. Not only no punishment, but adverse comments were even made about the observations made by the Appellate Authority. Rather, another opportunity has been given to rectify the error. Mr. Bose submits that while dealing with an application for contempt the Court ought to be concerned only with the question whether the earlier decision has received its finality and has been complied with or not. It would not be permissible for the court to examine the correctness of the earlier decision which had been assailed and to take a view different from that what was taken in the earlier decision. In support of this the *learned counsel & Ors. v. Subedar Devassy PV¹*. We are of the considered opinion that the aforesaid judgment is not applicable in the facts and circumstances of this case."

12. We find no merit in this appeal and the same is dismissed.

13. In the interest of justice we grant another four weeks time to the Appellate Authority to decide the appeal in accordance with the observations made by the learned Single Judge in the order dated 24th March, 2006 and the observations made by this Court in this appeal." this court.

14. We have heard the learned counsel for the parties at length. It was submitted before the court by the appellant-Bank that where there is no allegation of procedural irregularity or illegality or violation of statutory rules prescribed in the mode of enquiry, the High Court cannot upset the well-reasoned order of dismissal passed by the Disciplinary Authority. It was also submitted by the appellant-Bank that in the enquiry proceedings, a case of financial irregularity was detected and the court ought not to have interfered with the order of dismissal.

15. We have carefully perused the entire record of the case and all the proceedings before various courts. The Division Bench in the impugned judgment while dismissing the appeal gave four weeks time to the Appellate Authority to decide the appeal in accordance

with the observations made by the learned Single Judge in the order dated 24th March, 2006 and the observations made by the Division Bench.

16. In the facts and circumstances of this case, the observations made in the impugned judgment are absolutely just and fair. The Appellate Authority is directed to carry out the direction given by the learned Single Judge and the Division Bench in its true spirits. We find no infirmity in the directions given by the Division Bench in the impugned judgment.

17. The appellant instead of approaching this court ought to have complied with the directions of the Division Bench. This appeal being devoid of any merit is dismissed with costs.

¹(2006) 1 SCC 613