HIGH COURT OF GUJARAT

N R ZALA
Versus
BANK OF INDIA

Date of Decision: 21 July 2004

Citation: 2004 LawSuit(Guj) 433

Hon'ble Judges: K S Jhaveri

Eq. Citations: 2004 3 CLR 231, 2005 1 GLR 226, 2004 3 LLJ 942, 2005 1 GCD 405

Case Type: Special Civil Application

Case No: 4693 of 2003

Subject: Constitution

Editor's Note:
Constitution of India, 1950 - Art 14, 226 - Disciplinary authority imposed a penalty of discharge from services with superannuation benefits - Misconduct - Petitioner has misused his position as a Bank employee and has tires to take advantage of his position to avoid Criminal proceedings - Sufficient opportunity was given - Held, Penalty imposed upon petitioner is just and proper - Petitioner is dismissed.

Acts Referred:
Constitution Of India Art 226, Art 14

Final Decision: Petition dismissed

Advocates: C L Soni, Nanavati Associates

K. S. JHAVERI, J.

[1] In this petition, the petitioner has challenged the order dated 29-11-2002 passed by the disciplinary authority of the respondent-Bank, whereby the disciplinary authority imposed a penalty of discharge of the petitioner from the services with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules and Regulations prevalent as on the date and without disqualification from future employment in terms of Clause 6(d) of the Memorandum of Settlement

dated 10-4-2002. The petitioner has also challenged the order dated 4-3-2003 passed by the appellate authority whereby the authority has confirmed the order passed by the disciplinary authority.

[2] The petitioner was serving at I.N.S. Valsura Branch as Cashier-cum-Accounts

Clerk. He was served with a memorandum dated 9th September, 2002 informing him that it was decided to initiate disciplinary action against the petitioner for the acts of misconduct alleged to have been committed by him during the course of his duties. The inquiry was fixed on 23-9-2002. However, on that day the petitioner did not remain present. Therefore, the inquiry was adjourned to 25-9-2002. On 25-9-2002 the petitioner sought time to make arrangement for defence representative. The matter was therefore kept on 27-9-2002. On 27-9-2002 the Inquiry Officer completed the proceedings and submitted his report to disciplinary authority on 11-10-2002 holding the petitioner guilty for the charges levelled against him. The Inquiry Officer held that the charge of the employee doing any act prejudicial to the interest of the Bank or gross negligence involving or likely to involve the Bank in serious loss, as levelled against the C.S.E., stands proved against him.

Thereafter, on 7-11-2002 a show-cause notice was issued to the petitioner asking to show cause as to why punishment of discharging from the services should not be imposed upon him. The petitioner submitted his reply on 21-11-2002. Ultimately, the disciplinary authority passed the order dated 29-11-2002 discharging the petitioner from service as mentioned above. The appeal filed by the petitioner was dismissed by the appellate authority by order dated 4-3-2003. Hence the petitioner has approached this Court.

[3] Mr. Soni for the petitioner has submitted that the inquiry conducted was in violation of principles of natural justice inasmuch as he was not given sufficient opportunity to meet with the allegations and to defend his case. He was not given sufficient time to prepare himself.

The second argument of Mr. Soni is that this is not a misconduct as defined under the Rules, and therefore, the petitioner could not have been discharged from the Bank.

Mr. Soni submitted that the conduct which is shown by the petitioner could have been done by any other employee or customer, and therefore, it cannot be said that the said conduct is in any manner prejudicial to the Bank.

Lastly, Mr. Soni has submitted that assuming that even if the misconduct is proved, the penalty imposed is on the higher side.

[4] Mr. Soni has relied upon a decision in the case of Gopalakrishna Prabhu v. Central Bank, reported in 1991 (1) KLT 383 wherein in Para 2 of the said judgment the Kerala High Court considered the same regulations and has held that the act alleged therein was not a misconduct.

In the present case, the findings of the Inquiry Officer are of very serious nature. In the report of the Inquiry Officer it is held as under :

"(iv) That balance of Rs. 217/- prevailed in the said A/c. from 6-4-2002 till cash of Rs. 41,500/- was deposited by the C.S.E. on 11-6-2002 i.e. the day on which he requested for stop payment of the above cheque and the very next day i.e. on 12-6-2002 the balance was restored to Rs. 217/- when C.S.E. withdrew entire amount of cash deposited by him in the A/c. the previous day. On both the days i.e. on 11-6-2002 and 12-6-2002, the C.S.E. was on leave on account of his illness. The C.S.E. was emphasising on the issue of stop payment. Stop payment by itself is not a misconduct and it is nowhere stated in the charge-sheet that giving stop payment instructions is a misconduct. Further, the way in which the C.S.E. acted viz., issuing a cheque for Rs. 41500/- knowing fully well that balance in the A/c. was just Rs. 217/- on the date of the cheque depositing the exact amount of the cheque on the date of its presentation and withdrawing the same amount on the very next day once his stop payment instruction was complied with by the branch indicate that just to circumvent returning of the cheque for insufficient funds, he deliberately did all this, the C.S.E's. argument that since he was punished, he utilised the cheque in question is also not tenable in view of not only the Bank's repeated instructions to him to surrender the unutilised cheque leaves in all his accounts including S. B. (Jt.) A/c. No. 17217, but also his issuing the Cheque without maintaining sufficient balance. As per the C.S.E., he delivered the cheque dated 6-4-2002 only on 11-6-2002."

Therefore, looking to the fact that in spite of warning by the Branch Manager to return the cheques, the petitioner has not returned the same on one pretext or the other and has issued the cheques instead of returning the cheques to the Bank. Therefore, the argument that this is not a misconduct is stretching the case too far in view of the fact that if the petitioner would not have been in the Bank, he would have no knowledge about the cheque and at least Bank would not have allowed him to withdraw the amount on the next day which he has done.

Mr. Soni has also relied upon a judgment of the Supreme Court in the case of A. L. Kalra v. Project and Equipment Corporation of India Ltd., reported in AIR 1984 SC 1361 and more particularly Para 31 thereof. In the said case, the findings were that there were lapses on the part of the officer for doing the act on behalf of the Bank

and he has not returned the house building advance and vehicle advance. In the present case it is not the case that there are lapses, but there are serious misuse of power which otherwise the petitioner would not have been in a position to do. Therefore, this decision is of no assistance to the petitioner.

Mr. Soni has relied upon a decision of the Apex Court in the case of Mis. Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut, reported in AIR 1984 SC 505 wherein the Supreme Court has held that under Industrial Employment (Standing Orders) Act the employer cannot term any misconduct beyond the term which are defined under the orders. In the present case, the act which has been committed by the petitioner is misuse of his office as a Bank employee. Therefore, in the clause 19.5 it is widely worded i.e. "which is likely to cause loss to the Bank". Therefore, the act of the petitioner is covered by the said term.

Mr. Soni has placed reliance upon a decision of Madras High Court in the case of A. Baliah David v. Regional Manager, Central Bank of India, reported in 2001 Lab.IC 2671, wherein the Madras High Court has held that the act of the management in appointing Inquiry Officer in the very charge memo is an act of denial of opportunity to delinquent to preliminarily explain the charges framed resulting in violation of principles of natural justice. The said case will not help the petitioner inasmuch as on a specific query as to whether the petitioner has objected at the relevant point of time. Mr. Soni was not in a position to point out that at the relevant point of time the petitioner has objected about the appointment of Inquiry Officer in the notice itself. Apart from that the conduct of the petitioner right from 1995 is of very serious nature. Though, different punishments were imposed upon the petitioner, he has not improved and in spite of the last punishment of reduction in pay-scale the petitioner has continued the same conduct. In my opinion, therefore, the penalty imposed of discharge from service is just and proper.

[5] Mr. Chudgar for the respondent submitted that no interference is called for in the order passed by the respondent. He submitted that the respondent has followed all procedures and given sufficient opportunity to the petitioner. Apart from that, respondent being a nationalised Bank (Public Sector Undertaking) public money is involved, and therefore, the respondent has rightly passed the order in question.

Mr. Chudgar also submitted that the respondent has taken a liberal view in the matter looking to the age of the petitioner. Therefore, even on this ground no interference is warranted in the present petition.

Mr. Chudgar for the respondent-Bank has strongly relied upon a decision of the Supreme Court in the case of Tarachand Vyas v. Chairman & Disciplinary Authority, reported in 1997 (4) SCC 465. In the said decision, the Apex Court observed as under :

"2. Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Art. 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Art. 38. Distribution of material resources to elongate that purpose envisaged in Art. 39(b) is the means for the development of the weaker sections. The Banking business and services were nationalised to achieve the above objects. The nationalised Banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the Banks are not merely the trustees of the Society, but also bear responsibility and owe duty to the Society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the Society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The Banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in Banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live-wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the Banking system. What is more, the nationalisation of the Banking service was done in the public interest Every employee/officer in the Bank should strive to see that Banking operations or services are rendered in the best interest of the system and the Society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society."

Mr. Chudgar has also placed reliance on the decision of the Supreme Court in the case of Chairman & Managing Director, United Commercial Bank v. P. C Kakkar, reported in 2003 (4) SCC 364. In that case, in the case of misconduct, the Supreme Court has narrowed down the compass for judicial review. Paras 11 and 12 of the said decision read as under :

"11. The common threat running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

[6] No other contentions are raised.

[7] In that view of the matter, I am of the opinion that the petitioner has misused his position as a Bank employee and has tried to take advantage of his position to avoid criminal proceedings under Negotiable Instruments Act, whereby public at large viz., the Society is the sufferer.

The petitioner has also not shown from the record that no sufficient opportunity was given to him in the proceedings. On the contrary, from Inquiry Report it is clear that sufficient opportunity was given to the petitioner. Therefore, the penalty imposed upon the petitioner is just and proper and no interference is called for in the present petition.

[8] The petition, is therefore, rejected. Rule is discharged. Normally, the petition should have dismissed with costs, but since Mr. Soni mentioned that the petitioner is out of job, I do not impose any costs.