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HIGH COURT OF GUJARAT (*D.B.*)

VINODCHANDRA BALKRISHNA PANDIT
Versus
STATE OF GUJARAT

Date of Decision: 22 July 1997

Citation: 1997 LawSuit(Guj) 337

Hon'ble Judges: C K Thakker, S D Pandit

Eq. Citations: 1998 1 GLR 843, 1997 2 GLH 1025, 1997 3 GCD 375

Case Type: Letters Patent Appeal

Case No: 603 of 1997

Subject: Constitution

Acts Referred:
Constitution of India Art 226

Final Decision: Appeal dismissed

Advocates: A J Shastri, Nanavati Associates

Cases Referred in (+): 7

S. D. PANDIT, J.

[1] Vinodchandra B. Pandit the original petitioner in S.C.A. No. 3866 of 1984 has preferred this Letters Patent Appeal against the judgment and order passed by the learned single Judge on 9-5-1997 by which his petition has been dismissed.

[2] The appellant-petitioner joined the respondent-Bank of India as a clerk on 18-3-1963. He was promoted to the cadre of officer and on 1-12-1972, he was working as a manager at Pilvai Branch of Bank of India from 1-7-1974 to 6-3-1980. It is the claim of the respondent-bank that while he was working as Manager at Pilvai Branch, the petitioner had not worked with utmost integrity and honesty and that while he was working there he sanctioned 13 loans in favour of different persons. But for sanctioning of the said loans he had taken illegal gratification from the borrowers varying from Rs. 100/- to Rs. 3,000/-. Against these 13 sanctioned loans, there was a loan of Rs. 10,000/- in favour of one Chhaganbhai Bababhai Chaudhary and while sanctioning said

loan, the appellant-petitioner took illegal gratification of Rs. 1,000/- and he also allowed Somabhai Chhaganbhai Chaudhary the son of Chhaganbhai Bababhai Chaudhary to sign the documents in the name of his father. All these activities of the present appellant came to light of the bank as it received various complaints. Thereafter, the bank had directed the officer of the Central Bureau of Investigation (C.B.I.) to hold a preliminary inquiry. On inquiry it was found that the allegations made against him were true and correct. Therefore, on 4-8-1980 the appellant was served with a memo alleging commission of the said irregularities and illegalities. The appellant was given opportunity to have inspection of the record. Thereafter, the appellant sent his reply on 10-10-1980. In his reply all the allegations made against him were denied. Therefore, the respondent had decided to hold a departmental inquiry against him. Thereafter, the appellant was served with articles of charges and statement of allegations on 10-8-1982. An inquiry officer was also appointed on 30-9-1982. The inquiry officer held a detailed inquiry and he found that the charge against the appellant for taking illegal gratification was proved and on considering the report of the inquiry officer the disciplinary authority passed an order on 20-6-1983 imposing of penalty of removal from service. The appellant had preferred an appeal before the Zonal Manager on 12-8-1983 but the same was rejected on 7-10-1983. He had thereafter preferred a revision on 29-2-1984 and the same was also dismissed on 7-6-1984. He thereafter had filed this S.C.A. No. 3866 of 1984.

[3] It was contended by the appellant in the said writ petition that the departmental inquiry held against him was a delayed inquiry and therefore, said inquiry must be quashed. It was also contended that inquiry held against him was against the principle of natural justice as he was denied copy of the preliminary inquiry report submitted by the C.B.I. It was also contended that there was no material to prove the charges against him and lastly it was contended that the penalty imposed on him was harsh one. The learned single Judge has negatived all these contentions raised by the petitioner by a detailed judgment on 9-5-1997 and hence the petitioner has come up before this Court by preferring this L.P.A.

[4] Mr. A. J. Shastri learned Counsel for the appellant has challenged the order of the learned single Judge by raising the following contentions : (1) That the departmental inquiry held against the present appellant was vitiated on account of non-supply of the copy of the preliminary inquiry report, (2) That delay is caused in initiating the departmental proceedings and (3) that the penalty of dismissing from service is a harsh penalty and it is not proportionate to the guilt alleged to have been committed by the petitioner-appellant.

[5] It is not in dispute that present appellant had asked for the supply of the report of the preliminary inquiry held by the C.B.I, and that copy of the said report was not

supplied to the appellant. It is true that non-supply of such material could be taken into consideration as breach of principles of natural justice. But as law has developed and as the position stands today it is expected of the Court to have a balance between public interest with the requirement of natural justice and to arrive at a proper decision. For that purpose it is necessary for the Court to see as to whether non-supply of said report has caused any prejudice to the delinquent. The learned single Judge has dealt with this aspect in detail and has relied upon the decision of the Apex Court in the case of State Bank ofPatiala v. S. K. Sharma, AIR 1996 SC 1669 : JT 1996 (3) SC 722 and other cases. The learned single Judge had also seen that said report was not only showed to the learned Counsel for the appellant but a copy of the said report was also supplied to the learned Counsel for the appellant and the learned Counsel for the appellant was not in a position to point out to the learned single Judge that non-supply of the said report earlier had resulted into causing prejudice to him. The purpose of holding of preliminary inquiry is only with a view to find out the prima facie truth or otherwise as regards the allegations made against the employee and the report is prepared with a view to see as to whether there is sufficient material to proceed further by way of departmental inquiry against the delinquent employee. Therefore, the report of the preliminary inquiry could not be said to be such a material document that non-supply of the same has resulted into causing prejudice to the petitioner-appellant. From the report of the inquiry officer it was not possible for the learned Counsel for the appellant to point out that the inquiry officer had in fact in any way made use of the said preliminary report in recording his findings against the present appellant-delinquent. In the case of Vijaykumar Nigam v. State of M. P., AIR 1997 SC 1358, the Apex Court has considered the question of non-supply of the report of the preliminary inquiry conducted against the delinquent before initiating the departmental inquiry and has dealt with the same in para 3 on page 1359 as under :

> " ... The main ground was that the report of the preliminary enquiry conducted against him before initiating departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view, quite rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. The High Court also found as a fact that all the statements of persons that formed basis for report, recorded during the preliminary enquiry were supplied to the delinquent officer
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> Thus, the above cited decision of the Apex Court is a complete answer to the contention raised on behalf of the appellant.

[6] Learned Counsel for the appellant has cited before us the case of Ramakant v. Central Bank of India, [1982(2)] XXIII(2) GLR 644. But if the facts of the said case are considered, then it would be quite clear that facts of the said case is not applicable to the case before us. The next case cited before us is the case of Gordhanbhai Ambalal Patel v. State of Gujarat, 1991 (2) GLH 144 : [1991 (2) GLR 937]. On facts, this case is also not applicable to the case before us. In that case the inquiry officer had exonerated the petitioner of all the charges levelled against him and the disciplinary authority disagreed with the finding of the inquiry officer and passed an order directing stoppage of 2 increments without giving opportunity of being heard to the delinquent and therefore, in those circumstances it has been held that the action of the disciplinary authority was against the principles of natural justice. Learned Counsel for the appellant urged before us that when it is an admitted fact that there was non-supply of the copy of the preliminary inquiry report it is obvious that non-supply of the same must have caused prejudice to the delinquent-appellant and appellant need not show by any independent evidence that prejudice was caused to him and in support of that submission he cited before us the case of S. L. Kapoor v. Jagmohan, AIR 1981 SC 136, and relied upon the following observations in para 24 :

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

At the outset it must be stated that the above cited observations of the Apex Court should be borne in mind along with the facts of that case. In that case the Municipal Committee was suspended under the provisions of Sec. 238 of the Punjab Municipalities Act without giving an opportunity to the Committee of being heard before passing such an order and therefore, in view of all those peculiar facts it has been held that it was not necessary for the Corporation to show that non-observance of principles of natural justice had caused prejudice to it. It has been also held in that case that requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. Therefore, those

observations are also not helpful to the appellant before us in view of the facts of the case before us.

[7] Mr. Shastri learned Counsel for the appellant has also cited before us the case of D. K. Yadav v. (M/s.) J.MA. Industries Ltd., 1993 (2) GLH 174 (SC). That case is also not applicable to the facts before us. In that case the services of the appellant before the Apex Court were terminated on the ground that he had wilfully absented from duty continuously for more than 8 days without holding any departmental proceedings against him. Thus in that case, admittedly no opportunity was given to the appellant to meet with the allegations against him and in that it was the contention of the appellant that though he was reporting on his duty every day, he was not permitted to join the duty without assigning any reason. Therefore, in those circumstances, the action was held to be arbitrary, unjust and unfair and violative of Art. 14 of the Constitution.

[8] Thus, there is no substance in the contention of the appellant that the disciplinary action taken against him should be quashed on account of non-supply of preliminary inquiry report.

[9] It is vehemently urged before us by Mr. Shastri that there is delay in initiating the proceedings against the present petitioner. Disciplinary inquiry is initiated in the year 1982 by the appellant and inquiry officer was appointed in September 1982 for the acts committed by the petitioner for the period running between 1-7-1977 and 6-3-1980. In support of that submission he has also relied upon the case of Ramakant v. Central Bank of India, [1982 (2)] XXIII (2) GLR 644. But the facts of that case are quite distinct. In that case the learned Advocate for the bank had submitted before Hon'ble Mr. Justice N. H. Bhatt (as then he was) that as the departmental inquiry and consequential penalties were set at naught, the Court should declare that the bank was at liberty to start fresh inquiry on the self-same charges. That claim was turned down on the ground of delay by making the following observations (at page No. 647 para 21 of GLR) :

"It was then submitted by Mr. Mehta that as the conclusion of the departmental enquiry and consequential penalty are set at naught for want of any proof in respect of the charges and other allied grounds already referred to above, this Court should declare that the Bank is at liberty to start fresh enquiry on the self-saying charges. The petitioner has already retired from the services of the bank by now. The allegations are pertaining to the period 1969-70. This means 12 years have already rolled by and the petitioner had already retired from service. Relying on the ratio of the Supreme Court laid down in the case of Union of India & Ors. v. M. B. Patnaik & Ors., reported in AIR 1981 SC 858, paragraph 4, I declare that the petitioner shall not be put to harassment by initiating a fresh enquiry of the self-

same grounds and allegations that would amount to abuse of the powers of the public authority, namely, the respondent-bank."

[10] But if the facts of the present case are considered then it would be quite clear that it is very difficult to hold that there was inadequate delay in initiating the departmental inquiry against the present petitioner and that the departmental inquiry has caused any prejudice to him. The statement of allegations and articles of charges against the present appellant are running as under :

"During the course of your duties as Manager, Pilvai Branch from 1-7-1977 to 6-3-1980 :

(a) you accepted loan application in the name of Shri Chhaganbhai Bababhai Chaudhari from his son Somabhai Chhaganbhai Chaudhari for grant of loan of Rs. 10,000/- for installation of electric motor in well at his field without any photo of the borrower. On 22-7-1977 you prepared proposal No. 8/11 and recommended loan of Rs. 10,000/- in favour of the applicant without complying with specified rules i.e., without verifying the technical feasibility, economic viability of the project etc. You did not make any pre-sanction inspection and did not verify the details given in the loan application including condition of the farm, crop., asset, etc. You also did not furnish any check-list in this regard before granting the said loans; you knowingly allowed this application signed by Shri Somabhai Chhaganbhai Chaudhari in the name of his father Chhaganbhai Bababhai Chaudhari and for that demanded and accepted Rs. 1,000/- from Shri Somabhai Chhaganbhai.

(b) You also accepted the loan application from 13 different applicants/ agriculturists for various amount (as per Schedule I), including Shri Chhaganbhai Bababhai Chaudhari. You sanctioned or got sanctioned these loans without observing the Standing Rules and demanded and accepted bribe of Rs. 100/- to Rs. 3,000/-as per Schedule from each loanee.

Your aforesaid acts amount to acts of misconduct in terms of clause 24 of Bank of India Officer Employees (Conduct) Regulations, 1976, since you have committed breach of clause 3(1) of the said Regulations which reads as under :

Every officer employee shall at all times take 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."

The above statement of allegations and articles of charges was served on him on 10-8-1982. Before that on 4-8-1980 the appellant was served with a memo

alleging commission of the said irregularities by him. To the said memo the appellant had given his reply on 10-10-1980. Thus, the charge-sheet was served on the appellant within two years from the date of his refuting the allegations against him. It is very pertinent to note that the appellant has not pointed out as to how on account of delay prejudice is caused to him. The accusation against him was based on the documentary evidence and oral evidence of the witnesses. Neither during the inquiry nor during the submission made before the learned single Judge anything was pointed to show that because of the delay the petitioner could not produce the evidence which could have proved his case. In the case of State of Punjab & Ors. v. Chaman Lal Goyal, 1995 (2) SCC 570, the respondent Chamanlal Goyal was working as Superintendent of Nabha High Security Jail. On the night intervening 1/2-1-1987 certain inmates, said to be terrorists, made an attempt to escape. In that connection, two of the inmates attempting to escape and one jail official died in the shooting which took place. Six terrorists made good their escape. The Inspector General of Prisons immediately inspected the prison and made a report to the Government on 9-1-1987. He reported further that the respondent "followed the policy of appeasement towards the extremists. He yielded to each and every illegal demand of the extremists. As a result, detenu Gurdev Singh, assumed the leadership of the prison population and dictated terms to the administration. There was a total break down of the classification of the inmates in the different wards of the jail. It is quite evident from the fact that three escapees Balwinder Singh, Major Singh and another Balwinder Singh were permitted to stay together along with detenu Kulwant Singh life prisoner Major Singh and three adolescent undertrials Ram Singh, Kulwant Singh and Surinder Singh in a single cell in utter disregard of the Punjab Jail Manual... It has been told by the members of the staff that the Superintendent Jail, Shri Chaman Lal Goyal accepted a farewell party from the most dreadful terrorists, viz. Tarsem Singh Gill, Col. Kahlon, Giani Roshan Singh and others on the receipt of his promotion orders which is against the conduct rules and the provisions of Punjab Jail Manual". The injured terrorists were interrogated by the police and they have confessed that they had been planning this escape for about a month. He recommended that "the Deputy Superintendent, Shri Surinder Singh and Shri Chaman Lal Goyal, Superintendent Jail, who are responsible for the loose administration and laxity in the control of the inmates may please be placed under suspension at the Government level." Thereafter the District Magistrate had ordered the Sub-Divisional Magistrate to inquire into the said incident. The Sub-Divisional Magistrate submitted his report on 26-1-1987 but no action was taken against the respondent until 1992. For the first time, he was called to the office of the Secretary to the Home Department on 25-3-1992 for questioning and thereafter the memo of charges was issued on 9-7-1992. The respondent submitted his explanation on 4-1-1993 denying the charges and

the Government appointed an enquiry officer on 20-7-1993. In that case delay of nearly 5/4 years was taken into consideration by the High Court and the High Court had quashed the action against the respondent. But the action of the High Court was not approved by the Supreme Court and the Supreme Court stated that the delay in question did not warrant quashing of charges as delay had not caused prejudice to the delinquent officer in defending himself. The Apex Court has made the following observations :

"Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing." Thus, in our opinion when the appellant-petitioner is not in a position to point out that delay in inquiry has materially affected his defence, we are unable to hold that the departmental inquiry held against him deserves to be interfered with by accepting the contention of delay.

[11] The last contention raised on behalf of the appellant is as regards the punishment awarded to the appellant. It is contended that the punishment awarded to the appellant is very harsh. But if the nature of charges levelled against the appellant is taken into consideration then it is very difficult to hold that the punishment awarded to him is harsh one. If the inquiry report is taken into consideration, then it would be quite clear that out of the 13 incidents of taking illegal gratification of sanctioning of loan, the inquiry officer has found that 5 incidents were proved. As regards the remaining 8 incidents, the inquiry officer had found that the evidence led before him was not sufficient to hold the appellant guilty. If the appellant has taken illegal gratification ranging from Rs. 100/- to Rs. 3,000/-for sanctioning loans, then it is a clear case of corruption and if a corrupt bank officer is allowed to continue in the job by awarding him lessEr punishment then that would amount to giving premium on his dishonesty. The misconduct committed by the appellant-delinquent is of such a serious nature that on the proof of his misconduct, there could not be any other punishment than the dismissal from service. Therefore, in the circumstances we are unable to hold that the punishment awarded to the delinquent is also on the higher side so as to interfere with the same.

[12] Thus, we hold that the learned single Judge has not committed any error in dismissing the Special Civil Application filed by the appellant-petitioner. No error or law

of fact is committed by the learned single Judge in dismissing the S.C.A. filed by the present appellant. In the circumstances, we do not find any ground to admit this Letters Patent Appeal. We, therefore, summarily reject the same. No order as to costs.

Appeal summarily dismissed.

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