

SUPREME COURT OF INDIA

State Bank of India

Vs.

B.R.Saini

C.A.No.22970 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

15.12.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No.25040 of 2012

1. Leave granted.

2. The Respondent who was working in the Appellant-Bank was removed from service. The order of removal was set aside by a Single Judge of the High Court of Punjab & Haryana at Chandigarh. The judgment of the learned Single Judge was affirmed by a Division Bench. The correctness of the judgment of the High Court is challenged in this Appeal.

3. Articles of Charges framed against the Respondent when he was working as an Officer MMGS-II are as follows:

"CHARGE No. 1

You availed Demand Loans fraudulently under fake signatures of the depositors/ owners of the STDRs.

CHARGE No. 2

You closed certain Demand Loans granted at the branch before the date of inspection and reopened the same on the same day with a view to avoid inspection of securities charged to Demand Loans.

CHARGE No. 3

Certain fraudulent Demand Loans availed by you, were liquidated out of proceeds of cheques purchased by you, drawn on your personal Savings Bank A/c No. 01190077112 maintained at Sector 22, Chandigarh branch through the account of Shri Sant Ram.

CHARGE No. 4

You availed ACC Loans fraudulently under take signatures and without supporting revenue records to justify quantum of loan.

CHARGE No. 5

Certain fraudulent ACC Loan availed by you, were liquidated out of proceeds of cheques purchased by you, drawn on your savings Bank Account No. 01190077112 maintained at Sector 22, Chandigarh Branch, through the accounts of Shri Hira Pal, a part time Sweeper, who has alleged that he has not requested for purchase of any cheque in DD and further alleged that you got blank cheques signed by him drawn on his CC SBF A/c No.48.

CHARGE No. 6

You got purchased your personal cheques in DD at Karnal Branch, without keeping sufficient balance in your account.

CHARGE No. 7

You purchased cheques of heavy amount drawn on your personal savings Bank A/c in the accounts of Shri Hira Pal, a part time sweeper and Shri Sant Ram Sharma, without keeping sufficient balance in your account. Further you exercised financial powers not vested with you. You also caused delay in payment of these DDs.

CHARGE No. 8

Your account shows transactions of heavy amounts, which are much above your known sources of income.

You have thus violated Rule 50 (3) & 50 (4) of State Bank of India Officers Service Rules. "

4. Shri A.K. Sharma, SMGS-IV was appointed as an Inquiring Authority in terms of Rule 68 (2) (ii) of the State Bank of India Officers Service Rules (for short "the Rules"). A detailed Inquiry was held and the Inquiring Authority concluded that the Charge Nos. 1, 2, 4, 5 and 7 were proved, Charge No. 6 was partly proved and Charge Nos. 3 and 8 were not proved. The Disciplinary Authority disagreed with the findings of the Inquiring Authority qua Charge Nos. 6 and 8. A copy of the Report of the Inquiring Authority along with reasons for the disagreement was forwarded to the Respondent. The Respondent submitted his explanation to the findings of the Inquiring Authority as well as the disagreement of the Disciplinary Authority regarding Charge Nos. 6 and 8.

5. The Disciplinary Authority was not empowered to impose a major penalty as per Rule 66 (3) (iii) of the Rules. He transmitted the entire record which contained the findings of the Inquiring Authority, reasons of disagreement regarding Charge Nos. 6 and 8, the explanation submitted by the Respondent and the bio-data of the Respondent to the Appointing Authority. The Appointing Authority by an Order dated 22nd January, 2000 considered the entire material which was sent to him and imposed a penalty of "removal from service" on the Respondent.

6. The Respondent filed a Writ Petition in the High Court of Punjab & Haryana at Chandigarh questioning the legality of the order of dismissal. A learned Single Judge of the High Court allowed the Writ Petition relying upon the judgment of this Court in State Bank of India & Ors. v. Ranjit Kumar Chakraborty & Anr. wherein it was held that even when the Rule does not contemplate issuance of a notice before imposing a punishment, principles of natural justice would require an opportunity to be given to the delinquent employee as per the judgment cited supra. The Appellants filed a Letters Patent Appeal which was dismissed by a Division Bench of the High Court in which it was held that an order of removal cannot be passed without a show-cause notice against the proposed punishment. The Appellant-Bank is in appeal challenging the judgments of the High Court in this Appeal.

7. Rule 68 (3) of the State Bank of India Officers Service Rules is as under:

"68.(3)(i) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recovered by it in writing, remit the case to the Inquiring Authority-whether the Inquiring Authority is the same or different-for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of sub-rule (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagrees 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.

(iii) 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 rule 67 should be imposed on the officer, it shall, not-with-standing anything contained in sub-rule (4), make an order imposing such penalty.

(iv) If the Disciplinary Authority or the Appointing Authority, as the case may be, 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 concerned."

8. As stated above, the Disciplinary Authority after supplying the Report of the Inquiring Authority had given an opportunity to the Respondent to submit his explanation, which he did. In view of the disability of the Disciplinary Authority in passing an "order of removal"

under Rule 68 (2), the entire record was sent to the Appointing Authority who examined the matter and passed an "order of removal".

9. In *State Bank of India v. Ranjit Kumar Chakraborty* (supra) which is the basis of the judgment of the High Court, it was held that the Appointing Authority could not pass an order imposing a major penalty. In that case, the Disciplinary Authority sent the Records to the Appointing Authority who passed order of "dismissal from service". It is not clear from the judgment as to whether the delinquent officer in that case was given a notice by the Disciplinary Authority before the records were sent to the Appointing Authority. This Court held that even in the absence of any Rule requiring a notice to be given, the principles of natural justice would require an opportunity to the delinquent employee. It was not held in the said judgment that even if the Inquiry Report was furnished and an opportunity was given to the delinquent there is a further requirement of another opportunity before imposing the penalty. This Court found that before imposition of a major penalty the delinquent was entitled for an opportunity of being heard. The High Court was wrong in holding that the delinquent employee is entitled for a notice before the penalty is imposed.

10. Though Article 311 (2) of the Constitution of India, 1951 is not applicable to the Officers of the Appellant-Bank; in *Managing Director, ECIL v. B. Karunakar*, this Court held that Government servants as well as others are governed by their service rules and that whenever an Inquiry is conducted and a punishment is awarded, a delinquent employee is entitled to a copy of Report of the Inquiring Authority and an opportunity to submit his explanation. The absence of any rule providing for an opportunity to be given to a delinquent employee before imposition of a penalty cannot be taken advantage of by the employer. However, there is no requirement of a second show cause notice before imposition of a penalty.

11. In this case, the Respondent had sufficient opportunity to respond to the Report of the Inquiring Authority and to the findings of the Disciplinary Authority disagreeing with the Inquiring Authority regarding Charge Nos. 6 and 8. He is not entitled to any further notice before imposition of a penalty. Apart from the requirement of a second show-cause notice before imposition of penalty no other point was raised in this Appeal.

12. For the aforementioned reasons, the Appeal is allowed and the judgment of the High Court is set aside.